

Client Alert

January 2020

The Trump Administration Issues Executive Order Imposing Sanctions with Respect to Additional Sectors of Iran and Financial Institutions Providing Support Thereto

What Happened: On January 10, 2020, President Donald J. Trump issued an Executive Order that requires the blocking of all property and interests in property in the United States or that comes within the possession or control of a United States person belonging to any person determined by the Secretary of the Treasury to operate in the construction, mining, manufacturing or textile sectors in Iran. Also, the Executive Order allows the Secretary of the Treasury to sanction foreign financial institutions that conduct or facilitate financial transactions regarding such sectors.

The Bottom Line: Given the recent escalation of hostilities between the US and Iran, the Trump administration continues its objective to deny the Iranian government revenues that may be used to fund and support its nuclear program, missile development and terrorism, this time by sanctioning other sectors of the Iranian economy deemed to be material to the financing of such activities.

The Full Story:

On January 10, 2020, President Trump issued a new executive order titled “Imposing Sanctions with Respect to Additional Sectors of Iran” (the Executive Order). This Executive Order is similar in form to an executive order issued in May 2019 imposing sanctions with respect to the iron, steel, aluminum and copper sectors of Iran (the Iran Metals Sanctions).

The Executive Order blocks, and prohibits the transfer, payment, exportation, withdrawal or other dealing in, all property and interests in property 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 United States person, if such property or interests in property belong to any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

- (i) to operate in the construction, mining, manufacturing or textiles sectors of the Iranian economy, or any other sector of the Iranian economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;
- (ii) to have knowingly engaged, on or after the date of the Executive Order, in a significant transaction for the sale, supply or transfer to or from Iran of significant goods or services used in connection with a sector of the Iranian economy specified in, or determined by the Secretary of the Treasury, in consultation with the Secretary of State, pursuant to, (i) above;
- (iii) to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to the Executive Order; or

- (iv) 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 Executive Order.

The effect of a person being sanctioned under paragraphs (i)-(iv) above is to block all of its property in the United States and to prohibit US citizens or entities, US residents and others in the United States from conducting any kind of business or transactions whatsoever with the sanctioned person.

Additionally, the Executive Order expressly seeks to thwart commercial transactions with respect to these sectors of the Iranian economy by providing for sanctions against “foreign financial institutions” that knowingly conduct or facilitate any significant financial transaction:

- A. for the sale, supply or transfer to or from Iran of significant goods or services used in connection with a sector of the Iranian economy specified in, or determined by the Secretary of the Treasury, in consultation with the Secretary of State, pursuant to, (i) above; or
- B. for or on behalf of any person whose property and interests in property are blocked pursuant to (i)-(iv) above.

“Foreign financial institutions” is given a broad definition that includes, but is not limited to, depository institutions; banks; savings banks; money service businesses; trust companies; securities brokers and dealers; commodity futures and options brokers and dealers; forward contract and foreign exchange merchants; securities and commodities exchanges; clearing corporations; investment companies; employee benefit plans; dealers in precious metals, stones or jewels; and holding companies, affiliates or subsidiaries of any of the foregoing. The term “significant transaction” is not defined in the Executive Order, but it is likely it will be given a similar definition as is used in the regulations implementing the Iran Metals Sanctions.¹

Foreign financial institutions determined by the Secretary of the Treasury, in consultation with the Secretary of State, to meet the criteria set forth in A. or B. above, may be prohibited from opening, and prohibited or have imposed strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution. It is important to note that foreign financial institutions may be sanctioned for involvement in significant financial transactions in the Iranian sectors prescribed (e.g., construction, mining, manufacturing or textiles, or others to be determined by the Secretary of Treasury), even if the persons for whom such foreign financial institutions conduct or facilitate financial transactions are not themselves sanctioned or on OFAC’s Specially Designated Nationals List.

The prohibitions prescribed by this Executive Order apply except to the extent provided by statutes, or in regulations, orders, directives or licenses that may be issued pursuant to this Executive Order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this Executive Order. Thus, for example, a specific license or other guidance previously issued by OFAC with respect to a transaction with a person sanctioned by this Executive Order would be superseded by this Executive Order and any such transaction with a persons sanctioned by this Executive Order should cease immediately, unless a future specific license is granted pursuant to this Executive Order.

This Executive Order also suspends the unrestricted immigrant and nonimmigrant entry into the United States of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State,

¹ In August 2019, the Office of Foreign Assets Control (OFAC) published amendments to the Iran Financial Sanctions Rules, 31 C.F.R. Part 361 (IFSR), to implement the Iran Metals Sanctions. Rule 361.404 of the IFSR directs the Secretary of the Treasury to consider the totality of the circumstances in assessing the significance of a transaction. Among other things, the Secretary may consider some or all of the following factors: (1) the size, number and frequency of transactions; (2) the nature of the transactions; (3) the level of awareness and whether there is a pattern of conduct; (4) the closeness of the nexus between the foreign financial institution and the blocked person; (5) the impact of the transactions or financial services upon US interests; (6) whether deceptive practices were involved; (7) the involvement of the Central Bank of Iran and any impact on foreign reserves; and (8) any other relevant factors.

to meet one or more of the criteria set forth in paragraphs (i)-(iv) above and prohibits the donation of food, clothing and medicine to such persons.

The economic sanctions practice at Hunton Andrews Kurth LLP will continue to closely monitor this and other US sanctions matters. Please contact us if you have any questions or would like further information regarding US sanctions against Iran.

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