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Alert Memo

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U.S. Expands Sanctions Against Iran

Expansion of CISADA Sanctions

The President has issued a new Executive Order that effectively expands the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") to cover activities in the Iranian petrochemical sector and tightens the existing definitions of sanctionable investment in Iranian oil and gas production. The order does not technically amend CISADA, but it uses general statutory authority to impose economic sanctions to provide for new sanctions that parallel CISADA and (like CISADA) can apply to any person, including a non-US person, who engages in the activity. The following activity, if engaged in on or after November 21, 2011, is now sanctionable:

- Any provision of goods, services, technology, or support to Iran that has a fair market value of $1,000,000 or more or totals $5,000,000 or more in any 12-month period, if the provider knows or should know that the transaction could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources (including both upstream oil and gas production and refined products).
  - This change effectively lowers the monetary threshold for imposing sanctions in connection with upstream oil and gas production; under the existing statute, transactions had to total $20,000,000 or more in any 12-month period, counting only transactions of $5,000,000 or more. The triggering thresholds for upstream production now parallel those for refined products.
  - This change also removes a technical ambiguity in the original drafting of CISADA concerning whether the provision of goods, services, or technology in support of upstream oil and gas production was in fact sanctionable.
- Any provision of goods, services, technology, or support to Iran that has a fair market value of $250,000 or more or totals $1,000,000 or more in any 12-month period, if the provider knows or should know that the transaction could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of petrochemical products. "Petrochemical products" is defined to include "any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea."
  - These products were not previously covered under CISADA.

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The potential sanctions that can be imposed are in substance unchanged from CISADA, as is the potential liability for (1) US and non-US parent entities that know or should know that their subsidiaries were engaged in sanctionable activity and (2) entities under common control with the party engaged in sanctionable activity that knowingly participate in that activity.

The Executive Order may be found at http://www.whitehouse.gov/the-press-office/2011/11/21/executive-order-iran-sanctions. For a summary of CISADA, see our July 6, 2010 memorandum, available at http://www.cgsh.com/president_obama_signs_new_iran_sanctions_into_law/.

Designation of Iran as a "Jurisdiction of Primary Money Laundering Concern"

The Treasury Department has identified Iran as a "jurisdiction of primary money laundering concern" under Section 311 of the USA PATRIOT Act. While the direct regulatory impact of this designation is limited given the existing comprehensive US sanctions on Iran, it is intended to further discourage foreign financial institutions from dealing with Iran. The designation also helps build a record that could encourage other jurisdictions to adopt similar measures and could serve as a basis for further sanctions against Iran, in particular the Central Bank of Iran.

The direct effect of this designation, and a related proposed rule issued by the Financial Crimes Enforcement Network (FinCEN), is to prohibit U.S. financial institutions (including the U.S. branches of foreign banks) from maintaining correspondent accounts for or on behalf of banking institutions in Iran. Imposition of this “special measure” would also require U.S. financial institutions to apply special due diligence on their correspondent accounts in the United States to guard against their indirect use by Iranian financial institutions. Existing OFAC sanctions already prohibit U.S. financial institutions from dealing with Iranian banks, including indirect dealings through banks in other jurisdictions, and the FinCEN proposed rule specifically notes that existing OFAC screening mechanisms that examine information regarding correspondent transactions could be appropriate measures to comply with the general diligence requirement. The measures announced yesterday effectively add two new requirements: first, that U.S. financial institutions provide an explicit notice to those correspondent banks that the U.S. institution knows or has reason to know provide services to Iranian banks that Iranian banks may not be permitted access to the U.S. correspondent account; and second, that, if a financial institution discovers that its foreign correspondent is processing transactions on behalf of Iranian financial institutions through its US correspondent account, the US correspondent must seek corrective action from the foreign correspondent to ensure that Iranian financial institutions will no longer be able to access the correspondent account and, if it cannot obtain adequate assurances, terminate the correspondent relationship.

More broadly, the designation of Iran as a jurisdiction of money laundering concern appears designed to increase pressure on foreign banks generally to restrict their relationships with Iran, even if they do not involve transactions clearing through US correspondent accounts. US authorities are signaling that all transactions with Iranian financial institutions are potentially illicit, and foreign banks that engage in transactions of any kind with Iranian

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banks will run the risk that they themselves could be subject to additional scrutiny and potential future sanctions (and, of course, if those transactions involve US correspondent accounts they face immediate sanctions). The statement of Treasury Secretary Geithner in announcing the designation is indicative:

> "If you are a financial institution and you engage in any transaction involving Iran's Central Bank or any other Iranian bank operating inside or outside Iran, you are at risk of supporting Iran's illicit activities: its pursuit of nuclear weapons, its support for terrorism, and its efforts to deceive responsible financial institutions and evade sanctions. Any and every financial transaction with Iran poses grave risk of supporting those activities. Financial institutions around the world should think hard about the risks of doing business with Iran."

While foreign financial institutions that facilitate Iran's illicit activities outside the United States clearly could be subjected to a range of sanctions under existing law, the Section 311 designation does not itself impose any such consequences. It is rather a public warning that the United States considers all transactions with Iranian financial institutions suspect and that foreign banks that engage in such transactions risk future consequences. The designation is, in the words of US officials, intended to have a "serious chilling effect" on the willingness of foreign financial institutions to do business with Iran.

The Section 311 finding may be found at http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf, and the FinCEN proposed rule may be found at http://www.treasury.gov/press-center/press-releases/Documents/Iran311RulemakingProposalSpecialMeasure.pdf.

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

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