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CLIENT ALERT

OFAC Designations of Iranian Financial and Other Institutions Complicate Remaining Trade with Iran

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In recent weeks, OFAC has imposed a number of designations on Iranian financial institutions and other entities that will complicate remaining international trade with Iran. Possibly as an effort to render re-entry into the Iran nuclear deal politically untenable for a Biden Administration, the often symbolic pattern of Iranian designations has given way to actions that expand the threat of secondary sanctions and increase the risks to international companies doing business, directly or indirectly, with Iran.

On October 8, 2020, the U.S. Department of the Treasury Office of Foreign Assets Control ("OFAC") designated 18 Iranian financial institutions pursuant to Executive Order ("E.O.") 13902, which authorizes the Secretary of the Treasury to block the property and interests in property of any person determined to operate in any sector of the Iranian economy identified by the Secretary of the Treasury. OFAC designated the Iranian banks for operating in Iran's financial sector.

While the banks already appeared on the List of Specially Designated National and Blocked Persons (the "SDN List") as Iranian financial institutions, the new designation under an additional authority extends the threat of secondary sanctions against any company or financial institution engaging in a significant transaction with any of the 18 banks. Any foreign financial institution or company engaging in significant transactions with any of these banks could now risk the imposition of sanctions by the United States. As a result, the designations impose a new risk for non-U.S. institutions doing business there and threaten to disrupt the remaining international trade with Iran.

In an additional move to tighten existing sanctions on Iran, on October 26, 2020, OFAC designated Iran's Ministry of Petroleum pursuant to E.O. 13224 under the global terrorism sanctions program for its support of the Islamic Revolutionary Guard Corps – Qods Force. The National Iranian Tanker Company ("NITC") and National Iranian Oil Company ("NIOC"), while already on the SDN List, were also newly designated under the global terrorism sanctions designation.

The designations may result in additional restrictions on activities by U.S. companies previously authorized by non-humanitarian-related general or specific licenses. The more significant impact, however, appears to be an increased risk of secondary sanctions on non-U.S. persons doing business involving Iran.

a. Impact on U.S. Persons and U.S.-Owned or Controlled Entities

For U.S. persons and entities owned or controlled by U.S. persons, the new designations on Iranian financial institutions essentially duplicate restrictions on dealing with these banks that were already in place. The Iranian Transactions and Sanctions Regulations ("ITSR"), at 31 C.F.R. § 560204, generally prohibit the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a U.S. person or by U.S.-owned or controlled entities, wherever located, of any goods, technology, or services to Iran or the Government of Iran, unless authorized by OFAC or subject to an exemption. Alongside the designations of the financial institutions, OFAC issued General License L to allow transactions and activities involving those financial institutions that are authorized, exempt, or otherwise not prohibited under the ITSR, meaning that specified activities authorized by a general or specific license issued under the ITSR continue to be authorized.

Likewise, the new designation of the Ministry of Petroleum, NIOC, and NITC under the global terrorism sanctions program will have a limited impact for U.S. persons who are already prohibited from exporting goods or services to Iran or the Government of Iran. Alongside the announcement, OFAC issued General License 8A to expand the authorization for certain humanitarian trade transactions involving the Central Bank of Iran to also cover such transactions involving NIOC or any entity in which NIOC owns, directly or indirectly, a 50 percent or greater interest. The scope of the authorization is narrower than that of General License L, described above, because it only provides authorization for humanitarian trade related to the export of agricultural goods, medicine, and medical devices to Iran, rather than all activities subject to a license. If U.S. persons have been engaging in activity with NIOC under a separate general or specific license, additional authorization from OFAC may be necessary to continue with such activity.

b. Impact for Non-U.S. Persons Engaging in Activity with Iranian Financial Institutions

The more significant impacts of the new designations against the Iranian institutions apply to non-U.S. persons. U.S. sanctions do not prohibit non-U.S. persons from engaging in transactions with Iranian financial institutions absent any U.S. person involvement. However, non-U.S. companies risk the imposition of secondary sanctions for certain business activities involving Iran. In other words, OFAC or the U.S. State Department have the authority to impose sanctions on a foreign company for engaging in specified activity in Iran. The criteria for secondary sanctions relate to either the type of activity underlying the financial transaction or the identity of the Iranian parties involved in the transaction.

Specifically, with respect to these 18 Iranian financial institutions, because of their designation pursuant to E.O. 13902, OFAC has the authority to impose sanctions upon determining that a person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any of the 18 banks.[1]

The newly designated Iranian financial institutions were previously designated pursuant to E.O. 13599, which blocked all Government of Iran entities and Iranian financial institutions. However, the relevant secondary sanctions contained an exception for transactions with Iranian financial institutions designated solely pursuant to E.O. 13599.[2] Following the designation of the Iranian financial institutions under E.O. 13902, these institutions are now subject to secondary sanctions because they are no longer designated solely under E.O. 13599. However, OFAC has advised that it will continue to assess whether activity is significant in order to determine whether the activity meets the criteria for the imposition of sanctions.[3]

The threat of secondary sanctions in E.O. 13902 includes an exemption for the provision of agricultural commodities, food, medicine, and medical devices to Iran. Non-U.S. persons would also not risk exposure to secondary sanctions for any activity that is authorized for U.S. persons under the ITSR.[4] However, these transactions must not include any Iranian person designated under a different authority, such as for terrorism or the proliferation of weapons of mass destruction. Non-U.S. persons will risk sanctions for activities with Iranian entities designated under other authorities, unless similar exemptions or authorizations apply specifically to those authorities.

OFAC has advised that non-U.S. companies involved in activities that were not previously sanctionable will have 45 days to conclude these activities without risking exposure to sanctions.[5] The 45-day wind-down period ends on November 22, 2020. OFAC advised that it anticipates issuing additional guidance regarding the scope of transactions and activity that will become sanctionable after the end of the wind-down period.[6]

1 Executive Order 13846 § 1(a)(iii), available here.

2 *Id*.

3 Office of Foreign Assets Control FAQ # 847, available here.

4 *Id*.

5 Office of Foreign Assets Control FAQ # 845, available here.

6 *Id*.

c. Impact for Non-U.S. Persons Engaging in Activity with NIOC or NITC

The impact for non-U.S. persons engaging in activity with entities associated with the Ministry of Petroleum, including NIOC and NITC, will be minimal, because such activity is already subject to secondary sanctions. Executive Order 13846 authorizes sanctions against persons that are determined to knowingly sell, supply, or transfer to or from Iran significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran, including NIOC and NITC.[7] OFAC guidance confirms, however, that non-U.S. persons do not risk the imposition of sanctions for engaging in activity that would be authorized for U.S. persons by a general license.[8] Non-U.S. persons therefore will not risk secondary sanctions for humanitarian activity involving NIOC that is licensed by general license under the ITSR.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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7 Executive Order 13846 § 1, available here.

8 Office of Foreign Assets Control FAQ # 823, available here.