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LEGAL ALERT

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U.S. and EU Restrictions on Doing Business with Iran

In recent months, there have been major developments regarding the economic sanctions imposed on Iran. In an effort to pressure the Iranian regime and delay the progress of Iran's nuclear program, the United Nations, the United States, and the European Union have each strengthened their sanction programs. This update describes the basic structure of current U.S. and EU sanctions and highlights key provisions of interest. It is intended as a summary and is not a substitute for detailed legal analysis of specific questions that arise with respect to doing business with Iran.

Efforts to strengthen the economic sanctions imposed on Iran have focused primarily on three areas: Iran's energy industry, nuclear technology, and finance. In order to place maximum pressure on the Iranian regime, the United States and other members of the international community have tightened restrictions on refined petroleum products that were already in short supply within Iran. Direct restrictions on exports that might be useful to Iran's nuclear program remain in place and have been expanded. Finally, in an effort to starve the Iranian regime of capital for its nuclear program and support of terrorism, new efforts are underway to limit Iranian access to and use of the global financial system.

The international backdrop for U.S. and EU measures is the United Nations sanctions, which were strengthened with the adoption of U.N. Security Council Resolution 1929 on June 9, 2010. Key provisions of S.C. Res. 1929 include a prohibition against Iranian investment in commercial nuclear activity, measures forbidding the diversion of arms to Iran, restrictions on ballistic missile development, a directive to inspect cargo destined for Iran to ensure it does not include prohibited goods, and restrictions on providing support services to Iranian-owned or contracted vessels. Other new U.N. measures govern the provision of financial and banking services and dealings with certain named Iranian companies and individuals. Although the U.N. sanctions have had limited effectiveness, the new restrictions adopted in June reflect a growing international consensus that more needs to be done to hamper the Iranian nuclear program.

United States Sanctions

U.S. persons have long been prohibited from doing business with Iran. The Iran Sanctions Regulations administered by the Department of Treasury's Office of Foreign Assets Control (OFAC) contain broad language that, as a practical matter, forbids U.S. companies and individuals from engaging in trade and investment activity with Iran. U.S. persons may not export, reexport, sell, or supply goods, technology, or services to Iran. They are also prohibited from facilitating trade with Iran, and, unless otherwise authorized by OFAC, a U.S. person may not "approve, finance, facilitate or guarantee any transaction by a foreign person where the transaction by that foreign person would be prohibited … if performed by a United States person or within the United States." Transactions that contribute to the development of the Iranian petroleum industry are singled out as a particular target, and financial dealings with Iran and Iranian banks are severely restricted. Although there are some limited exceptions and it is possible to apply for a license authorizing a specific activity, U.S. policy and OFAC practice leave almost no opportunity for U.S. persons to engage in commercial activity involving Iran.

The most significant U.S. legal development during 2010 has been the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), which President Obama signed into law on July 1, 2010. CISADA expanded the U.S. sanctions regime by targeting Iran's oil and gas industry, its nuclear weapons program, and its access to international capital. Consistent with past practice, CISADA applies to all "United States persons," defined to include (1) a natural person who is a citizen or resident of the United States or a national of the United States or (2) an entity organized under the laws of the United States or any state. Key provisions of CISADA include the following:

- Exports of refined petroleum products and investments that contribute to the enhancement of Iran's petroleum refining capability are forbidden.
- Exports of nuclear material, technology, or services to a country with jurisdiction over sanctioned persons are prohibited, subject to limited Presidential waiver authority.
- Exports from the United States to Iran are not allowed, with limited exceptions for humanitarian relief and personal communications technology.
- Non-U.S. financial institutions are subject to penalties if they knowingly facilitate Iranian efforts to acquire weapons of mass destruction or support terrorism, the activities of sanctioned persons, or the activities of Iran's Revolutionary Guard Corps.
- U.S. government agencies are forbidden from entering into contracts with persons who export sensitive technology to Iran, and U.S. contractors must certify they are not engaged in sanctionable activity.
- Any country allowing substantial diversion of restricted commodities or services to Iran will be designated as a Destination of Diversion Concern and subject to export licensing requirements.

Existing penalty provisions remain in place, and substantial civil and criminal penalties are authorized, depending on the character and scope of a violation.

U.S. authorities have been particularly active since CISADA became law, with the Treasury Undersecretary for Terrorism and Financial Intelligence, Stuart Levey, in the lead. Undersecretary Levey and Department of State officials have recently met with officials in numerous countries, including Lebanon, the United Arab Emirates, Japan, South Korea, and China, to encourage those countries to restrict their trade with Iran. This diplomatic pressure has been accompanied by a number of high-profile sanction enforcement actions in recent months, including substantial settlements entered into by Barclays Bank ($298 million) and Credit Suisse ($536 million).

In addition to official U.S. government action, watchdog organizations such as United Against Nuclear Iran have pressured companies to reduce or eliminate their business dealings in Iran. Numerous major multinationals have announced that they have already ended, or will soon terminate, operations by their affiliates in Iran. This development underscores the growing stigma attached to doing business with Iran.

European Union Sanctions

On July 26, 2010, the European Council approved strict new restrictions governing trade between Member States and Iran. These measures include additional restrictions on trade in dual-use goods and technology, investment in the Iranian oil and gas industry, investment in the uranium mining and nuclear industries in Iran, and Iranian access to the banking, insurance, and bond markets of the EU.

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On October 25, 2010, the EU adopted Council Regulation (EU) No 961/2010 (the EU Regulation), which implements the July 26 Council Decision and provides additional detail on its practical application. Key elements of the Council Decision, as implemented by the new EU Regulation, are as follows:

- The EU Regulation applies to nationals of Member States, any legal person, entity, or body incorporated under the law of a Member State, and any legal person with respect to business done in whole or in part within the EU.
- The EU Regulation creates a list of commodities and technologies that may not be exported to Iran.
- Certain exceptions to the restrictions are authorized if it is determined that a given transaction would "clearly" not aid Iran's nuclear proliferation activities, and Iran provides a declaration to that effect, along with suitable end-user assurances.
- Export of key equipment or technology for the oil and gas industry of Iran is forbidden.
- New restrictions are imposed on financing parts of the Iranian energy sector, and investments in certain other specified areas are subject to Member State approval.
- Restrictions apply to the transfer of funds to or from an Iranian person, entity or body. EU authorities may approve such transfers, subject to certain standards specified in the EU Regulation.

The EU Regulation, combined with the enhanced U.S. restrictions under CISADA and recent diplomatic efforts to pressure companies and nations not to deal with Iran, calls into question whether multinational companies operating in the United States and Europe which previously have conducted business with Iran can reasonably continue to do so. Companies with U.S. employees outside the United States are particularly at risk, because such individuals are U.S. persons and therefore subject to the full application of U.S. sanctions.

Comment

The new economic sanctions imposed on Iran by the United States and the European Union severely restrict business activities with Iran. Prudence demands a conservative approach in this dynamic legal and political environment. Both legal and reputational risks are high, and current efforts by the United States and other nations to increase pressure on the Iranian regime are likely to continue for the foreseeable future.

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If you have any questions regarding this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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