

E-ALERT | International Trade Controls

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DEVELOPMENTS IN US AND UK SANCTIONS AGAINST IRAN

New US Sanctions Target Foreign Companies Supporting the Iranian Petroleum and Petrochemical Industries, Iran's WMD Program, and Iranian Money Laundering; UK Sanctions Target Dealings with Iranian Banks

The US government has sought to ratchet up the pressure on Iran to abandon its nuclear ambitions by imposing additional sanctions. On November 21, 2011, President Obama issued an Executive Order imposing new sanctions against persons who support the Iranian petroleum and petrochemical industries; and the State and Treasury Departments designated one Iranian individual and ten Iranian entities as blocked parties for their involvement in Iran's Weapons of Mass Destruction (WMD) program. In addition, to further isolate Iran's financial sector, the Treasury Department designated Iran as a jurisdiction of primary money laundering concern under the USA PATRIOT Act, and issued a proposed rule to require financial institutions to conduct more thorough due diligence before processing transactions.

The UK government also has imposed additional sanctions against Iran because of the risk of terrorist financing or money laundering activities being carried on in that country. As of November 21, 2011, HM Treasury has required UK credit and financial institutions to cease business relationships and transactions with all Iranian banks, including their branches and subsidiaries, and the Central Bank of Iran. These new requirements apply *in addition to* existing EU and UK sanctions targeting Iran.

Other Western governments are also taking action to further isolate Iran because of its nuclear ambitions. For example, Canada has imposed additional sanctions that, among other things, (i) prohibit the provision of financial services to or from Iran or any person in Iran, and the supply of goods used in the petrochemical, oil or natural gas industry, except financial services or goods provided pursuant to a contract that pre-dates the new sanctions; and (ii) restrict dealings with certain individuals and entities. In addition, indications are that the European Union soon may also impose additional sanctions against Iran. EU Foreign Affairs Ministers are meeting to discuss new Iran sanctions on December 1, 2011.

NEW US SANCTIONS AGAINST IRAN

Executive Order 13590

Sanctionable Activities

[Executive Order 13590](#) authorizes the Secretary of State, in consultation with the Secretary of the Treasury and other officials, to impose sanctions upon any person who, on or after November 21, 2011, knowingly:

- “sells, leases, or provides to Iran goods, services, technology, or support that has a fair market value of \$1,000,000 or more or that, during a 12-month period, has an aggregate fair market value of \$5,000,000 or more, and that could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources located in Iran;” or
- “sells, leases, or provides to Iran goods, services, technology, or support that has a fair market value of \$250,000 or more or that, during a 12-month period, has an aggregate fair market value of \$1,000,000 or more, and that could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of petrochemical products.”

The activities that are made sanctionable by the Executive Order supplement those activities that are already sanctionable under the Iran Sanctions Act (ISA), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA). As described in our [June 25, 2010 e-alert](#), the ISA requires the imposition of sanctions, absent a Presidential waiver, against persons who (i) make an investment in the development of petroleum resources located in Iran above certain monetary thresholds (\$20 million in a twelve-month period or a combination of investments during a twelve-month period of at least \$5 million each that equals or exceeds \$20 million), (ii) provide refined petroleum products to Iran that have a fair market value of \$1 million or more or that, during a twelve-month period, have an aggregate value of \$5 million or more, or (iii) provide goods, services, technology, information or support above these same \$1 million/\$5 million thresholds that either (A) could directly and significantly contribute to Iran's ability to import refined petroleum products, or (B) could directly and significantly facilitate Iran's domestic production of refined petroleum products. The new Executive Order expands sanctionable conduct to include the provision of goods, services, technology or support that could contribute to Iran's ability to develop petroleum resources located in Iran or its domestic production of petrochemical products.

The Executive Order defines “petroleum resources” as “petroleum, oil, natural gas, liquefied natural gas and refined petroleum products,” and “petrochemical products” as “any aromatic, olefin, and synthetic gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea.” As in the ISA, the Order defines “refined petroleum products” as “diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel) and aviation gasoline.” “Iran” is defined to include not only the territory of Iran, but also “any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction” if the government of Iran exercises partial or de facto control over the area and derives a benefit from economic activity in the area pursuant to international arrangements.

President Obama's message to the Congress explained that the United States decided to target activities that contribute to either Iran's development of petroleum resources in Iran or its domestic production of petrochemicals because these two sectors continue to fund Iran's illicit nuclear activities and “could serve as conduits for Iran to obtain proliferation sensitive technology.” The President's message also noted that, because CISADA had already targeted Iran's domestic petroleum refining capacity, Iran has tried to use its petrochemical facilities to refine petroleum.

Available Sanctions

The Order authorizes the Secretary of State to impose one or more of nine sanctions against persons found to have engaged in sanctionable conduct. These sanctions are the same as the sanctions that are authorized under the ISA, as amended by the CISADA, as follows:

- 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;

- denial of specific licenses or other specific permission by US government agencies required for the export or reexport of goods or technology to the sanctioned person;
- with respect to a sanctioned person that is a financial institution:
 - such actions as the Chairman of the Board of Governors of the Federal Reserve System and the President of the Federal Reserve Bank of New York deem appropriate, including denying designation, or terminating the continuation of any prior designation of, the sanctioned person as a primary dealer in US government debt instruments; or
 - prohibiting the sanctioned person from serving as an agent of the US government or as a repository for US government funds;
- prohibiting US government agencies from procuring any goods or services from the sanctioned person;
- prohibiting any US financial institution from making loans or providing credits to the sanctioned person totaling more than \$10 million in any twelve-month period, unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;
- prohibiting any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;
- prohibiting any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;
- blocking all property and interests in property of the sanctioned person that are or come within the United States, or that are or come within the possession or control of any US person, including any foreign branch; or
- restricting or prohibiting imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person.

The Executive Order provides that, as under the ISA, sanctions may be imposed not only on the person who engages in the sanctionable activity, but also on (i) any successor entity, (ii) any person who owns or controls the person engaging in the sanctionable activity and who knew or should have known that the person was engaging in such activity, and (iii) any person owned or controlled by, or under common ownership or control with, the person engaging in the sanctionable activity who knowingly participated in the activity.

New US Non-Proliferation Designations

On November 21, 2011, the Departments of State and the Treasury announced that new sanctions had been imposed on ten entities involved in Iran's illicit nuclear program:

- Nuclear Reactors Fuel Company (SUREH)
- Noor Afzar Gostar Company
- Fulmen Group
- Yasa Part
- Modern Industries Technique Company (MITEC)
- Iran Centrifuge Technology Company (TESA)
- Parto Sanat

- Paya Partov
- Neka Novin
- Simatic Development Co.

Sanctions also were imposed on one Iranian individual, Javad Rahiqi. These parties were sanctioned for working with the Atomic Energy Organization of Iran (AEOI) or otherwise participating in or contributing to Iran's nuclear weapons program. They have been added to the List of Specially Designated Nationals and Blocked Persons published by the Treasury Department's Office of Foreign Assets Control.

US persons are prohibited from engaging in any dealings with these newly sanctioned parties; property and property interests of these sanctioned parties that are or come within the United States or that are or come into the possession or control of a US person must be blocked, and dealings in such blocked property by US persons are prohibited.

Jurisdiction of Primary Money Laundering Concern Under the USA PATRIOT Act

On November 21, 2011, the Department of the Treasury announced that all of Iran has been designated a jurisdiction of primary money laundering concern under Section 311 of the USA PATRIOT Act. This designation, which applies to the entire Iranian financial sector, including the Central Bank of Iran and all governmental and private Iranian banks, further isolates Iran's banking sector from the US and global financial system by requiring banks to obtain additional information about and retain additional records on customers in order to make certain that Iranian persons are not involved in any financial transactions involving US banks.

Also on November 21, 2011, the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) filed a Notice of Proposed Rule Making (NPRM) that would require "covered financial institutions" to seek more detail, and conduct more thorough due diligence, before processing transactions. The term "covered financial institutions" would be defined the same as in the final rule implementing Section 312 of the USA PATRIOT Act, which requires US financial institutions to perform due diligence and, in some cases, enhanced due diligence, with regard to correspondent accounts established or maintained for foreign financial institutions and private banking accounts established or maintained for non-US persons. In general, "covered financial institutions" include insured banks, commercial banks, agencies or branches of foreign banks in the United States, credit unions, savings associations, trust companies, registered brokers/dealers, registered commission merchants, private bankers and mutual funds. While US banks already are prohibited from dealing with Iranian financial institutions, this additional due diligence seeks to prevent indirect access by Iranian banks to the US financial system through US correspondent accounts. Comments on the proposed rule will be due 60 days after its publication in the *Federal Register*.

NEW UK SANCTIONS AGAINST IRAN

UK Treasury Action to Impose Additional Financial Sanctions Against Iran

In the United Kingdom, HM Treasury has also imposed new financial restrictions against Iran because of the risk of terrorist financing or money laundering activities being carried on in that country. As of November 21, 2011, UK credit and financial institutions are required to cease business relationships and transactions with all Iranian banks, including their branches and subsidiaries, and the Central Bank of Iran.

The new restrictions are contained in the UK's [Financial Restrictions \(Iran\) Order 2011](#) (the "2011 Iran Order"). Importantly, the 2011 Iran Order applies *in addition to* the EU sanctions currently in place against Iran, adopted by Regulation 961/2010 (as described in our October 20, 2010 [e-alert](#)), and supplemented in the United Kingdom by the [Iran \(European Union Financial Sanctions\) Regulations 2010](#).

Application and Scope of the 2011 Iran Order

The 2011 Iran Order applies to any credit or financial institutions (so-called "relevant parties") that:

- are established in the United Kingdom, regardless of where they are physically located; or
- are acting in the course of a business they carry on in the United Kingdom.

The 2011 Iran Order does not apply to:

- any subsidiaries of a UK financial or credit institution incorporated outside the United Kingdom (except to the extent they are acting in the course of business carried on in the United Kingdom); or
- any subsidiaries of a UK financial or credit institution, wherever located, which are not themselves financial or credit institutions.

The 2011 Iran Order defines the terms "credit institution" and "financial institution" broadly. The terms capture, among other entities, credit institutions as defined in the [Banking Consolidation Directive](#), as well as financial institutions engaged in lending (e.g., consumer credit, mortgages), money transmissions services, guarantees, trading, issuance of securities, portfolio management and advice, insurance, and a range of other financial services.

Prohibited Dealings

The 2011 Iran Order prohibits relevant parties from (i) entering into, or (ii) continuing to participate in, any transaction or business relationship with "Iranian financial institutions." The Order defines such institutions sweepingly, to include:

- any credit institutions incorporated in Iran;
- the Central Bank of Iran, also known as Bank Markazi Jomhuri Islami Iran; and
- all branches and subsidiaries, wherever located, of any credit institutions incorporated in Iran.

Relevant parties must end existing professional and commercial relationships and cease business transactions with Iranian financial institutions with immediate effect. Examples of prohibited activities by UK financial and credit institutions include:

- the transmission of funds to an Iranian financial institution;
- the accrual, creation or other provision of funds or value for an Iranian financial institution;
- the exchange of financial or credit documents with an Iranian financial institution;
- acting upon the instructions of an Iranian financial institution; and
- acting under a contract agreed with or pursuant to an obligation owed to an Iranian financial institution.

Violators are subject to civil and criminal penalties, including a prison term of up to two years and/or a fine. The failure to comply with the conditions of any license that HM Treasury may issue is subject to civil penalties; there is no criminal sanction for such non-compliance with license conditions.

Licenses

If a relevant party wishes to enter into a transaction with an Iranian financial institution, it may only do so if authorized by HM Treasury under either a general license or an individual license.

HM Treasury has issued a number of general licenses together with the 2011 Iran Order, among them licenses that cover:

- transfers related to humanitarian activities, medicines, or foodstuffs, which are under €40,000; and
- the completion of payments to or from Iranian financial institutions which were in progress when the 2011 Iran Order came into force (November 21, 2011); in order to benefit from this license, the payments must be completed before midnight on November 28, 2011.

In case of transactions not covered by the general licenses, relevant parties may apply for an individual license.

Relation to the EU Iran Regulation

Importantly, the requirements of the 2011 Iran Order apply on top of requirements imposed by Council Regulation 961/2010 (“EU Iran Regulation”), including an obligation to freeze the funds of certain designated parties, the prohibition on making funds available to certain designated parties, and the requirement that certain transfers of funds to Iranian persons be notified and authorized.

The 2011 Iran Order goes further than this EU Iran Regulation. For example, in contrast to the EU Iran Regulation, which prohibits the making available of funds or economic resources only with respect to certain designated parties (including some Iranian banks), the 2011 Iran Order prohibits all transactions and business relationships with all Iranian financial institutions.

Similarly, transactions involving transfers of funds to or from Iranian banks that would previously have been possible if notified or authorized in accordance with the EU Iran Regulation are now prohibited unless HM Treasury grants an individual or general license for such transactions.

Safe Harbour

The 2011 Iran Order provides for a safe harbour for parties that take all reasonable steps and exercise all due diligence to ensure that they comply with the requirements of the 2011 Iran Order. Pursuant to the safe harbour, if, having exercised due diligence, a party does not know or have reasonable cause to suspect that its participation in a transaction is prohibited by the 2011 Iran Order, the party will not be subject to criminal or civil penalties.

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The US, UK and EU sanctions against Iran are fluid and may change again in the near future. We will circulate additional e-alerts concerning these developments as circumstances warrant.

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