International Trade Alert

U.S. Moves to Freeze Iranian Government Assets

February 7, 2012

On February 5, 2012, President Obama expanded U.S. sanctions against Iran by signing Executive Order No. 13599,[1] which requires U.S. persons to block or freeze all property and interests in property of the Government of Iran and all Iranian financial institutions, including those of the Central Bank of Iran. Under previous sanctions, U.S. persons were simply prohibited from engaging in transactions with the Government of Iran and had to reject, rather than block, transactions involving Iranian property.

This new round of U.S. sanctions follows months of escalating global sanctions intended to pressure Iran's leadership into shutting down the country's burgeoning nuclear program. Iran's entrenched position regarding the development of nuclear technology resulted in UN Security Council Resolution 1929 on June 9, 2010. This was quickly followed, on June 24, 2010, by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), which provided for a substantial expansion of established extraterritorial U.S. sanctions against Iran. Since then, waves of sanctions by the United States, the European Union, Canada, Japan, South Korea and others have failed to deter Iran.

In a recent attempt to increase pressure on Iran, in December 2011, Congress passed and President Obama signed into law the National Defense Authorization Act (NDAA), which prohibits or restricts foreign financial institutions that the President determines have knowingly conducted or facilitated transactions with the Central Bank of Iran or other designated Iranian financial institutions from maintaining correspondent or payable-through accounts in the United States, as well as directs the President to freeze property and interests in property of Iranian financial institutions. In January 2012, the European Union formally adopted an oil embargo against Iran banning all new oil contracts and agreed to freeze assets of Iran's Central Bank. Britain and Australia have pledged to follow suit.

The February 5, 2012 Executive Order announced by the White House and Treasury Department implements section 1245(c) of NDAA and builds on the existing Iranian Transactions Regulations[2] (ITR)—which remain in effect—to further limit Iran's access to the U.S. financial system and deter petroleum exports.

NEW BLOCKING SANCTIONS

Executive Order No. 13599 directs the Treasury Department, in consultations with the State Department, to block, rather than reject as previously directed, all property and interests in property belonging to—

- the Government of Iran, including the Central Bank of Iran, Iranian ministries, state-owned enterprises and commercial firms owned or controlled by the Government of Iran

[1] Executive Order No. 13599, February 5, 2011, available at http://www.whitehouse.gov/the-press-office/2012/02/06/executive-order-blocking-property-government-iran-and-iranian-financial-.
[2] 31 C.F.R. part 560.

- any Iranian financial institution, including the Central Bank of Iran
- persons determined to be owned or controlled by, or to have acted or purportedly to act for, or on behalf of, directly or indirectly, any person whose property and interest in property are blocked pursuant to the order.

This order will freeze the property or interests in property that are in the United States, that come within the United States or that come within the possession or control of a U.S. person. U.S. financial institutions receiving instructions to execute transactions involving designated Iranian entities were previously directed to reject transactions unless exempt, authorized or not prohibited by the ITR, as administered by Treasury's Office of Foreign Asset Control (OFAC). U.S. financial institutions will now be directed to freeze these assets. These provisions, which mirror the Cuba sanctions, will no doubt further constrain Iran's ability to sell petroleum products on the world market.

OFAC notes that U.S. persons, and, in particular, financial institutions, will be expected to conduct adequate diligence on their own direct customers, including their ownership structure, to confirm that those customers are not persons subject to blocking. The Treasury Department comments that these provisions do not change the sanctions and diligence requirements that may be applied against foreign financial institutions pursuant to NDAA or CISADA.

GENERAL LICENSES AND EXCEPTIONS

Pursuant to Executive Order No. 13599, the Treasury Department has issued two general licenses excluding certain transactions from the sanctions outlined above.

General License A authorizes the continuation of almost all transactions already permitted under existing licenses. Specifically, it permits most transactions (i) authorized under general licenses set forth in the ITR or (ii) authorized under specific license issued by OFAC pursuant to any part of 31 C.F.R. chapter V, including specific licenses issued pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000,[3] provided that they have an expiration date. The license provides additional provisions for those licenses without expiration dates.

General License A does not, however, permit the closing of accounts of the Government of Iran or of other Iranian financial institutions and the lump sum transfer of the balance to an account outside of the United States. Those transactions are prohibited by this executive order and must now be blocked.

General License B authorizes certain U.S. financial institutions to process non-commercial, personal remittances to or from Iran provided that the payment is not made by, to or through a designated entity. In order to comply with existing U.S. sanctions, such transactions must be processed through a third country due to the bar on operating correspondent accounts for Iranian banks. The transaction may, however, involve the use of blocked Iranian financial institution, if blocked solely pursuant to this executive order, and there is a third-country, non-U.S. financial institution as an intermediary.

CONTACT INFORMATION

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

Edward L. Rubinoff
erubinoff@akingump.com
202.887.4026
Washington, D.C.

Wynn H. Segall
wsegall@akingump.com
202.887.4573
Washington, D.C.

[3] 22 U.S.C. §§ 7201-7211.

Akin Gump
Strauss Hauer & Feld LLP

Thomas J. McCarthy
tmccarthy@akingump.com
202.887.4047
Washington, D.C.

Sally S. Laing
slaing@akingump.com
202.887.4522
Washington, D.C.

Tamer A. Soliman
tsoliman@akingump.com
+971 2.406.8531
Abu Dhabi