

E-ALERT | International Trade Controls

June 13, 2013

DEVELOPMENTS IN U.S. SANCTIONS AGAINST IRAN

EXECUTIVE ORDER IMPOSES NEW SANCTIONS RELATED TO IRAN AND IMPLEMENTS SANCTIONS IMPOSED BY THE IRAN FREEDOM AND COUNTER-PROLIFERATION ACT (“IFCPA”); U.S. TREASURY DEPARTMENT ISSUES GENERAL LICENSE AUTHORIZING THE EXPORT OF PERSONAL COMMUNICATIONS DEVICES, SOFTWARE AND SERVICES TO IRAN AND GUIDANCE REGARDING THE IMPLEMENTATION OF THE IFCPA SANCTIONS

The U.S. government has taken a series of significant actions with regard to U.S. sanctions against Iran in recent days. On June 3, 2013, the President issued an [Executive Order](#), effective July 1, 2013, that authorizes new sanctions against Iran and implements and, in some cases, broadens, sanctions mandated by [Title XII, Subtitle D](#) of the [National Defense Authorization Act for Fiscal Year 2013](#) (“NDAA 2013”), known as the Iran Freedom and Counter-Proliferation Act of 2012 (“IFCPA”). We previously discussed the IFCPA in our [E-Alert of January 4, 2013](#). The sanctions authorized by the Executive Order may have significant implications for financial institutions and for firms in the energy, shipping, precious metals, semi-finished metals, insurance, or automotive industries.

In particular, the new sanctions authorized by the Executive Order are:

- Sanctions on foreign financial institutions that, on or after July 1, 2013, have maintained significant funds or accounts of Iranian rials outside Iran or knowingly conducted or facilitated any significant transaction related to the purchase or sale of Iranian rials or any financial instrument (such as a derivative, swap, or future) that is based on the exchange rate of the rial; and
- Sanctions on persons—including foreign financial institutions—that, on or after July 1, 2013, knowingly engage in any significant transaction related to the supply to Iran of significant goods or services used in connection with Iran’s automotive sector.

The Executive Order broadens sanctions mandated by the IFCPA by:

- With certain exceptions, authorizing the imposition of sanctions on persons determined to have materially assisted (a) Iranian persons on the List of Specially Designated Nationals and Blocked Persons (“SDN list”) or (b) persons on the SDN list whose property is blocked either pursuant to the new Executive Order because they provided such material assistance to Iranian SDN-listed persons or pursuant to Executive Order 13599. Executive Order 13599, issued on February 5, 2012, generally blocked the property of the Iranian government and Iranian financial institutions, and all institutions deemed to be owned by, controlled by, or acting on behalf of those institutions; and
- With certain exceptions, authorizing the imposition of sanctions on foreign financial institutions that have knowingly conducted or facilitated any significant financial transaction on behalf of either Iranian persons included on the SDN list or other persons on the SDN list whose property

is blocked because they provided material assistance to Iranian persons under the Executive Order or pursuant to Executive Order 13599.

Pursuant to provisions of the IFCPA, the Executive Order:

- Implements sanctions on persons that, on or after July 1, 2013, are a part of the energy, shipping, or shipbuilding sectors of Iran, operate a port in Iran, or knowingly provide significant support or goods or services to such persons;
- Implements sanctions on entities that, on or after July 1, 2013, knowingly provide (i) precious metals; or (ii) other metals (such as aluminum or steel), coal, or software for integrating industrial processes if such materials are (A) used as a medium for barter for purposes of Iran's national balance sheet; (B) used in connection with Iran's energy, shipping, or shipbuilding sectors or any sector determined to be controlled by Iran's Islamic Revolutionary Guard Corps ("IRGC"); (C) provided to or from an SDN-listed Iranian person, with certain exceptions; or (D) used in connection with Iran's weapons proliferation activities;
- Implements sanctions on underwriters and insurers that, on or after July 1, 2013, knowingly provide their services for a broad range of transactions with Iran, including those related to Iran's energy, shipping, or shipbuilding industries or for Iranian persons included on the SDN list; and
- Pursuant to the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"), as amended by the IFCPA, imposes sanctions on persons found by the Treasury Secretary to have engaged, on or after January 2, 2013, in corruption or other activities related to the diversion of goods—including medicine and other humanitarian products—meant for the Iranian people.

Separately, on May 30, 2013, the Treasury Department's Office of Foreign Assets Control ("OFAC") took significant measures aimed at facilitating the free flow information to and among the Iranian people by issuing a general license authorizing the export and reexport to Iran of a wide range of personal communication devices, software and services. The general license authorizes the export and reexport to Iran of (i) certain fee-based Internet communications services and related software and hardware, and (ii) a variety of specified personal communications devices, including mobile phones, tablets, laptops and other personal computers, and satellite receivers. The general license does not authorize such exports or reexports if there is reason to know the devices, services, or software are intended for the Government of Iran or any person or entity whose property and property interests are blocked. In addition, the general license is limited to exports from the United States and reexports by U.S. persons and entities they own or control; reexports of devices and software subject to U.S. jurisdiction by other parties not owned or controlled by a U.S. person may still be limited under the Iran sanctions regulations.

Executive Order of June 3, 2013, Implementing and Broadening IFCPA Sanctions and Authorizing Other New Sanctions With Respect to Iran

The Executive Order, issued June 3, 2013, authorizes new sanctions with respect to the automotive sector of Iran and to foreign financial institutions that engage in certain sanctionable conduct relating to Iran. It also implements and expands a number of sanctions mandated by the IFCPA.. Concurrently, OFAC published preliminary guidance, in the form of "[Frequently Asked Questions](#)," concerning the scope and interpretation of the Executive Order and the implementation of the IFCPA.

Sanctions for Providing Material Support to Persons Included on the SDN List

With regard to material support to SDN-listed persons, the Executive Order broadens Section 1244 of the IFCPA to authorize the Treasury Secretary to block the property of persons that:

- **Provide material assistance to certain Iranian persons included on the SDN list.** This provision authorizes blocking the property of any person that provides material assistance, sponsorship, financial, material, or technological support, or goods or services to any Iranian person on the SDN list, except for those Iranian depository institutions whose property is blocked solely under Executive Order 13599. It also authorizes blocking the property of persons that materially assist other persons on the SDN list whose property is blocked either pursuant to the new Executive Order because they provided material assistance to Iranian SDN-listed persons or pursuant to Executive Order 13599. [§ 2(a)(i)]

This provision of the Executive Order is similar to the sanctions mandated by Section 1244(c)(1)(A) of the IFCPA, but it encompasses a wider range of activity by eliminating the IFCPA's requirement that, to be sanctioned, persons must "knowingly"¹ provide "significant" support to SDN-listed persons. The Executive Order instead only requires that persons provide "material assistance," a term that does not require knowledge or that the assistance be "significant." Further, the Executive Order omits the IFCPA's requirement that assistance take place on or after July 1, 2013 in order to be sanctionable. The Executive Order instead adopts no date restriction, meaning that material assistance to SDN-listed persons is sanctionable regardless of whether it occurred before or after July 1, 2013.

The Executive Order grants an exception to this provision for the conduct or facilitation of activities that relate to the Shah Deniz gas field project in Azerbaijan, as described in Section 603 of the [Iran Threat Reduction and Syria Human Rights Act of 2012](#) ("TRA"). [§ 4]

Sanctions Against Foreign Financial Institutions

The Executive Order authorizes sanctions on foreign financial institutions that:

- **Knowingly conduct or facilitate any significant transaction related to Iranian rials or to derivatives of Iranian rials or that maintain rial accounts outside of Iran.** This is a new sanction imposed by the Executive Order that was not previously required under the IFCPA. A foreign financial institution is subject to certain retaliatory sanctions if, on or after July 1, 2013, it (i) knowingly conducts or facilitates any significant transaction related to the purchase or sale of Iranian rials or any financial instrument (such as a derivative, swap, future, forward, or other similar contract) whose value is based on the exchange rate of the Iranian rial; or (ii) maintains significant funds or accounts outside the territory of Iran denominated in Iranian rials. [§ 1(a)]

The Department of Treasury in its discretion may impose on such foreign financial institutions the following sanctions: (i) a prohibition on the opening or maintenance of a correspondent or payable-through account in the United States; (ii) strict conditions on the maintenance of such accounts; and (iii) blocking all property of the sanctioned entity. [§ 1(b)]

- **Knowingly conduct or facilitate any significant financial transaction on behalf of certain persons included on the SDN list or supporters of such persons.** Expanding upon Section 1247 of the IFCPA, the Executive Order subjects a foreign financial institution to certain retaliatory sanctions if the institution knowingly conducts or facilitates a significant financial transaction (i) on behalf of an Iranian person included on the SDN list (other than an Iranian financial institution whose property is blocked solely pursuant to Executive Order 13599); (ii) on behalf of a person whose material support to an Iranian SDN listed person has subjected him to blocking measures and an SDN listing under the new Order; or (iii) on behalf of a person on the SDN list pursuant to Executive Order 13599 (other than an Iranian financial institution whose property is blocked solely pursuant to Executive Order 13599). [§ 3(a)(i)]

¹ The Executive Order and the IFCPA define "knowingly" or "knowledge" to mean that a person has "actual knowledge, or should have known, of the conduct, the circumstance, or the result."

This provision of the Executive Order is similar to Section 1247(a) of the IFCPA, but it eliminates the IFCPA's requirement that, to be sanctionable, a foreign financial institution's actions must occur on or after July 1, 2013. The Executive Order instead adopts no date restriction, meaning that a foreign financial institution's actions on behalf of SDN-listed persons are sanctionable regardless of whether they occurred before or after July 1, 2013.

The Executive Order grants four exceptions to this provision. The first relates to transactions for the purchase of petroleum or petroleum products from Iran. Pursuant to 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 ("NDAA 2012"), sanctions will generally apply to such transactions if the President continues to determine that there is a sufficient global supply of petroleum and petroleum products to permit a significant reduction in purchases from Iran. However, sanctions will not apply to a transaction if (i) it relates to an export of petroleum or petroleum products from Iran to a country that the President determines has significantly reduced crude oil purchases from Iran;² and (ii) for transactions conducted or facilitated on or after February 6, 2013, the transaction is solely for trade between the country with primary jurisdiction over the foreign financial institution and Iran and any funds owed to Iran as a result of such trade are credited to an account located in that country. [§ 3(c)(ii)]

The second exception applies to significant financial transactions for the sale, supply or transfer to or from Iran of natural gas if the transaction is solely for trade between the country with primary jurisdiction over the foreign financial institution and Iran and any funds owed to Iran as a result of such trade are credited to an account located in that country. [§ 3(d)]

Third, the Executive Order excepts transactions that relate to the Shah Deniz gas field project in Azerbaijan, as described in Section 603 of the TRA. [§ 4]

Fourth, it provides a humanitarian exception for transactions for the provision of agricultural commodities, food, medicine, or medical devices to Iran. [§ 3(e)]

- **Knowingly conduct or facilitate any significant transaction for the sale, supply or transfer to Iran of significant goods or services used in connection with the automotive sector.** This is a new sanctions provision imposed by the Executive Order that was not previously required under the IFCPA. A foreign financial institution is subject to certain retaliatory sanctions if it knowingly conducts or facilitates a significant financial transaction, on or after July 1, 2013, for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran. [§ 3(a)(ii)]

(The "automotive sector of Iran," and the transactions in support of Iran's automotive sector that may give rise to sanctions, are discussed in the next section.)

The Department of Treasury in its discretion may impose the following sanctions on foreign financial institutions that engage in any of the above sanctionable activities: (i) a prohibition on the opening or maintenance of a correspondent or payable-through account in the United States; and (ii) strict conditions on the maintenance of such accounts. [§ 3(b)]

Sanctions Regarding the Automotive Sector of Iran

In addition to the sanctions against foreign financial institutions that conduct or facilitate a significant financial transaction relating to the supply of significant goods or services to Iran for its automotive sector, the Executive Order authorizes sanctions against any person that provides certain

² The President has exempted the following nations from the petroleum sanctions authorized by the NDAA 2012: Belgium, China, the Czech Republic, France, Germany, Greece, India, Italy, Japan, Malaysia, South Africa, South Korea, Sri Lanka, the Netherlands, Poland, Singapore, Spain, Taiwan, Turkey, and the United Kingdom.

support for “the automotive sector of Iran.” This new sanctions provision authorizes sanctions against persons that engage in the:

- **Sale, supply, or transfer to Iran of significant goods or services for the automotive sector of Iran.** Persons and entities, and their successors, may be subject to sanctions if the Secretary of State (in consultation with other agencies) determines that they have knowingly engaged in “a significant transaction” on or after July 1, 2013, “for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran.” [§ 5] The Executive Order defines the “automotive sector or Iran” as “the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles.” [§ 14]

Sanctions also may be imposed against a person who owns or controls an entity found to engage in significant transactions for the automotive sector in Iran if the controlling person “had knowledge” of that activity, and against persons under common control that participated in the activity.

OFAC has issued guidance that the relevant “good or services” include those that contribute to (i) Iran’s ability to research, develop, manufacture, and assemble light and heavy vehicles; and (ii) the manufacturing or assembling of original equipment and after-market parts used in Iran’s automotive industry. OFAC anticipates that it will promulgate regulations to further define the goods and services covered by this provision of the Executive Order.

The Secretary of State may impose “one or more” of twelve specified sanctions for those found to provide prohibited support to Iran’s automotive sector. The available menu of sanctions is outlined in a separate section below. These sanctions may be imposed not only on a company that engaged in or participated in the sanctioned activity, but also on the principal executive officers of the entity. [§§ 5, 6, & 7]

Sanctions Mandated by the IFCPA and Implemented by the Executive Order

Signed into law early this year, the IFCPA mandated a series of sanctions with regard to Iran, as described in our [E-Alert of January 4, 2013](#). The Executive Order implements a number of those sanctions.

- **The Executive Order blocks the property of any person that the Secretary of the Treasury determines has engaged in corruption or other activities related to the diversion of goods—including medicine and other humanitarian products—meant for the Iranian people.** This provision of the Executive Order implements the IFCPA’s amendment to the CISADA that imposes sanctions on persons that are determined to have engaged, on or after January 2, 2013, in corruption or other activities relating to the diversion of goods, including agricultural commodities, food, medicine and medical devices intended for the people of Iran, or the misappropriation of proceeds from the sale or resale of such goods. [§ 8(a)]
- **The Executive Order delegates to the Treasury Secretary the authority to block the property of persons that are part of Iran’s energy, shipping, or shipbuilding sectors, operate ports in Iran, or knowingly provide significant support or goods and services to such persons.** Section 1244(c) of the IFCPA requires the President to block the property and interests in property that are or come within the United States or within the possession or control of a U.S. person of any person who, on or after July 1, 2013, is (i) part of the energy, shipping, or shipbuilding sector of Iran; (ii) operates a port in Iran; or (iii) knowingly provides significant support to, or goods or services for the benefit of, such a person or (with limited exceptions for certain financial institutions) any Iranian person included on the SDN list. The power to block property under this provision does

not include the authority to impose sanctions on the importation of goods. The Executive Order delegates to the Treasury Secretary the authority to impose such blocking measures. [§ 2(a)(ii)]

Section 1244(h)(1) of the IFCPA grants an exception to this sanctions provision for the sale, supply, or transfer to or from Iran of natural gas. The Executive Order and Section 1254 of the IFCPA also grant an exception to this provision for the conduct or facilitation of transactions that relate to the Shah Deniz gas field project in Azerbaijan, as described in Section 603 of the TRA. [§ 4]

According to the guidance released by OFAC, the public will be able to consult the SDN list to determine the persons that are part of the energy, shipping, or shipbuilding sectors of Iran or that are port operators.

- **The Executive Order delegates to the Secretaries of Treasury and State the authority to impose sanctions on persons that:**
 - **Knowingly provide significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran.** Under Section 1244(d) of the IFCPA, the President must impose five or more of the sanctions authorized under Section 6(a) of the Iran Sanctions Act of 1996 (“ISA”) against any person that, on or after July 1, 2013, knowingly sells, supplies, or transfers to or from Iran significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran. [§ 7(a)]

The guidance OFAC released describes some of the elements that will likely be included in regulations OFAC expects to promulgate defining what goods and services are covered by this provision. The energy sector goods and services will likely include goods or services that contribute to (i) Iran’s ability to develop its domestic petroleum resources; (ii) the maintenance or expansion of Iran’s domestic production of petroleum products; and (iii) Iran’s ability to import or export petroleum or petroleum products.

The definition of goods or services in the shipping sector will likely include (i) the provision of crude and product tankers to Iran; (ii) the provision of registry, flagging, or classification services of any kind; (iii) the supervision of and participation in the repair of ships and their parts; (iv) the inspection, testing, and certification of marine equipment materials and components; (v) the carrying out of surveys, inspections, audits and visits, and the issuance, renewal or endorsement of the relevant certificates and documents of compliance, as they relate to ships and shipping; and (vi) any other goods or services relating to the maintenance, supply, bunkering, and docking of vessels flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by, or for or on behalf of, the Government of Iran or an Iranian person.

The definition of goods or services in the shipbuilding sector will likely include (i) the building and refitting of vessels; (ii) the provision or refitting of turbines, engines, and related parts used for marine propulsion; (iii) compasses and other navigational instruments intended solely for the maritime industry; and (iv) technical assistance and training relating to, and financing of, the building, maintenance or refitting of vessels.

Two exceptions apply to this provision. First, Section 1244(h)(1) of the IFCPA grants an exception to this provision for the sale, supply, or transfer to or from Iran of natural gas. Second, Section 1254 of the IFCPA also grants an exception to this provision for any activity that relates to the Shah Deniz gas field project in Azerbaijan, as described in Section 603 of the TRA.

Knowingly provide precious metals, other metals, or other commodities directly or indirectly to or from Iran. Section 1245(a)(1) of the IFCPA requires the President to impose five or more of the sanctions authorized under Section 6(a) of the ISA on any person that, on or

after July 1, 2013, knowingly sells, supplies, or transfers to or from Iran, directly or indirectly (i) a precious metal; or (ii) graphite, raw or semi-finished metals; or software for integrating industrial processes, if such material is (A) determined to be used by Iran as a medium for barter, swap, or other exchange or is listed as an asset of the Government of Iran for purposes of the national balance sheet of Iran; (B) to be used in connection with Iran's energy, shipping or shipbuilding sectors or any sectors determined to be controlled by the IRGC;³ (C) sold, supplied or transferred to or from an Iranian person on the SDN List (other than an Iranian financial institution not designated for weapons proliferation, terrorism or human rights reasons); or (D) determined to be used in connection with the nuclear, military, or ballistic missile programs of Iran. [§ 7(a)]

OFAC expects to promulgate regulations that will define what precious metals,⁴ graphite, and semi-finished metals⁵ are covered by this provision.

Section 1254 of the IFCPA grants an exception to this provision for any activity that relates to the Shah Deniz gas field project in Azerbaijan, as described in Section 603 of the TRA.

- **Knowingly provide underwriting or insurance services for any activity with respect to Iran for which U.S. sanctions have been imposed.** Section 1246 of the IFCPA requires the President to impose five or more of the sanctions authorized under Section 6(a) of the ISA on persons that, on or after July 1, 2013, knowingly provide underwriting services, insurance, or reinsurance in the following particular circumstances:
 - If such services are rendered for activities subject to sanctions under any law relating to the imposition of sanctions with respect to Iran;
 - If such services are rendered to or for any person with respect to, or for the benefit of, any activity in Iran's energy, shipping, or shipbuilding sectors;
 - If such services are rendered for the sale, supply, or transfer to or from Iran of materials for which sanctions are imposed under the IFCPA;
 - If such services are rendered to persons designated for sanctions pursuant to the International Emergency Economic Powers Act ("IEEPA") for their involvement in Iran's weapons proliferation or for international terrorism reasons; or

³ By July 1, 2013, OFAC will publish a report in the Federal Register detailing which sectors of the Iranian economy are controlled directly or indirectly by Iran's Islamic Revolutionary Guard Corps.

⁴ OFAC's guidance indicates that the definition of "precious metals" will likely include silver (including silver plated with gold or platinum) unwrought or in semi-manufactured forms or in powder form; gold (including gold plated with platinum) unwrought or in semi-manufactured forms or in powder form; base metals or silver, clad with gold, not further worked than semi-manufactured; platinum, unwrought or in semi-manufactured forms, or in powder form; iridium; osmium; palladium; rhodium; ruthenium; base metals, silver or gold, clad with platinum, not further worked than semi-manufactured; waste and scrap of precious metal or of metal clad with precious metals, other waste and scrap containing precious metal or precious-metal compounds, of a kind used principally for the recovery of precious metal.

⁵ OFAC's guidance indicates that the definition of graphite, raw or semi-finished metals will likely include steels; aluminum metal and its alloys; base metals of single or complex borides of titanium; beryllium metal and its alloys; boron metal and its alloys; cobalt metal and its alloys; copper infiltrated tungsten metal; copper-beryllium metal; germanium metal and its alloys; graphites; hastelloy; inconel; magnesium metal and its alloys; molybdenum metal and its alloys; neptunium-237 metal and its alloys; nickel metal and its alloys; nickel aluminide metals; niobium metal and its alloys; niobium-titanium filaments; plutonium metal and its alloys; porous nickel metal; silver infiltrated tungsten metal; tantalum metal and its alloys; tellurium metal and its alloys; titanium aluminide metals; titanium metal and its alloys; tungsten metal, tungsten carbide metal, and their alloys; uranium titanium alloy metals; and zirconium metal and its alloys and compounds.

- If such services are rendered to or for any Iranian person included on the SDN list (except Iranian financial institutions not designated for weapons proliferation, terrorism, or human rights reasons). [§ 7(a)]

Exceptions apply to this provision. First, Section 1256(c) of the IFCPA provides a humanitarian exception to this provision for underwriting and insurance services for transactions for the supply of agricultural commodities, food, medicine, or medical devices to Iran. Second, Section 1254 of the IFCPA grants an exception to this provision for any activity that relates to the Shah Deniz gas field project in Azerbaijan, as described in Section 603 of the TRA.

Also, on a case by case basis and as part of an investigation or enforcement action, the Departments of Treasury and State will grant exceptions to underwriters and insurers who provide otherwise sanctionable services if those agencies determine that the underwriter or insurer has established and enforced official policies, procedures, and controls to ensure that they do not provide services for activities targeted by this provision of the Executive Order and the IFCPA.

“Significant” Transactions

With regard to what constitutes a “significant transaction” or “significant goods or services” for purposes of the Executive Order, OFAC has published FAQ guidance stating that, in general, it will apply the criteria outlined in the Iranian Financial Sanctions Regulations at 31 C.F.R. § 561.404. That provision specifies a number of broad factors that OFAC will consider to determine whether a transaction is “significant.” These criteria are stated in general terms, and the provision does not clarify the relative weight that may be given to each factor; moreover, the provision specifically notes that the analysis may consider any other factors that are deemed relevant on a case by case basis. These factors include:

- The size, number, and frequency of the transactions, including whether they are increasing or decreasing over time;
- The type, complexity, and commercial purpose of the transaction;
- The level of awareness of management and whether the transactions are part of a pattern of conduct;
- The nexus between the person and the sanctioned activity or person;
- The impact of the transactions on statutory objectives (such as economic benefit conferred on sanctions targets or furthering weapons development);
- Whether deceptive practices are involved; and
- Other factors deemed to be relevant.

Menu of Available Sanctions for Sanctionable Conduct Under the IFCPA Provisions and for Support for Iran’s Automotive Sector

For the persons sanctioned pursuant to the IFCPA provisions implemented by the Executive Order as outlined above, the IFCPA requires that the Secretaries of Treasury and State impose at least five of the following twelve sanctions, which are listed in the Executive Order and are drawn from the twelve sanctions described in Section 6(a) of the ISA.⁶ The Executive Order also authorizes the Secretary of

⁶ Although it appears that the text of Section 7(a) of the Executive Order pares down the number of available sanctions from twelve to six, the Department of State’s Office of the Legal Adviser has confirmed that all twelve ISA sanctions are available for application and that OFAC and the State Department did not intend to limit the

State to impose any of these twelve sanctions on persons found to have engaged in significant transactions in support of Iran’s automotive sector:

- Prohibit U.S. government agencies from procuring or contracting for goods or services from the sanctioned person;
- Deny specific licensing for exports or reexports of goods or technology to the sanctioned person;
- Deny Export-Import Bank guarantees, insurance, extensions of credit, or participation in an extension of credit in connection with the export of any goods or services to the sanctioned person;
- Deny visas to, and exclude from the United States, any alien who is a corporate officer, principal of, or a controlling shareholder of a sanctioned person;
- If the sanctioned person is a financial institution, the Chairman of the Board of Governors of the Federal Reserve System and the President of the Federal Reserve Bank of New York may take any actions they deem appropriate, including denying or terminating the designation of the sanctioned person as a primary dealer in U.S. government debt instruments;
- If the sanctioned person is a financial institution, prevent it from serving as an agent of the U.S. government or as a repository for U.S. government funds;
- Prohibit any U.S. financial institution from making loans or providing credits to the sanctioned person totaling more than \$10 million in any 12-month period, unless such loans and credits are provided for activities to relieve human suffering;
- Prohibit any transactions in foreign exchange in which the sanctioned person has an interest;
- Prohibit any transfers or credits or payments in which the sanctioned person has an interest and that involve a financial institution;
- Block all property and interests in property of the sanctioned person that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any U.S. person;
- Prohibit U.S. persons from investing in or purchasing significant amounts of equity or debt instruments from the sanctioned person; or
- Restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person. [§§ 6(a)-(e) & 7(a)(i)-(vi)]

The Departments of Treasury and State have discretion to impose these sanctions on the principal executive officer or officers of the sanctioned persons as well. [§§ 6(f) & 7(a)(vii)]

It is important to note that, by listing all twelve ISA sanctions, Section 7 of the Executive Order restores to the Departments of State and Treasury the authority to impose sanctions related to the importation of goods on persons subject to the IFCPA provisions that Section 7 implements. The IFCPA, for reasons related to the jurisdiction of the congressional committee that drafted the statute, originally omitted the authority to apply import-related sanctions.

list of twelve made available under the IFCPA. Further, although Section 7(a) of the Executive Order states that “one or more” of the sanctions may be imposed, the Department of State’s Office of the Legal Adviser confirmed that for those cases in which sanctions are based on conduct defined in the IFCPA, the Executive Order should be read to incorporate by reference the specific IFCPA requirement to impose at least five of the ISA sanctions.

New General License D Authorizing Certain Personal Communications Devices, Software and Services

In addition to the retaliatory sanctions discussed above that the United States imposes on persons who engage in certain activities involving Iran, the United States maintains comprehensive economic sanctions against Iran, embodied primarily in the [Iranian Transactions and Sanctions Regulations](#) (“ITSR,” 31 C.F.R. Part 560) administered by OFAC. The ITSR effectively prohibit U.S. persons, and any entity owned or controlled by a U.S. person, from any export-import trade, services, financial dealings or other transactions involving Iran and its government, and block (or freeze) property of the Government of Iran and other designated SDNs. “U.S. person” includes U.S. nationals (both U.S. citizens and permanent residents); entities incorporated or formed under U.S. law; and anyone in the United States.

The ITSR also broadly prohibit the reexport to Iran by anyone—whether or not a U.S. person—of many types of common electronic devices and software with more than a *de minimis* amount (10 percent by value) of U.S.-origin content that is not classified in the least-sensitive, catch-all export classification designation “EAR99.”

As part of the Obama administration’s policy to encourage and advance Internet freedom in Iran, OFAC issued [General License D](#) (the “General License”) authorizing the export and reexport of a range of communication devices, software and services that support personal communication over the Internet.

First, General License D authorizes the export and reexport of certain fee-based Internet communications services and related software and hardware to the Iranian people. This action builds on and expands the general license at Section 560.540 of the ITSR, adopted in 2010 to authorize the export and reexport of Internet communications services and software that are publicly available at no cost to the user. The new General License effectively expands this authority to fee-based services and related software.

In particular, the new General License authorizes fee-based personal communications services that include, but are not limited to, instant messaging, chat and e-mail, social networking, photo and video sharing, web browsing, and blogging. To facilitate these services, the General License also authorizes consumer-grade Internet connectivity services and the provision or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) that is incident to personal communications.

The export and reexport of paid-for software is authorized as long as such software is necessary to enable the authorized personal communications services, and is either (i) classified under the catch-all category EAR99 of the Commerce Department’s Export Administration Regulations (“EAR”); or (ii) classified on the Commerce Department’s Commerce Control List (“CCL”) under the export control classification number (“ECCN”) 5D992.c, which includes “mass market” software and certain other software for which the Commerce Department’s Bureau of Industry and Security (“BIS”) has received an encryption registration.

Second, the General License also authorizes the export of particular hardware, software, and services described in an annex to the General License. The annex authorizes the export of the following eleven categories of products:

- Mobile phones (including smartphones), personal digital assistants, SIM cards, and drivers and connectivity software for such hardware, that are classified EAR99 or ECCN 5A992.c, and services necessary for the operation of such hardware and software;

- Satellite phones, Broadband Global Area Network hardware, and demand drivers and connectivity software for such hardware, that are classified EAR99 or ECCN 5D992.c, and services necessary for the operation of such hardware and software;
- Modems, network interface cards, radio equipment, routers, switches, and WiFi access points—all designed for 50 or fewer concurrent users—that are classified EAR99 or under ECCNs 5A992.c, 5A991.b.2, or 5A991.b.4; drivers, communications, and connectivity software for such hardware classified EAR99 or ECCN 5D992.c; and services necessary for the operation of such hardware and software;
- Residential consumer satellite receive-only terminals and receiver equipment classified EAR99 or under ECCNs 5A992.c, 5A991.b.2 or 5A991.b.4; drivers, communications, and connectivity software for such hardware classified EAR99 or ECCN 5D992.c; and services necessary for the operation of such hardware and software;
- Laptops, tablets, personal computing devices, disk drives, data storage devices, computer peripherals, keyboards, and mice classified EAR99 or under ECCNs 5A992.c, 5A991.b.2, 5A991.b.4, or 4A994.b; computer operating systems and other software required for effective consumer use of such hardware, including software updates and patches, classified EAR99 or ECCN 5D992.c; and services necessary for the operation of such hardware and software;
- Anti-virus and anti-malware software classified EAR99 or ECCN 5D992.c, and services necessary for the operation of such software;
- Anti-tracking software classified EAR99 or ECCN 5D992.c, and services necessary for the operation of such software;
- Mobile operating systems, online app stores, and related software classified EAR99 or ECCN 5D992.c, and services necessary for the operation of such software;
- Anti-censorship tools and related software classified EAR99 or ECCN 5D992.c, and services necessary for the operation of such software;
- Virtual Private Networks (“VPNs”), proxy tools, and fee-based personal communications tools including voice, text, video, voice-over-IP telephony, video chat, and successor technologies, and communications and connectivity software required for effective consumer use of such tools classified EAR99 or ECCN 5D992.c; and services necessary for the operation of such software; and
- Secure Sockets Layer (“SSL”) software classified EAR99 or ECCN 5D992.c; and services necessary for the operation of such software.

It is important to note that the General License limits its authorization to consumer grade items to facilitate personal communications for the Iranian people. It explicitly withholds authorization for exports or reexports with knowledge or reason to know that the service, hardware, or software is intended for the Government of Iran or for persons included on the SDN list. It also withholds authorization for the export of commercial-grade Internet connectivity services or telecommunications facilities (such as dedicated lines or dedicated links with quality of service guarantees). Nor does it authorize domain registration services, or web-hosting for any purpose—such as web-hosting for a commercial endeavor—other than personal communications.

Finally, it is also important to note that the General License authorizes exports and reexports of the specified devices, hardware, and software only from the United States, by U.S. persons, or by entities owned or controlled by a U.S. person. The General License does not provide authority for other parties, who are not U.S. persons or owned or controlled by a U.S. person, to reexport U.S.-origin personal communications devices and software that are not EAR99, or such items made outside the United States with more than 10 percent U.S.-origin content by value that is not classified EAR99.

OFAC will consider requests for specific licenses for the export and reexport to Iran of personal communications services, software, and hardware that is not specified in the General License. That policy would presumably include reexports by non-U.S. persons.

CONCLUSION

We are well-positioned to assist clients in understanding how the new sanctions and General License may impact their operations and business opportunities. We are also able to advise on the various other Iran sanctions measures that have been implemented in recent years and how they may evolve as geopolitical developments surrounding Iran play out.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our international trade controls group:

Peter Flanagan	+1.202.662.5163	pflanagan@cov.com
Corinne Goldstein	+1.202.662.5534	cgoldstein@cov.com
Peter Lichtenbaum	+1.202.662.5557	plichtenbaum@cov.com
Kimberly Strosnider	+1.202.662.5816	kstrosnider@cov.com
David Addis	+1.202.662.5182	daddis@cov.com
Alan Larson	+1.202.662.5756	alarson@cov.com
Alex Wong	+1.202.662.5748	awong@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.

© 2013 Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004-2401. All rights reserved.