

E-ALERT | International Trade Controls

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DEVELOPMENTS IN U.S. SANCTIONS AGAINST IRAN

EXECUTIVE ORDER BLOCKS PROPERTY AND INTERESTS IN PROPERTY OF THE GOVERNMENT OF IRAN AND IRANIAN FINANCIAL INSTITUTIONS

President Obama has issued a new [Executive Order](#), effective February 6, 2012, blocking all assets of the Government of Iran and Iranian financial institutions that are or hereafter come into the United States or the possession or control of a U.S. person. The new Executive Order implements section 1245(c) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81 (“NDAA”), which President Obama signed on December 31, 2011, and also takes additional steps to sanction Iran. As reported in our [January 4, 2012 e-alert](#), the Obama Administration is expected to take further steps to implement other provisions of the NDAA.

The Executive Order blocks all property and interests in property of the Government of Iran (including the Central Bank of Iran), all Iranian financial institutions, and all persons owned or controlled by, or acting for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order. While previously U.S. banks and other U.S. persons were required simply to reject proposed funds transfers or other transactions involving property and interests in property of the Government of Iran or certain Iranian financial institutions (*i.e.*, those banks that had not been separately designated by the U.S. government as a result of their involvement in Iran’s weapons proliferation or terrorism activities), the Order now requires U.S. persons to block (freeze) the funds or other property involved in such transactions.

The Treasury Department’s Office of Foreign Assets Control (“OFAC”) has issued two general licenses that impact the scope of the Executive Order. The general licenses continue to allow transactions involving the Government of Iran or Iranian financial institutions that were previously authorized by certain general and specific OFAC licenses as well as the transfer of personal remittances by U.S. depository institutions to and from Iran.

BACKGROUND ON SANCTIONS

The Executive Order builds upon the prohibitions of the existing Iranian Transactions Regulations (“ITR”), 31 CFR Part 560, which remain in effect. The ITR have since 1995 prohibited virtually all direct and indirect transactions involving Iran or the Government of Iran by U.S. persons or with a nexus to the United States, unless otherwise authorized by OFAC or exempted by statute. The ITR, however, do not require U.S. persons to block property of the Iranian government or banks that comes into their possession or control; rather, they require U.S. persons to refuse to implement any transactions relating to such property, including by rejecting wire instructions that seek to transfer funds relating to Iran, unless the transactions are exempt, authorized, or not prohibited by OFAC.

On December 31, 2011, President Obama signed the NDAA, an appropriations bill containing one section – Section 1245 (entitled “Imposition of Sanctions with Respect to the Financial Sector of

Iran”) — which directed the President to impose sanctions aimed at limiting Iran’s ability to finance its nuclear ambitions. Among other things, Section 1245(c) of the NDAA required the President to block (freeze) all property and interests in property of an Iranian financial institution if such property or interests in property are in the United States, come within the United States, or are or come within the possession or control of a U.S. person.

SCOPE OF THE NEW EXECUTIVE ORDER

With the new Executive Order, President Obama has imposed the additional sanctions against Iran required by Section 1245(c) and has also taken additional steps to sanction Iran.

Blocking Property

Section 1 of the Executive Order blocks all property and interests in property of the Government of Iran or any Iranian financial institution that is or comes into the United States or within the possession or control of a U.S. person. Such property is blocked and may not be transferred, paid, exported, withdrawn, or “otherwise dealt in.” The “Government of Iran” is defined broadly to include any political subdivision, agency, or instrumentality, including the Central Bank of Iran, and any person owned, controlled by, or acting for or on behalf of the Government of Iran. “Iranian financial institution” is also broadly defined to mean a financial institution organized under the laws of Iran or any jurisdiction within Iran (including foreign branches); any financial institution in Iran; any financial institution, wherever located, owned or controlled by the Government of Iran; and any financial institution, wherever located, owned or controlled by any of the foregoing.

In addition, Section 1(c) of the Executive Order blocks property or interests in property of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have 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 the Order.

As a result of the Executive Order, the “[IRAN]” tag on OFAC’s List of Specially Designated Nationals and Blocked Persons (“SDN List”) will connote that a person or entity meets the definition of the term “Government of Iran” or “Iranian financial institution.” (Previously, some Iranian entities and financial institutions that had been designated under programs other than the ITR — for example, SDN-listed banks bearing the “[NPWMD]” tag indicating persons engaged in weapons of mass destruction proliferation activities and their supporters — were already subject to blocking under those programs.) Transactions involving entities bearing this “[IRAN]” tag will now need to be blocked unless exempt or authorized by OFAC. Property and interests in property of entities that are 50% or more owned, directly or indirectly, by a person or entity whose property and interests in property are blocked, must also be blocked.

Section 4 of the Executive Order indicates that the blocking requirement does not apply to property that was blocked in 1979 during the Iran hostage crisis and made subject to transfer directives in January 1981.

Humanitarian Donations

Under Section 2 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 the Government of Iran or any other blocked party.

Delegation of Authority

Under Section 9 of the Executive Order, the Secretary of the Treasury, in consultation with the Secretary of State, is authorized to take actions and employ all powers granted to the President as may be necessary to carry out the purposes of the Order.

In addition, under Sections 10 and 11, the Secretary of the Treasury and Secretary of State, in consultation with each other and, on occasion, the Secretary of Energy and Director of National Intelligence, are authorized to exercise certain functions and authorities conferred upon the President by sections 1245(d) and (e) of the NDAA, as follows:

- The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to exercise the functions and authorities conferred upon the President by section 1245(d)(1)(A) of the NDAA, which requires the President to prohibit or impose restrictions on the ability of a foreign financial institution to maintain a correspondent or payable-through account¹ in the United States if the foreign financial institution has “knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury for the imposition of sanctions pursuant to the International Emergency Economic Powers Act.” Accordingly, the Secretary of Treasury will be responsible for imposing these prohibitions or restrictions and determining what transactions are “significant.” It is unclear whether the President’s freezing of the assets of all Iranian financial institutions under the International Emergency Economic Powers Act is intended to make them all “designated” for purposes of the NDAA. Since the NDAA refers to dealings with Iranian financial institutions “designated by the Secretary of the Treasury,” however, an additional designation may be contemplated before retaliatory sanctions under the NDAA would be imposed against foreign financial institutions engaging in significant financial transactions with “designated” Iranian banks.
- The Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Energy, and the Director of National Intelligence, is authorized to exercise the functions and authorities conferred upon the President by section 1245(d)(4)(D) of the NDAA. Pursuant to section 1245(d)(4)(D), restrictions on correspondent and payable-through accounts shall not apply to a foreign financial institution if the President determines and reports to Congress that the country with primary jurisdiction over the foreign financial institution has “significantly reduced” its volume of crude oil purchases from Iran during the reporting period. Accordingly, the Secretary of State will be responsible for making (and renewing, every 180 days) these country-specific determinations. We understand that separate determinations will be made for each member of the European Union.
- The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to exercise the functions and authorities conferred upon the President by sections 1245(e)(1) and 1245(e)(2) of the NDAA, which require the President to (i) carry out multilateral diplomacy to persuade other governments to limit Iran’s use of revenues from Iran’s sales of petroleum and petroleum products to purchase non-luxury goods, and to prohibit the purchase by Iran of military and dual-use items, and any other items that could contribute to Iran’s conventional, nuclear, chemical, or biological weapons programs; and (ii) conduct outreach to other petroleum-producing countries to encourage them to increase their output of petroleum and petroleum

¹ The term “correspondent account” means an account established to receive deposits from, make payments on behalf of, or handle other financial transactions related to a foreign financial institution. The term “payable-through account” means an account, including a transaction account, opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States. See 31 U.S.C. §§ 5318A(e)(1)(B) and (C).

products to counteract the effect of the new sanctions. Accordingly, the Secretary of Treasury will be responsible for carrying out this diplomacy and outreach.

The Executive Order does not delegate certain other functions and authorities granted to the President in the NDAA. In particular, no delegation has yet been made of the President's authority to (i) determine whether there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions (section 1245(d)(4)(C)); or (ii) waive the imposition of sanctions against foreign financial institutions where that is in the national security interest of the United States (section 1245(d)(5)).

GENERAL LICENSES

OFAC has issued two general licenses pursuant to the new Executive Order to clarify the extent to which parties can continue to engage in transactions involving the Government of Iran or Iranian financial institutions that have previously been authorized or allowed by OFAC.

General License A

Under [General License A](#), almost all transactions that are authorized under existing general licenses issued pursuant to the ITR or under existing specific OFAC licenses will continue to be authorized.

- Transactions authorized pursuant to a general license. Except as noted below, all transactions involving property and interests in property of the Government of Iran or Iranian financial institutions authorized under general licenses set forth in the ITR continue to be authorized.
- Transactions authorized pursuant to a specific license with an expiration date. All transactions involving property and interests in property of the Government of Iran or Iranian financial institutions authorized under specific OFAC licenses that have an expiration date continue to be authorized.
- Transactions authorized pursuant to a specific license without an expiration date. Transactions involving property and interests in property of the Government of Iran or Iranian financial institutions that are authorized under specific OFAC licenses that do not contain expiration dates continue to be authorized. Transactions authorized by licenses under the Iranian Assets Control Regulations ("IACR"), 31 CFR Part 535 (the hostage crisis blocking program that began in 1979) are authorized pursuant to the terms of the license; but transactions authorized by specific licenses issued pursuant to OFAC regulations other than the IACR are authorized only until April 6, 2012.

General License A, does not, however, extend to the following –

- The closing of accounts of the Government of Iran or an Iranian financial institution and the lump sum transfer of the balances to an account outside the United States, which was authorized by sections 560.517(a)(3) & (b)(2) of the ITR, is prohibited. Accounts of the Government of Iran or Iranian financial institutions must now be blocked.
- Payments from blocked funds or debits to blocked accounts are not authorized. A limited exception exists for payments from funds or debits to accounts blocked under the IACR that are authorized by specific licenses issued by OFAC.

General License B

General License B authorizes U.S. depository institutions and U.S. registered brokers or dealers in securities to process noncommercial, personal remittance transfers of funds to or from Iran or for or on behalf of an individual ordinarily resident in Iran. The general license is subject to certain limitations –

- Recipients may not be included within the term “Government of Iran.”
- Charitable donations to or for the benefit of an entity or funds transfers for use in supporting or operating a business, including a family-owned business, do not qualify as “noncommercial personal remittances.” Charitable donations of funds to or for the benefit of an entity in Iran require a specific license.
- Transfers may not be by, to, or through a person whose property and interest in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR Part 544, the Global Terrorism Sanctions Regulations, 31 CFR Part 594, or other OFAC regulations or Executive Orders. Transfers by, to, or through an Iranian financial institution whose property and interests in property are blocked solely pursuant to the new Executive Order are authorized, however.

Transfers of noncommercial personal remittances to Iran must be processed through a third country, as U.S. banks are prohibited from operating correspondent accounts for Iranian banks. Such transactions may involve the use of blocked Iranian financial institutions as long as the Iranian financial institution is blocked solely pursuant to the new Executive Order (and not pursuant to any other Executive order or regulation) and there is a third-country, non-U.S. financial institution as an intermediary between the U.S. financial institution and the Iranian financial institution.

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