HUNTON& WILLIAMS

Client Alert

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Obama Administration Imposes New Sanctions on Foreign Entities Doing Business with Iran: House and Senate Approve Legislation Imposing Yet Further Sanctions

U.S. trade sanctions already prohibit U.S. persons or entities from engaging in virtually all commercial transactions involving Iran, with limited exceptions for agricultural or medical products and certain humanitarian transactions. On July 31, 2012, President Obama signed an executive order intended to extend U.S. efforts to deter Iranian attempts to get around U.S. sanctions. These sanctions will restrict U.S. businesses in their dealings with foreign businesses that engage in certain transactions with Iran.

Sanctions imposed under the authority of the new executive order would prohibit U.S. persons or entities from engaging in a range of transactions with any person or entity determined to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services in support of, (i) National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO) or the Central Bank of Iran (CBI) or (ii) the purchase or acquisition of U.S. banknotes or precious metal by the government of Iran. In addition, the executive order authorizes a new range of prohibitions on U.S. persons or entities doing business with foreign persons or entities determined to knowingly engage in significant transactions for the purchase or acquisition of petroleum, petroleum products or petrochemical products from Iran.

The new sanctions also include limitations on foreign financial institutions engaging in transactions with NIOC or NICO or otherwise facilitating significant transactions for the purchase or acquisition of petroleum, petroleum products or petrochemical products from Iran. Such entities would be prohibited from maintaining correspondent or payable-through accounts in the U.S. Finally, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury simultaneously announced sanctions against Bank of Kunlun (China) and Elaf Islamic Bank (Iraq) that would effectively bar them from directly accessing the U.S. financial system. The sanctions were imposed because the two banks were determined to have knowingly facilitated significant transactions or provided significant financial services for designated Iranian banks.

Meanwhile, on August 1 the House and the Senate approved legislation that would impose further sanctions on Iran. A complex and extensive series of provisions would include prohibitions on transactions involving Iran by foreign subsidiaries of U.S. corporations and would require disclosures in SEC filings of certain sanctioned activities. The legislation would also impose a range of “indirect” sanctions akin to those described above, that is, sanctions not just on Iran itself, but on dealings with foreign persons or entities engaging in certain types of transactions with Iran. These would include measures such as sanctions relating to vessels transporting petroleum and related products from Iran, including underwriting services or insurance or reinsurance, sanctions on participants in joint ventures with Iran related to petroleum or uranium, and restrictions on exports to foreign government agencies identified as carrying out activities with certain Iran-affiliated persons.

Sanctions such as the new executive order and legislation seek to extend the reach of U.S. jurisdiction as far as possible, to include not just a restriction on commercial transactions with the sanctioned country by U.S. persons or entities, but also by foreign persons and entities as well. This is accomplished by limiting or prohibiting transactions with such foreign persons or entities by persons or entities subject to U.S.

jurisdiction. As a result, these developments significantly increase the complexity for U.S. businesses of compliance with trade sanctions, and underscore the importance for compliance of attention to the Specially Designated Nationals list (SDN) maintained by OFAC. Foreign persons or entities subject to the sort of indirect sanctions described above would normally be identified in the SDN. More generally, U.S. businesses need to be aware that U.S. trade sanctions may prohibit not just transactions with a sanctioned country, but also a range of transactions with a number of persons or entities in third countries that do business with the sanctioned country.

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