December 4, 2008

INTERNATIONAL TRADE ALERT

NEW AMENDMENTS TO THE OFAC SANCTIONS ON IRAN RAISE THE BAR FOR U.S. SANCTIONS DUE DILIGENCE IN INTERNATIONAL BUSINESS TRANSACTIONS

Effective December 4, 2008, the Department of Treasury's Office of Foreign Asset Control (OFAC) is amending Appendix A of the Iranian Transactions Regulations (ITR) to expand the list of entities that OFAC deems to be owned or controlled by the Government of Iran, and, therefore, subject to ITR restrictions regardless of their location. While, previously, OFAC has identified a number of entities associated with Iran's financial services sector in this list, these additions, for the first time, reach beyond financial services to include companies associated with Iran's energy sector with a presence in third countries, including the United Kingdom and Switzerland.

OFAC's action reflects its increasing enforcement focus on entities operating outside of Iran that the agency views as owned or controlled by Iranian interests. Core provisions of the ITR generally prohibit U.S. persons, wherever located, from engaging in transactions with, or exporting or reexporting goods, technology or services to, Iran, the Government of Iran or to Specially Designated Nationals (SDNs) of Iran. OFAC's latest action reflects the agency's increasing focus on entities associated with Iran that operate in third countries and should be understood as a cautionary reminder to U.S. companies that appropriate due diligence is critical to safeguard against potential U.S. sanctions liabilities in international business transactions regardless of where they occur.

NEW LISTINGS

Appendix A of the ITR provides a list of entities that OFAC has determined to be owned or controlled by the Government of Iran. 31 C.F.R. Part 560, Appendix A. These entities are also designated as SDNs of Iran. Until now, the Appendix A list was limited to certain banks and financial institutions associated with Iran. OFAC's new listings signal OFAC's efforts to expand its enforcement focus to Iran's energy sector.

The December 4, 2008, amendment to the ITR specifically names three entities for inclusion in the Appendix A list. These are—

- National Iranian Oil Company (a.k.a. NIOC), Hafez Crossing, Taleghani Avenue, P.O. Box 1863 and 2501, Tehran, Iran;

- Naftiran Intertrade Company Ltd. (a.k.a. NICO); a.k.a. Naft Iran Intertrade Ltd., 22 Grenville St, St Helier, Jersey Channel Islands JE4 8PX, United Kingdom; 22 Grenville St, St Helier, Jersey Channel Islands JE2 4UF, United Kingdom; 5th Floor, Petro Pars Building, Saadat Abad Avenue, No. 35, Farhang Blvd, Tehran Iran;

- Naftiran Intertrade Co. (NICO) Sarl, 6, Avenue de la Tour, Haldimand, 1009 Pully, VD, Switzerland.

The fact that two of the named entities are located in Western Europe, at a time of focused U.S. diplomatic efforts to strengthen multilateral efforts to combat Iran's pursuit of nuclear ambitions, is a noteworthy indication of OFAC's commitment to pursue enforcement against entities owned by the Government of Iran in strategic sectors that are located in third countries.

SIGNIFICANCE FOR U.S. BUSINESS INTERESTS

This latest expansion of the OFAC sanctions program against Iran reflects a broader trend in the agency's enforcement practices. OFAC generally takes the position that U.S. sanctions prohibitions against Iran and other embargoed countries apply to entities that are identified as SDNs or otherwise subject to the ownership or control of a U.S.-embargoed country even if they are located outside the embargoed country. Moreover, within the past year, OFAC has put U.S. companies on notice that the agency considers entities subject to the ownership or control of an SDN to be blocked parties, subject to U.S. sanctions restrictions, regardless of whether or not they have been separately identified or designated by OFAC.[1] OFAC's new listing of energy sector entities associated with Iran, including entities located in Western Europe, is consistent with this trend and widens the global circle of tainted entities affected by the U.S. sanctions regime against Iran.

OFAC's action underscores the increasing importance for U.S. companies to conduct effective due diligence of third parties involved in their international business transactions to avoid inadvertent violations of the OFAC sanctions programs. Even where a foreign entity is not listed as an SDN, a review of its structure of ownership and control is necessary to safeguard against potential exposure to the substantial legal and reputational liabilities associated with violations of the U.S. sanctions laws. As OFAC enforcement efforts increase with respect to non-financial entities associated with Iran that are located in third countries, the risks for U.S. companies with international business interests, and a parallel premium on related diligence practices, will rise accordingly.

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[1] *See, e.g.*, OFAC, Guidance on Entities Owned By Persons Whose Property And Interests In Property Are Blocked (Feb. 14, 2008), http://www.treas.gov/offices/enforcement/ofac/programs/common/licensing_guidance.pdf.