

International Trade Alert

International Sanctions Against Libya

February 28, 2011

Companies with business interests in Libya or with the Libyan government should immediately assess the implications of a range of economic sanctions measures, including but not limited to U.S., UN, EU, UK and Canadian measures, imposed over the last several days. At this time, with events on the ground in Libya still rapidly evolving, many questions remain open regarding how these sanctions will be implemented, elaborated, applied and enforced. This alert highlights key sanctions measures and related considerations under current U.S., UK, EU and Canadian sanctions laws.

U.S. Sanctions

The Obama Administration took steps on the evening of February 25, 2011 to impose a sweeping new sanctions regime against Libya. Key considerations include the following—

- **Contracts and Business Dealings Involving the Government of Libya and Designated Parties Are Subject to Asset Block.** The February 25, 2011 Executive Order prohibits any transfer or dealing in property in which the Government of Libya (including the National Oil Company of Libya, the Central Bank of Libya and other Libyan state “owned or controlled” institutions) has any direct or indirect interests. The same prohibition applies to property in which designated senior officials, as well as Muammar Qadhafi’s family members, have an interest. Companies considering the potential application of this measure to their operations should be mindful of two key considerations: (i) the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) interprets the term “interests” extremely broadly and (ii) under published Treasury guidance, the U.S. Government considers any entity owned 50 percent or more by the Government of Libya or its agencies to be subject to this blocking order unless a license or authorization applies.
- **Contract Sanctity Provisions.** The Executive Order does not include provisions authorizing completion of performance on preexisting contracts or other transactions. Accordingly, absent contrary guidance or authorization from OFAC, the completion of preexisting contracts or transactions by U.S. “persons” (to include both individuals and entities) with affected Libyan parties is generally barred at this time.
- **Existing US Export Licenses for Defense Articles Are Revoked.**
- **Obligation to Hold and Report Blocked Property.** U.S. persons that are in possession or control of property or property interests subject to these sanctions not only must refrain from any transfer or dealing in such property, but also are subject to an obligation to file a report with the U.S. Government within a 10-day period.
- **General License Authorizing Dealings with Third-Country Financial Institutions.** The Administration created a narrow carve-out from the prohibitions described above by issuing a general license that authorizes “all transactions . . . with financial institutions owned or controlled by the Government of Libya that are organized under the laws of a country other than Libya.”



www.twitter.com/akin_gump

UN Sanctions

Separately, late on Saturday, February 26, 2011, the UN Security Council unanimously adopted a resolution that imposes more narrowly targeted multilateral sanctions on Libya. Unlike the U.S. measure, the UN measure: (i) does not broadly sanction the Government of Libya and (ii) contains a process whereby payments may be received under preexisting commercial contracts under certain conditions. The UN measures provide the baseline for individual Member State sanctions and include the following key provisions—

- **Sanctions Targeted at Qadhafi and Key Associates.** Sanctions, including an asset freeze and travel ban, are targeted against Muammar Qadhafi, his family and other individuals closely associated with his regime.
- **Arms Embargo.** A general embargo on sales and exports of arms to Libya.
- **Process for Payments Under Preexisting Commercial Contracts.** The UN resolution provides a process whereby companies holding preexisting contracts may receive payment from sanctioned parties under those contracts, subject to sanctions measures implemented by individual UN Member States. This is limited to contracts that are not related to any prohibited items or activities and applies only if the payment is not directly or indirectly received by a person subject to an asset freeze.

EU, UK and Canada Sanctions

A number of jurisdictions, including the EU, UK and Canada, have imposed separate sanctions measures against Libya at this time, with other countries expected to follow. Companies should consider carefully the extent to which the sanctions measures imposed by multiple jurisdictions may apply, as well as the potential for diverging interpretations and approaches under these various jurisdictions.

- **EU.** On February 28, 2011, the EU adopted Decision 7081/11 implementing the UN measures. In addition, the EU prohibited trade with Libya in equipment “which might be used for internal repression.” The EU has also issued sanctions that expand the travel bans and asset freezes issued in accordance with the UN resolution to other Libyans deemed to be responsible for the repression. Specifically, the EU expands the travel ban to an additional 10 individuals and the asset freeze to an additional 20 individuals. While the language focuses on individuals, presently the identity of affected persons remains unclear and it is unclear whether the asset freeze extends to sovereign wealth funds of Libya, the Libyan Investment Authority or the Central Bank of Libya.
- **UK.** The UK’s Libya (Financial Sanctions) Order 2011, enacted on February 27, 2011, applies to UK persons, wherever located, as well as any person in the UK. The UK Order imposes targeted financial sanctions (including an asset block and restrictions on dealings with designated parties) against certain senior Libyan government officials and affiliates. Notably, the Order also imposes these sanctions against persons or entities “owned or controlled by” or “acting on behalf, or at the direction of” a designated party. The UK law, therefore, does not appear to go as far in explicit terms as U.S. measures in targeting the Government of Libya and its institutions. However, its provisions provide a basis to block activities with entities owned or controlled by the Qadhafi regime. It remains to be seen whether the UK Government will establish a carve-out or safe harbor similar to the current OFAC/U.S. General License for owned or controlled third-country financial institutions described above.
- **Canada.** On February 27, 2011, the Canadian government issued sanctions that are similar to those of the United States and go further than measures adopted by other countries. The Canadian sanctions target not only individuals associated with the Qadhafi inner circle, but also the Government of Libya, including the Central Bank of Libya. At this time it is not clear whether or not Canada may follow the approach taken by the United States in exempting third country entities owned or controlled by the Central Bank from its sanctions measures or to what extent further guidance regarding receipt of payments under pre-existing commercial commitments will be forthcoming.

CONTACT INFORMATION

If you have any questions concerning this alert, please contact —

Wynn H. Segall

wsegall@akingump.com

202.887.4573

Washington, D.C.

Edward L. Rubinoff

erubinoff@akingump.com

202.887.4026

Washington, D.C.

Lars-Erik A. Hjelm

lhjelm@akingump.com

202.887.4175

Washington, D.C.

Thomas James McCarthy

tmccarthy@akingump.com

202.887.4047

Washington, D.C.

Tamer A. Soliman

tsoliman@akingump.com

(971)2.406.8531

Abu Dhabi

Nnedinma C. Ifudu Nweke

nifudu@akingump.com

202.887.4013

Washington, D.C.

Nicole M. D'Avanzo

ndavanzo@akingump.com

202.887.4557

Washington, D.C.

Mahmoud B. Fadlallah

mfadlallah@akingump.com

202.887.4159

Washington, D.C.