

## Recent Sanctions Developments: Iran, Syria, and Burma

### Highlights

- Two recent Executive Orders expand the threat of U.S. sanctions against non-U.S. persons dealing with Iran or Syria in providing information technology likely to be used for repressive activities and non-U.S. persons assisting Iran or Syria in evading U.S. sanctions or otherwise disguising their economic activities.
- Both Executive Orders raise the possibility of sanctions for activity conducted entirely outside U.S. jurisdiction. This is an extension of the growing trend of extraterritorial efforts aimed at persons who are acting outside the reach of U.S. sanctions by threatening that such foreign actors will themselves become the target of sanctions.
- It is also notable that the Executive Orders treat Iran and Syria equally. Although both countries are subject to comprehensive U.S. sanctions, extraterritorial efforts have previously been focused largely on Iran.
- Despite extensive press coverage of political developments and easing of sanctions in Burma, U.S. sanctions remain largely intact. The pace of future change remains unclear, as the U.S. has indicated an intent to move deliberately and incrementally.
- For background on other recent actions involving Iran and Syria, please see our prior alert memoranda.<sup>1</sup>

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For summaries of recent actions involving Iran please see: our July 6, 2010 memorandum on the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“[CISADA](http://www.cgsh.com/president_obama_signs_new_iran_sanctions_into_law/)”), available at [http://www.cgsh.com/president\\_obama\\_signs\\_new\\_iran\\_sanctions\\_into\\_law/](http://www.cgsh.com/president_obama_signs_new_iran_sanctions_into_law/); our November 22, 2011 memorandum on Executive Order 13590, available at [http://www.cgsh.com/u\\_s\\_expands\\_sanctions\\_against\\_iran/](http://www.cgsh.com/u_s_expands_sanctions_against_iran/); and our January 2, 2012 memorandum on the National Defense Authorization Act for Fiscal Year 2012, available at [http://www.cgsh.com/president\\_obama\\_signs\\_new\\_us\\_sanctions\\_targeting\\_foreign\\_banks\\_dealing\\_with\\_iran/](http://www.cgsh.com/president_obama_signs_new_us_sanctions_targeting_foreign_banks_dealing_with_iran/). For a summary of Executive Order 13582 imposing comprehensive sanctions against Syria, please see our August 19, 2011 memorandum, available at [http://www.cgsh.com/new\\_comprehensive\\_us\\_sanctions\\_on\\_the\\_syrian\\_regime/](http://www.cgsh.com/new_comprehensive_us_sanctions_on_the_syrian_regime/).

## **Iran and Syria: Increasing Focus on Non-U.S. Persons**

In recent weeks, the President has issued two Executive Orders expanding sanctions programs related to Iran and Syria. These orders provide authority to impose U.S. economic sanctions on non-U.S. persons who engage in targeted transactions involving Iran or Syria that conceal the participation of a sanctioned person or relate to equipment used for censorship or monitoring. They also provide additional enforcement tools against non-U.S. persons who may already have violated U.S. sanctions but are beyond the reach of U.S. authorities.

In the case of both Executive Orders, there is no immediate or automatic consequence as a result of engaging in the targeted conduct; in other words, they do not expand the scope or jurisdiction of U.S. sanctions or make additional conduct illegal. Rather, they have an indirect effect, not prohibiting the conduct but threatening that those who engage in it may be sanctioned (and, unlike similar provisions in CISADA, there is no language affirmatively calling for investigation or the imposition of sanctions). It remains to be seen how aggressive the Treasury Department will be in using the new authority.

### Foreign Sanctions Evaders Executive Order

On May 1, 2012, the President signed Executive Order 13608, entitled “Prohibiting Certain Transactions with and Suspending Entry into the United States of Foreign Sanctions Evaders with respect to Iran and Syria” (the “FSE E.O.”). The FSE E.O. authorizes the Secretary of the Treasury to impose sanctions against two groups of non-U.S. persons: (1) those who have violated, attempted to violate, conspired to violate, or caused violations of U.S. sanctions against Iran or Syria or with respect to nonproliferation, weapons of mass destruction or terrorism, which may include any U.S. dollar transactions concerning these activities; and (2) those who have “facilitated deceptive transactions for or on behalf of” any sanctioned person, which does not appear to require any connection to the United States. A “deceptive transaction” is defined as “any transaction where the identity of any person subject to United States sanctions concerning Iran or Syria is withheld or obscured from other participants in the transaction or any relevant regulatory authorities.”

Taking the new sanctions authorizations in reverse order, those engaged in “deceptive transactions” on behalf of Iran or Syria may now become the target of U.S. sanctions. Importantly, this authority is not limited by its terms to transactions within U.S. jurisdiction,<sup>2</sup> nor (unlike CISADA) is it limited to particular industries, transactions above a certain size, or knowing conduct. Any transaction in any currency involving persons sanctioned by the United States under the Iran or Syria sanctions programs in which the

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<sup>2</sup> Indeed, the sanctions against “deceptive transactions” would be largely if not entirely duplicative if they were restricted to transactions within U.S. jurisdiction, as the other prong of the FSE E.O. provides for sanctioning foreign persons who actually violate U.S. sanctions.

identity of the sanctioned parties is withheld exposes persons “facilitating” that transaction to the potential imposition of U.S. sanctions. In OFAC practice, “facilitation” is a very broad concept encompassing almost any form of participation.

However, while the authority to impose sanctions is sweeping, as noted there are no automatic consequences resulting from engaging in conduct potentially triggering the FSE E.O. Rather, further action by the Treasury Department to designate the triggering person for sanctions, and any consideration of such designation will presumably take into account the culpability of each party and the relative seriousness of the conduct in question.

The remaining set of sanctions is aimed at people and entities that have violated U.S. sanctions but are outside U.S. jurisdiction and therefore are not susceptible to prosecution or fines as a practical matter. The new sanctions authority essentially makes a third enforcement tool available to OFAC. If OFAC concludes that a person outside the United States has violated U.S. sanctions by taking actions or causing actions to be taken within U.S. jurisdiction (for example, by transmitting U.S. dollar payments for the benefit of a sanctioned person through the U.S. financial system in violation of OFAC sanctions), that person may now itself become the target of U.S. sanctions.

In both cases, unlike the sanctions typically associated with becoming a “Specially Designated National” (“SDN”), the new FSE designation would not require that property in which the sanctioned party has an interest be blocked if it enters U.S. jurisdiction. However, any party subject to FSE sanctions would no longer be able to transact with U.S. persons and would effectively lose access to the U.S. economy. Moreover, any assets of a designated person already in the United States would likely be stranded as a practical matter, as no U.S. person could execute a transaction involving them.

#### “GHRVITY” Executive Order

On April 22, 2012, the President signed Executive Order 13606, entitled “Blocking the Property and Suspending Entry into the United States of Certain Persons with Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology” (the “GHRVITY E.O.”). The GHRVITY E.O. makes sanctionable: (1) the operation, or any directing of the operation, of “information and communications technology that facilitates computer or network disruption, monitoring or tracking” related to human rights abuses by the Governments of Iran or Syria; and (2) the provision of “goods, services, or technology” to Iran or Syria that is “likely to be used to facilitate computer or network disruption, monitoring or tracking” related to human rights abuses by the Governments of Iran or Syria. Thus, the first prong of the GHRVITY E.O. targets Iranian and Syrian

security officials, and the second prong targets those providing equipment likely to be used by them in monitoring or disrupting communications.<sup>3</sup>

Dealings with Syria and Iran by U.S. persons were of course already prohibited, so the GHRAVITY E.O. has two main effects. First, individuals and entities sanctioned for human rights abuses will have their assets within U.S. jurisdiction blocked. Second, persons and entities acting outside of U.S. jurisdiction to provide the targeted goods, technology, or services relating to the monitoring or disruption of internet or telephone communications could find themselves the target of U.S. sanctions.

In a series of FAQs published on its web site, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") emphasizes that the GHRAVITY E.O. is not intended to restrict the provision of "information and communications technology necessary to enable the Iranian and Syrian people to freely communicate with each other and the outside world." As such, it appears that the GHRAVITY E.O. does not impose a ban on the provision of ordinary telecom equipment to Iran or Syria by non-U.S. companies. It is not yet clear, however, how OFAC would view the provision of standard commercial networking equipment that in some cases may include location-based features (e.g., to target advertising or to manage network traffic), filtering technology (e.g., to reduce spam), or traffic analysis features that could be used by Iranian or Syrian security services or law enforcement in monitoring or blocking private communications. It is also worth noting that the risk is not limited to the provision of monitoring equipment to the security services themselves; the provision of equipment to state-owned or influenced telecom providers could also be targeted. Syriatel, the largest Syrian mobile provider, has itself already been sanctioned as a participant in human rights abuses.

### Future Developments

Sanctions against Iran and Syria continue to be an active political topic, with legislation targeting both countries pending in Congress. While the recent executive actions may have, or be intended to have, the effect of reducing pressure for additional legislative action, there remains a strong possibility that one or more additional, more aggressive proposals will be enacted in Congress in the coming weeks. It is also noteworthy that the recent Executive Orders apply to both Iran and Syria. Although U.S. sanctions against Iran are more comprehensive than those that apply to Syria, this is perhaps an indication that U.S.

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<sup>3</sup> The GHRAVITY E.O. expands authority available under Section 106 of CISADA, which provided the President with authority to impose a government procurement ban on persons who export technology that could be used to "restrict the free flow of unbiased information in Iran" or "disrupt, monitor, or otherwise restrict speech of the people of Iran."

authorities are beginning to view the countries as similarly situated and may signal stronger measures to come against Syria.

**Easing of U.S. Sanctions against Burma (Myanmar): Less than Meets the Eye**

Recent political developments in Burma and widely publicized comments by Secretary of State Hillary Clinton have prompted speculation that the U.S. is in the process of lifting sanctions against Burma. Although the European Union and Canada have taken significant steps to suspend sanctions against Burma, to date the United States has not. Senior Administration officials speaking in a briefing discussing Secretary Clinton's remarks suggested that any easing of sanctions by the U.S. would be "a measured incremental approach."

Initial steps taken following Secretary Clinton's visit to Burma were in fact quite modest. On April 17, 2012, OFAC issued General License No. 14-C with respect to the Burmese Sanctions Regulations titled, "Authorizing Certain Financial Transactions in Support of Humanitarian, Religious, and other Not-for-Profit Activities in Burma" (the "General License"). The General License authorizes the exportation and re-exportation of financial services to Burma in support of specified not-for-profit activities, including certain humanitarian, democracy-building, educational, sporting, and non-commercial development activities, provided that financial services are not exported or re-exported to a person whose property and interests are blocked pursuant to U.S. sanctions targeting Burma. Administration officials have indicated that further steps to ease the restrictions on financial services and investment are likely but will initially focus on liberalizing sectors providing benefits to ordinary Burmese citizens rather than liberalizing activity with respect to the Burmese natural resource sector.

In summary, although additional developments liberalizing the U.S. sanctions regime against Burma are likely, their scope is uncertain and significant restrictions may remain in place for some time.

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If you have any questions, please feel free to contact any of your regular contacts at the Firm, or Ken Bachman or Paul Marquardt of our Washington office, listed on our website at <http://www.clearygottlieb.com>.

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