

Client Alert

Latham & Watkins
Litigation Department

Broad US and UN Sanctions Freeze Libyan Assets and Restrict Dealings with the Qadhafi Regime

In response to the continuing conflict in Libya, several governments and the United Nations Security Council have imposed asset freezes and other sanctions on Muammar Qadhafi and members of his family and regime. These sanctions measures have included an asset freeze on Qadhafi family members by the Government of Switzerland, an even broader asset freeze by the Government of the United States, and an array of sanctions imposed by the UN Security Council. Additional sanctions are expected to be imposed by the European Union in the coming days. This *Alert* focuses on the legal and practical effects of the US sanctions, which thus far have the broadest sweep in that they target the assets of the Government of Libya as a whole and entities under its ownership and control.

Scope and Effect of US Sanctions

On February 25, 2011, President Obama issued an Executive Order targeting the assets of Muammar Qadhafi and certain of his relatives as well as the Government of Libya and state-owned and -controlled entities. The Executive

Order also prohibits transactions with the targeted parties, including the provision of goods and services as well as the transfer or receipt of funds. The Executive Order explains that the President imposed these sanctions in response to the "extreme measures against the people of Libya" and "wanton violence against unarmed civilians" by Colonel Qadhafi and the Libyan Government. It also addresses "the serious risk that Libyan state assets will be misappropriated by Qadhafi, members of his government, members of his family, or his close associates if those assets are not protected."

These new sanctions took immediate effect, as of 8:00 pm Eastern Standard Time on February 25. There is not yet any exception for performance or payment for past transactions or services or under pre-existing contractual obligations. While there is some possibility that continuing implementation of the Executive Order will further clarify or narrow the impact of the sanctions, US persons are effectively barred from participating in, approving, or facilitating any transaction or activity involving blocked persons or assets, absent specific authorization from the US Government.

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Application of Rules to United States Persons

Consistent with recent US sanctions programs, these restrictions apply to activities and transactions by United States Persons that involve any targeted parties or assets. The term “United States Person” or US Person includes US citizens and lawful permanent residents wherever they are located; entities organized in the US and their foreign branches and employees; and any person — regardless of nationality — physically located or acting within the United States. As a practical matter, any activity involving a US Person, directly or indirectly, and any targeted assets or persons (defined below) may be subject to US blocking and legal prohibitions, even where the activity occurs wholly outside the United States.

Targeted Persons and Assets

These new sanctions require US Persons to freeze all property and interests in property of the following parties that are currently in, or will later come into, the United States or within the possession or control of any US Person (including overseas branches):

- Colonel Qadhafi and four of his children;
- The Government of Libya, including its agencies, instrumentalities, and controlled entities; and
- The Central Bank of Libya.

Blocked property cannot be transferred, paid, exported, withdrawn or otherwise dealt in by any US Person. Under US law, funds targeted by the Executive Order must be frozen by US financial institutions and placed in an interest-bearing account, with the blocking action being reported within 10 business days to the US Treasury Department’s Office of Foreign Assets Control (OFAC). Notably, OFAC has issued a General License, authorizing transactions with financial institutions owned or controlled

by the Government of Libya, provided such banks are organized under the laws of a country other than Libya. This narrow authorization to engage in transactions with third-country Libyan-owned or -controlled banks is intended to minimize disruption to third-country commerce.

Simultaneously with the release of the Executive Order, OFAC issued a separate announcement, adding Colonel Qadhafi and four of his children designated in the Executive Order to the List of Specially Designated Nationals and Blocked Persons. OFAC also reiterated the obligation to block the “property and interests in property of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya.” As a result, the Executive Order prohibits virtually all activities by US Persons relating to the Libyan government-controlled petroleum sector, and the receipt of funds from Libyan state-owned or -controlled entities such as Libya’s sovereign wealth fund, the Libyan Investment Authority. In addition, these new sanctions prohibit US Persons from making humanitarian donations or providing funds, services or goods to persons blocked under the Executive Order as well as receiving funds, goods or services from such persons.

The Executive Order also delegates to the US Treasury Secretary, in consultation with the Secretary or State, the authority to designate the following parties as sanctions targets:

- Senior officials of the Government of Libya;
- Additional children of Colonel Qadhafi;
- Any person responsible for or complicit in, or responsible for ordering, controlling or otherwise directing, or to have participated in, the commission of human rights abuses related to political repression in Libya;

- Any person that has materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of the above-described activities, including those who have provided such support to blocked parties;
- Any person owned or controlled by, or who has acted or purported to act for or on behalf of, any blocked person under the Executive Order; and
- Spouses and dependent children of any blocked person under the Executive Order.

Arms Embargo and Travel Ban

In a [letter to Congress](#) on February 25, President Obama reported that the Secretary of State had suspended all existing licenses and other approvals for exports of military products, technology and services to Libya. The State Department's Directorate of Defense Trade Controls ([DDTC](#)) has issued a [notice](#) to that effect. The Secretary of State also [signed an order](#) directing the State Department to revoke the travel visas of senior officials of the Qadhafi regime as well as their family members.

FinCEN Alert

On a related note, the Treasury Department's Financial Crimes Enforcement Network ([FinCEN](#)) issued an [advisory](#) on February 24, reminding US financial institutions to "take reasonable risk-based steps with respect to the potential increased movement of assets that may be related to the situation in Libya," including the requirement to apply enhanced scrutiny to private accounts held by or on behalf of senior foreign political figures and "to monitor transactions that could potentially represent misappropriated or diverted state assets, proceeds of bribery or other illegal payments, or other public corruption proceeds."

UN and EU Sanctions

On February 26, the United Nations Security Council unanimously adopted [Security Council Resolution 1970](#), which freezes the assets of Colonel Qadhafi and five family members, subjects Qadhafi and 15 of his loyalists to an international travel ban, imposes a comprehensive arms embargo and refers human rights abuses to the International Criminal Court.

In addition, Member Governments of the European Union have announced that they expect to impose sanctions on Libya in the coming days. Indeed, on February 27, the [Government of the United Kingdom](#) imposed an asset freeze and other sanctions on Colonel Qadhafi and members of his family and regime. We will continue to monitor these developments and issue additional *Client Alerts* as events warrant.

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The US sanctions landscape is difficult to navigate, and violations of these rules carry with them risks of significant penalties and reputational damage. Risks under US sanctions laws are compounded by their complexity and broad extraterritorial reach.

If you have any questions about this *Client Alert* or the potential application of these or other sanctions, please contact one of the professionals listed below or the Latham attorney with whom you normally consult:

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