NEW IRAN SANCTIONS COULD TARGET INSURERS, REINSURERS OF INTERNATIONAL TRADE AND PETROLEUM INDUSTRY TRANSACTIONS

As a result of new revelations and escalating international concerns regarding the continuing development of Iran's nuclear program, the Obama Administration and the U.S. Congress are each moving forward with proposals for additional economic sanctions against Iran that involve measures directed at Iran's international trade transactions, especially its petroleum industry. The reported Obama Administration proposals and the legislation Congress is considering would significantly expand existing U.S. trade sanctions that prohibit U.S. companies from dealing with Iran and single out entities providing insurance or reinsurance services.

The Obama Administration's sanctions could affect most Iranian import and export trade. Both proposals could ban goods, services, technology, information, or other activities that support the importation or production of refined petroleum by Iran, including refinery construction, modernization, and repair. Insurers and reinsurers identified by the United States as providing services could become subject to one or more U.S. sanctions, the effect of which would be to limit or proscribe their ability to do business in the United States. The Obama Administration's possible extension of sanctions and the legislation pending in Congress, together with existing laws restricting insurance transactions that in any way touch Iran and other U.S.-government sanctioned countries, should prompt insurance and reinsurance companies and brokers to create or revise programs designed to avoid noncompliance with current and proposed sanctions.

EXISTING LAW

U.S. law already prohibits U.S. companies, including insurers and reinsurers, from doing business in Iran. The President of the United States also has discretionary authority to impose one or more sanctions from a menu of available measures against non-U.S. individuals and firms that make significant investments in Iran's petroleum industry. To date, no U.S. President has used this authority.

The current Iran sanctions are part of a broader program of statutory and executive trade sanctions enforced by the U.S. Treasury Department's Office of Foreign Assets Controls ("OFAC"). These apply to Iran, Cuba and Sudan, among others, as well as to individuals and entities that the U.S. government has determined to be involved in terrorism, drug trafficking, or other criminal activity. The sanctions programs restrict economic activity on several levels, from a total ban on all economic activity to limits on investment in selected industries or dealings with prohibited persons. OFAC regulations also prohibit the facilitation, approval, or support of transactions with embargoed countries or persons that are carried out by third parties. The restrictions are complex, and there are numerous examples of inadvertent violations, particularly those involving transactions that may only touch indirectly the sanctioned country or entity. OFAC enforces the restrictions aggressively and imposes strict liability in the form of substantial fines for such violations.

POSSIBLE ADMINISTRATION PROPOSALS

President Obama has not yet announced what new steps his administration may take, or threaten to take, to supplement its ongoing diplomatic efforts to persuade the government of Iran to abide by United Nations resolutions and the rules of the International Atomic Energy Agency. On September 29, 2009, *The Washington Post* reported that the Obama Administration is "prepared by year's end to make it increasingly difficult for Iranian companies to ship goods around the world. The administration is targeting, in particular, the insurance and reinsurance companies that underwrite the risk of such transactions." These new sanctions may include proposals designed to reduce or eliminate further international investment in Iran's oil industry, also focusing on insurers and reinsurers. The Obama Administration has signaled its intention to propose sanctions that would be applied by the United States and its allies in the absence of significant Iranian concessions emerging from the diplomatic talks scheduled for October 1, 2009, among the United States, several of its key allies, and Iran.

THE PROPOSED LEGISLATION

The proposed legislation, H.R. 2194 and S. 908, the "Iran Refined Petroleum Sanctions Act of 2009" (the "Act"), would make two changes to existing law. The Act would limit the President's discretion so as to make it more likely that sanctions will be imposed on foreign entities investing in Iran's petroleum industry. The Act would also expand the types of foreign entities that could be sanctioned by the United States and the activities that could result in sanctions to include the importation and use of refined petroleum, an increasingly important industry sector in Iran.

The Act would explicitly require the President (subject to certain exceptions) to impose sanctions against foreign or domestic entities that are "underwriting or otherwise providing insurance or reinsurance" for "any activity that could contribute to the enhancement of Iran's ability to import refined petroleum resources." This provision would extend the risk of sanctions to any insurance or reinsurance activity that enhances Iran's capacity to import refined petroleum through direct export of refined petroleum to Iran by financing, brokering, underwriting, or providing ships or shipping services for such exports, or by providing goods or services that support domestic production of refined petroleum in Iran.

If a foreign entity is determined to have engaged in any of the specified activities, the President could choose from among a menu of potential sanctions. Among other things, the President could essentially bar sanctioned persons from access to U.S. financial institutions and block any sanctioned person's assets located in the United States. The Act's sponsors have stated that their intent is effectively to prohibit the sanctioned person from doing business in the United States.

STATUS AND OUTLOOK

The Act was introduced in the House earlier this year by House Foreign Affairs Committee Chairman Howard L. Berman (D-CA) and in the Senate by Senator Evan Bayh (D-IN), Chairman of the Senate Banking Committee's Subcommittee on Security and International Trade and Finance. Senate Banking Committee Chairman Christopher Dodd (D-CT) has also announced his intention to introduce Iran sanctions legislation that will include the Act. The legislation is intended to buttress the Obama Administration's ongoing diplomatic efforts to force the government of Iran to cease its nuclear activities--including the development of nuclear weapons--by severely restricting commercial trade activity connected with Iran's vital petroleum sector. In a September 27, 2009 commentary in *The Washington Post*, Chairman Berman stated that the United States should be ready to impose immediate and "crippling sanctions" if the October 1 talks do not result in a meaningful commitment from Iran to curb its nuclear program. Berman also stated his intention to schedule the bill for consideration by his committee in October so that the measure could be ready for the President's signature by early 2010. The two measures have garnered overwhelming support--the House bill has 317 cosponsors and the Senate bill has 75 cosponsors.

It is increasingly likely that, if the October 1 talks fail, President Obama will proceed with efforts to obtain international consensus on additional Iran sanctions and those sanctions proposals will involve additional limits on insurers and reinsurers. If new global sanctions are not adopted, there is a strong likelihood that Congress will want to proceed with consideration of legislation to demonstrate U.S. determination to "punish" Iran. In that case, Congress would probably pass the legislation with significant bipartisan majorities, making it very difficult for President Obama not to sign it into law.

Insurance and reinsurance companies and brokers could be immediately and directly affected by expanded international or U.S. sanctions against Iran. While particularly directed at the petroleum industry, these sanctions could extend to all commercial transactions involving Iran. It will be important, both in terms of achieving compliance and, in the event of a violation, demonstrating good faith efforts to comply, that these companies and brokers have comprehensive compliance programs in place and that they are enforcing them effectively. Companies that have compliance programs should review them carefully to assure that they are adequate to deal with existing and possible additional sanctions. Companies that do not have such programs should develop and implement them as soon as possible.

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If you have any questions regarding this memorandum, please contact Mitchell J. Auslander (212-728-8201, mauslander@willkie.com), Russell L. Smith (202-303-1116, rsmith@willkie.com), Miriam A. Bishop (202-303-1126, mbishop@willkie.com), or the attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099 and has an office located at 1875 K Street, NW, Washington, DC 20006-1238. Our New York telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our Washington, DC telephone number is (202) 303-1000 and our facsimile number is (202) 303-2000. Our website is located at www.willkie.com.

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