

E-ALERT | International Trade Controls

October 15, 2012

DEVELOPMENTS IN U.S. SANCTIONS AGAINST IRAN

NEW EXECUTIVE ORDER REGARDING IRAN AND OTHER ACTIONS RELATED TO U.S. SANCTIONS AGAINST IRAN

On October 9, 2012, President Obama issued [Executive Order 13628](#) implementing various provisions of the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "ITRA"), which President Obama signed on August 10, 2012, and which was the subject of a [prior E-Alert](#). The Executive Order, together with a [Presidential Memorandum](#) issued the same day, delegates to the Secretaries of State and Treasury certain functions and authorities under the ITRA and other sanctions against Iran. Of particular note, the Executive Order implements Section 218 of the ITRA to impose civil liability on U.S. parent companies for actions by their non-U.S. subsidiaries that would violate U.S. sanctions against Iran if performed by a U.S. person or from the United States.

In a related action to implement a mandate of the ITRA, on September 24, 2012, the Treasury Department's Office of Foreign Assets Control ("OFAC") [announced](#) that the National Iranian Oil Company ("NIOC") is an agent or affiliate of Iran's Islamic Revolutionary Guard Corps ("IRGC"). This designation has implications for parties, including foreign financial institutions, that engage in significant financial transactions with or materially assist or provide goods or services to NIOC.

BACKGROUND ON SANCTIONS

On August 10, 2012, the President signed the ITRA (also sometimes referred to as ITRSHRA), which, among its many provisions, (i) amends the Iran Sanctions Act of 1996 ("ISA"), the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"), and the National Defense Authorization Act for Fiscal Year 2012 ("NDAA") to expand and codify existing sanctions; and (ii) adds new unilateral sanctions against Iran.

The ITRA requires or authorizes the President or the Treasury Secretary to take certain actions to implement sanctions against Iran, including the following:

- Section 218 of the ITRA requires the President to prohibit non-U.S. entities that are owned or controlled by a U.S. person from knowingly engaging in transactions directly or indirectly with the Government of Iran or persons subject to the jurisdiction of the Government of Iran that would be prohibited if such transactions were performed by a U.S. person or from the United States, and authorizes the imposition of civil liability against U.S. parent companies for actions by their non-U.S. subsidiaries that would violate such U.S. sanctions.
- Section 204 of the ITRA amends the ISA to add three additional sanctions to the arsenal of available retaliatory sanctions and authorizes the President, or those whom the President directs, to apply those sanctions.

- Section 312 of the ITRA requires the Treasury Secretary to determine whether NIOC or the National Iranian Tanker Company (“NITC”) is an affiliate of the IRGC.
- Sections 402(a) and 403(b) of the ITRA, respectively, require the President to impose sanctions against persons who (i) engage in certain activities associated with the commission of human rights abuses against the people of Iran; or (ii) are associated with censorship and related activities with respect to Iran.

SCOPE OF THE NEW EXECUTIVE ORDER

Liability of Parent Companies for Violations of Sanctions by Non-U.S. Subsidiaries

Section 4 of the Executive Order implements Section 218 of the ITRA by prohibiting any entity owned or controlled by a U.S. person and established or maintained outside the United States (a “non-U.S. subsidiary”) from knowingly engaging in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran, if that transaction would be prohibited if engaged in by a U.S. person or in the United States. The Order broadly defines the term “subject to the jurisdiction of the Government of Iran” to mean any person in Iran, ordinarily resident in Iran, organized under the laws of Iran or any jurisdiction within Iran, or owned or controlled by any of the foregoing. The ITRA defines “own or control” as holding more than 50 percent of the equity interest (by vote or value) in the non-U.S. subsidiary, holding a majority of the seats on the board of directors of the subsidiary, or otherwise controlling the subsidiary’s actions, policies or personnel decisions.

Pursuant to Section 4(b) of the Executive Order, civil penalties for violations may be assessed against the U.S. person that owns or controls the entity that engaged in the prohibited transaction. Section 218 of the ITRA and the Questions and Answers that OFAC issued regarding Section 4 of the Order (the “[OFAC Q&A](#)”) indicate that civil penalties apply to the same extent that they would apply to a U.S. person for the same conduct. Pursuant to Section 4(c), however, penalties do not apply if the U.S. person that owns or controls the non-U.S. subsidiary divests or terminates its business with the subsidiary not later than February 6, 2013.

The OFAC Q&A briefly address the applicability to non-U.S. subsidiaries of general and specific licenses issued by U.S. governmental authorities. To the extent that a transaction is either exempt from U.S. sanctions or is authorized by a general license if engaged in by a U.S. person, the non-U.S. subsidiary is not prohibited from engaging in the transaction so long as it satisfies the conditions and requirements of the exemption or general license. Similarly, in circumstances where a U.S. person may apply for a specific license to engage in transactions involving Iran (e.g., to export medicines or medical devices to Iran), a non-U.S. subsidiary or its U.S. parent may apply to OFAC for a specific license for the non-U.S. subsidiary to engage in such transactions. The terms of any existing, specific license issued to a U.S. parent, including the scope of authorized activities, will determine whether such an existing license covers transactions by a non-U.S. subsidiary.

Blocking Property

Sections 2 and 3 of the Executive Order implement Sections 402(a) and 403(b) of the ITRA, respectively, by authorizing the Treasury Secretary, in consultation with or at the recommendation of the Secretary of State, to block all property and interests in property of any person determined to have (i) engaged in certain activities associated with the commission of human rights abuses against the people of Iran; or (ii) engaged in certain censorship and related activities with respect to Iran.

In particular, Section 2 authorizes the blocking of property of persons determined to have knowingly, on or after August 10, 2012, provided to Iran, any national of Iran or any entity organized under the

laws of Iran or otherwise subject to the jurisdiction of the Government of Iran, or for use in or with respect to Iran, goods, technologies, or services that are likely to be used by the Government of Iran to commit serious human rights abuses against the people of Iran. For purposes of this blocking provision, services include services relating to hardware, software, or specialized information or professional consulting, engineering, or support services.

Section 3 authorizes the blocking of property of persons determined to have engaged in censorship or other activities with respect to Iran on or after June 12, 2009, the date of Iran's disputed Presidential election, that (i) prohibit, limit, or penalize the exercise of freedom of expression or assembly by citizens of Iran; or (ii) limit access to print or broadcast media (including the facilitation or support of intentional frequency manipulation by the Government of Iran or an entity owned or controlled by the Government, that would jam or restrict an international signal).

Under both Sections 2 and 3, blocking sanctions also apply where the Treasury Secretary determines that a person (i) has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the above-described activities or any person whose property and interests in property are blocked pursuant to Section 2 or 3; or (ii) is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to Section 2 or 3.

Furthermore, Section 10 of the Executive Order suspends the entry into the United States of persons whose property and interests in property are blocked pursuant to Section 2 or 3.

Humanitarian Donations

Under Section 8 of the Executive Order, U.S. persons, wherever located, are prohibited from making humanitarian donations of food, clothing, and medicine to or for the benefit of any person whose property and interests in property are blocked under the Executive Order.

Revisions to July 31, 2012 Executive Order 13622

Section 15 of the Executive Order makes minor amendments to three provisions of Executive Order 13622, which came into effect on July 31, 2012.

- Section 15 removes the phrase “with respect to the country with primary jurisdiction over the financial institution” from Subsection 1(c)(ii) and the phrase “with respect to the country with primary jurisdiction over the person” from Subsection 2(b)(ii) of Executive Order 13622. Pursuant to these changes, the sanctions laid out in Sections 1 and 2 of Executive Order 13622 apply only if the President determines that global petroleum supplies are sufficient and an exception under the NDAA does not apply.
- A third amendment clarifies Section 1 of the Executive Order 13622, which authorizes the imposition of sanctions on foreign financial institutions that conduct or facilitate significant financial transactions with NIOC or NITC. The amendment provides that such sanctions will not apply to the sale of agricultural commodities to Iran, with sales of food, medicine, and medical devices having already been exempted.

Delegations of Authority

The Executive Order and a Presidential Memorandum also issued on October 9, 2012 delegate to the Secretaries of State and Treasury and the heads of relevant agencies certain functions and authorities under the ITRA and other sanctions against Iran, including the authority to take action to

implement any sanctions that are imposed under the Order or other U.S. sanctions regimes that fall within their respective areas of responsibility.

The Treasury Secretary also is authorized to take all actions and employ all powers granted to the President as may be necessary to carry out the purposes of CISADA Section 104A. That Section extends the CISADA Section 104 sanctions to any foreign financial institution, including an Iranian financial institution, that the Treasury Secretary finds (i) has knowingly facilitated or participated in a significant transaction with, or provided significant financial services to, the IRGC or its affiliates or a person that has been designated as a result of participation in Iran's proliferation or terrorism activities; or (ii) is owned or controlled by a financial institution that engages in such an activity.

OFAC DETERMINATION AS TO NIOC

Pursuant to Section 312 of the ITRA, OFAC announced on September 24, 2012 that NIOC has been determined to be an agent or affiliate of the IRGC. OFAC simultaneously announced that, based on currently available information, it could not determine whether NITC is an agent or affiliate of the IRGC. OFAC's announcement of the determination regarding NIOC was silent as to whether the determination applies to entities owned or controlled by NIOC.

While NIOC was already subject to sanctions pursuant to Executive Order 13622, issued in July 2012, the determination that NIOC is an agent or affiliate of the IRGC means that foreign financial institutions determined to knowingly facilitate significant transactions or provide significant financial services for NIOC are exposed to retaliatory sanctions under CISADA Section 104. In addition, Section 302 of the ITRA requires the imposition of retaliatory sanctions against persons determined to have knowingly (i) engaged in a significant transaction with the IRGC or any of its officials, agents, or affiliates whose property and interests in property are blocked; or (ii) materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of such sanctioned parties. Consequently, persons who knowingly engage in such transactions with NIOC after September 24, 2012 are exposed to sanctions.

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