

INTRODUCTION

On May 1, 2012, President Obama issued and Executive Order targeting "foreign sanctions evaders" with respect to U.S. sanctions against Iran and Syria¹. We set forth below our General Overview of the new Executive Order, and our thoughts and observations regarding its underlying policies and potential impact.

GENERAL OVERVIEW

The Executive Order is a new mechanism via which the U.S. government may enforce sanctions that are already in place against Iran and Syria. It clearly delegates authority to the U.S. Department of Treasury (in consultation with the Department of State) to enforce already existing U.S. sanctions, including those that apply extraterritorily to non-U.S. persons who engage in prohibited petroleum and petrochemical trade with Iran. The Order also grants U.S. Treasury authority to sanction foreign persons who facilitate transactions with Iran and/or Syria for or on behalf of U.S. persons. U.S. Treasury will publically identify entities and individuals who violate the sanctions against Iran and/or Syria as Foreign Sanctions Evaders ("FSE"). As of today, no names of FSEs have been published, and U.S. Treasury has made no indication of when that may occur.

The Executive Order does not alter or expand prohibitions against foreign entities/non-U.S. persons doing business with Iran as set forth under CISADA² and Executive Order 13590.³ Nor does it modify the application of the SDN list, which still only applies to U.S. persons. Rather, the Executive Order enables U.S. Treasury to act against foreign persons who violate U.S. sanctions as those sanctions apply to them, or who assist any person in evading U.S. sanctions.

The penalty to be imposed by Treasury does not apply directly to the foreign entity, but instead bans U.S. persons from providing goods, services, or technology to, or from, an FSE. In U.S. Treasury's own words, FSEs "will be cut off from the U.S. commercial and financial system." Funds wired to an FSE through a U.S. bank will not be blocked but will be rejected. If a U.S. person wants to provide goods or services to an FSE, they must first apply for authorization from U.S. Treasury. An FSE's bank account in the United States is not blocked (as is an SDN's), but access to the account shall be restricted and will require Treasury authorization. FSE's who are individuals will be banned from entering the United States.

¹ The full title is: "Prohibiting Certain Transactions with and Suspending Entry into the United States of Foreign Sanctions Evaders with Respect to Iran and Syria."

² Targeting persons that invest in Iran's petroleum resources; that assist Iran with developing petroleum refining capacity; and/or that provide Iran with refined petroleum products.

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³ Sanctioning entities that contribute to the development of Iran's petroleum resources and the domestic production of Iranian petrochemicals.

⁴ OFAC's answers to "Frequently Asked Questions" can be accessed here: http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#191.

Important Points to Consider

- Authority has now clearly been placed in U.S. Treasury's hands to act against individuals and entities that continue to conduct sanctioned business with Iran and/or Syria.
- The Executive Order is another example of the U.S. government utilizing the U.S. financial system as a means to effectuate U.S. foreign policy by discouraging, and now penalizing, non-U.S. persons and companies that do prohibited business with Iran and/or Syria.
- It is also another example of the U.S. government attempting to insulate the U.S. financial system from prohibited business with Iran and/or Syria. (A similar policy can be seen with respect to the National Defense Authorization Act provisions that will prohibit, or severely restrict, a third-country bank's access to the U.S. financial system if it continues to conduct business with sanctioned Iranian banks or the Central Bank of Iran.) There is thus a clear policy of severing the U.S. financial system from Iran and/or Syria.

Conclusion

It remains unclear how or when the FSE list will be published. However, once the list is published, we highly recommended that businesses and entities engaged in international commerce review the FSE list prior to entering international transactions. We will provide an additional alert in the near future as developments unfold, and we look forward to answering any inquiries you may have regarding the above.

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Disclaimer:

This update provides only a general summary and is not intended to be comprehensive. Specific legal advice should be taken with respect to an individual inquiry. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com), or Ed Carlson (carlson@freehill.com).