

Client Alert

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Litigation Department

US and EU Sanctions Continue to Evolve in Response to Events in the Middle East and North Africa

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This *Client Alert* reviews a number of recent and significant changes to United States and European Union sanctions targeting Syria and Libya. These changes are in direct response to events "on the ground" in these countries, and they reflect an increasingly coordinated and multilateral use of sanctions as tools of foreign policy. While the US and EU sanctions targeting Libya and Syria differ in several respects, their broad prohibitions and extraterritorial reach are combining to create significant legal and compliance challenges, as well as reputational risks, for international companies.

In addition to discussing recent changes to the Libya and Syria sanctions, this Alert surveys sanctions developments involving Iran and arising from South Sudan's independence, political developments in Belarus, and the famine in Somalia. We also provide general observations on ways to manage common compliance issues arising under these increasingly complex and aggressively-enforced legal regimes.

Expanding Sanctions on Syria and the Assad Regime

New US Sanctions

In response to the continuing crisis and repressive government tactics in Syria, President Obama issued an Executive Order on August 18, 2011, that greatly expanded previous sanctions against Syria. Among other restrictions, these sanctions, which are addressed to US persons, freeze the assets of the Government of Syria and prohibit imports of, and dealings in, Syrian-origin petroleum and petroleum products. Earlier this summer, the US Government imposed more targeted sanctions on Syria, freezing the assets of Syrian President Bashar Al-Assad, members of his inner circle, and certain members of the Syrian government and security forces.

The new and expanded sanctions represent a dramatic increase in the scope and reach of previous US sanctions against Syria, essentially barring US persons (a term that

includes, among others, entities organized in the United States as well as US citizens and lawful permanent residents wherever located) from engaging in, approving, or facilitating any business with the Syrian Government or any entity owned or controlled by the Syrian Government, dealing in Syrian-origin petroleum or petroleum products, making new investments in Syria, or providing services to Syria. This new round of sanctions supplements longstanding restrictions on exports and reexports of US-regulated products, software and technology to Syria.

Shortly after President Obama signed the Executive Order, the Treasury Department's Office of Foreign Assets Control (OFAC) issued six general licenses, authorizing limited activities involving Syria. In particular, General License No. 4 authorizes exports or reexports to the Government of Syria or other blocked Syrian parties of US-regulated items that are authorized by the Department of Commerce under the existing trade sanctions expressed in the Commerce Department's General Order No. 2, issued in May 2004. The effect of OFAC's General License No. 4 is to allow the continuation of limited activities under previously-licensed or otherwise authorized (*i.e.*, EAR99 medicines and food products) exports and reexports to Syria. This is in contrast to the sanctions imposed earlier this year on Libya, pursuant to which all export and reexport licenses for Libya were "suspended indefinitely" by the Commerce Department.

On August 18, OFAC added five state-owned Syria petroleum companies to its List of Specially Designated Nationals and Blocked Persons (SDN List). The state-owned entities are: (1) the General Petroleum Corporation; (2) the Syrian Petroleum Company (also known as the Syrian Crude Oil Transportation Company); (3) the Syrian Company for Oil Transport; (4) the Syrian Gas Company; and (5) Sytrol.

Expanding EU Sanctions

To date, the EU sanctions against Syria have been more targeted than those imposed by the US Government. On May 10, 2011, under Council Regulation (EU) No. 442/2011, the EU imposed several measures, including an arms embargo, a ban on shipments of internal repression equipment, and an asset freeze on designated persons and entities considered responsible for the violent repression of the Syrian population. The asset freeze, which originally did not cover President Bashar Al-Assad, has since been extended to cover President Al-Assad and other individuals and entities associated with his regime.

The EU's Syria sanctions have recently been expanded in scope, and there is a continuing risk that they may expand further, particularly with respect to the Syrian energy sector. On August 31, 2011, the EU reportedly agreed to broaden the Syria sanctions to include an oil embargo and to withdraw technical assistance for European Investment Bank projects. These new sanctions, which the EU is expected to implement formally in the coming days, are likely to have a significant economic impact given that about 95 percent of Syrian oil exports are to the EU. The new sanctions are reported to contain "grandfathering" provisions giving European companies until November 15, 2011 to comply with them. This limited grandfathering would be in line with previous EU sanctions against Iran (imposed in July 2010), but markedly different from the US Government's approach. Nonetheless, even a more flexible EU approach would likely impact long-term contracts and yield complex legal and compliance challenges.

Anticipated Changes to Libya Sanctions

On July 15, 2011, the US formally recognized Libya's main opposition group, the Transitional National Council

(TNC) as Libya's legitimate transitional government. However, the current US sanctions expressed in Executive Order 13566 and OFAC's Libyan Sanctions Regulations continue to target the "Government of Libya," and require US persons to block Libyan Government assets and bar US persons from dealings in such assets or with the Government of Libya.

In light of the US Government's recognition of the TNC, OFAC recently issued General License No. 6, which broadly authorizes all transactions by US persons with the TNC, provided the transactions do not involve parties whose property is blocked and provided further that all property blocked as of August 19 remains blocked. Though signed on August 19, General License No. 6 is effective as of July 15, when the US Government officially recognized the TNC. OFAC also clarified that property of the Qadhafi regime and persons on OFAC's SDN List remains blocked and transactions with such parties continue to be prohibited. Notably, parties on OFAC's SDN List continue to include, for instance, the National Oil Corporation, the Central Bank of Libya, and the Libyan Investment Authority.

Following the recent toppling of the Qadhafi regime, attention is now turning to the process of unfreezing for TNC use the billions of dollars in Libyan assets frozen since February 2011. On August 25, the UN Security Council's Libya Sanctions Committee approved a US proposal to unfreeze \$1.5 billion of Libyan assets to provide critical humanitarian and other assistance in Libya. The State Department's Fact Sheet explains that the funds will be divided among (a) relief efforts by international humanitarian organizations, (b) fuel and other supplies for civilian needs, and (c) the provision of key social services (such as education and health) as well as food and other humanitarian needs. Reportedly, OFAC will require US financial institutions to release liquid assets through "directive" licenses.

As to the remaining blocked Libyan assets, a State Department spokesman explained on August 29 that the US is working to address UN Security Council Resolutions 1970 and 1973, which appear to preclude broad US measures to unfreeze assets in the United States or in the possession or control of US persons. Following such action, it remains unclear how OFAC will unfreeze other blocked assets, which could be accomplished through an Executive Order, a general license, or specific licenses. (In 2004, when the first Libya sanctions were lifted, President Bush signed Executive Order 13357, which had the effect of unblocking previously frozen assets.) However the unblocking of Libyan assets will be implemented, US financial institutions and other holders of blocked assets will continue to face challenges and risks in releasing assets to their rightful owners.

Update on Iran Sanctions

US State Department Actions Under CISADA/ISA

After many years of inaction under the Iran Sanctions Act (ISA) (and its precursor, the Iran Libya Sanctions Act), the Obama Administration has sanctioned a number of non-US companies for their alleged dealings with Iran's energy sector. These efforts to isolate and penalize non-US companies for their dealings with Iran reflect Congressional pressure and a growing push by the Obama Administration to pursue an aggressive stance towards Iran's nuclear ambitions and its energy sector, which is viewed as the regime's financial lifeline.

On May 24, 2011, the State Department imposed sanctions on seven companies under ISA, as amended by the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA). These were the first sanctions the US imposed for refined petroleum activities under CISADA, which was

signed into law in July 2010. The State Department had previously imposed sanctions on the Neftiran Intertrade Company (September 30, 2010), a wholly owned subsidiary of the National Iranian Oil Company, for financing development projects in Iran's petroleum sector, and on Belarusneft (March 29, 2011), for its role in the development of the Jofeir oilfield in Iran. The companies sanctioned on May 24, 2011, were: (1) Petrochemical Commercial Company International (PCCI) of Iran and Jersey; (2) the Royal Oyster Group of the UAE; (3) Speedy Ship of UAE and Iran; (4) Tanker Pacific of Singapore; (5) Ofer Brothers Group of Israel; (6) Associated Shipbroking of Monaco; and (7) notably Venezuela's state-oil company, Petróleos de Venezuela (PDVSA). These ISA-sanctioned parties are subject to varying sanctions.

On June 23, 2011, the United States imposed sanctions on two additional companies: Tidewater Middle East Company, an operator of Iranian ports owned by the Islamic Revolutionary Guard Corps (IRGC), and Iran Air for providing material support and services to IRGC and Iran's Ministry of Defense and Armed Force Logistics and for facilitating activities related to proliferation.

It is likely that the State Department will continue to pursue sanctions on additional companies as it seeks to use the full authorizations provided in the amended ISA. As discussed below, there is continuing bipartisan pressure from Capitol Hill for increased enforcement activity, as evidenced by two bills recently introduced in Congress.

Proposed New Legislative Sanctions Against Iran

Prior to its current recess, the US Congress was considering two bills introduced in May 2011 (S. 1048 in the Senate and H.R. 1905 in the House of

Representatives), which, if passed and signed into law, would considerably expand ISA's scope. In their present form, these bills would force public companies, including non-US "issuers," to self-disclose possibly sanctionable activities under CISADA. Both bills are currently "in committee," and it is uncertain whether either bill will emerge from committee, be modified through reconciliation, and eventually make it to the President's desk.

Continuing and Expanding Impact of 2010 EU Sanctions

On July 26, 2010, shortly after the enactment of CISADA, the EU announced a comprehensive range of sanctions against Iran that went well beyond the then-existing EU and UN sanctions regimes. The EU sanctions were consolidated and expanded on 27 October 2010 in Council Regulation (EU) No. 961/2010, which has direct effect throughout the EU.

The EU sanctions are wide-ranging. They include an asset freeze on designated entities (including several Iranian banks) as well as restrictions on trade in equipment for and investment in the Iranian oil and gas industry, on transfers of funds to and from Iran, on the Iranian banking sector, on Iran's access to insurance and bond markets, and on the provision of certain services to Iranian ships and cargo aircraft. All EU companies doing business with Iran need to be vigilant to ensure that they comply with these sanctions. Failure to do so may result in criminal liability.

Importantly, the EU sanctions are constantly being updated and, in light of Iran's continuing uranium enrichment program (as noted by the UK Foreign Office on August 24, 2011) and reports of Iranian involvement in the hostilities in Syria, there is a continuing risk that they may be further expanded.

Other Sanctions Developments

Creation of South Sudan and Status of US Sanctions Against "Sudan"

On July 9, 2011, the Republic of South Sudan officially came into existence, formally ceding from Sudan. Prior to South Sudan's independence, OFAC issued [guidance on April 12, 2011](#) clarifying that, although the US sanctions against Sudan would generally not apply to the new nation of South Sudan, certain activities by US persons in South Sudan would still be subject to US sanctions given the interdependence between the economies of South Sudan and Sudan. This guidance was largely consistent with [OFAC's position in 2006](#), when US sanctions were lifted as to certain "exempt areas" in South Sudan.

The continued application of US sanctions to the above activities is significant because the new nation of South Sudan is landlocked and will rely heavily on Sudan for the export of its petroleum via Port Sudan, located in Sudan. Accordingly, although the US sanctions against Sudan do not formally apply to South Sudan, transactions that involve or transit Sudan remain generally prohibited as to US persons absent authorization from OFAC.

On July 13, 2011, the Commerce Department formally added South Sudan to the [Commerce Country Chart](#) in the Export Administration Regulations (EAR). As expected, South Sudan is not designated as being subject to Anti-Terrorism controls under the EAR.

Designation of Belneftekhim Affiliates

Executive Order 13405, issued in June 2006, targets individuals and entities responsible for undermining democracy in Belarus or human rights abuses or political repression in Belarus as well as

senior officials who are responsible for or have engaged in public corruption in Belarus.

On August 11, 2011, OFAC [announced the designation](#), pursuant to [Executive Order 13405](#), of four Belarusian enterprises determined to be owned or controlled by Belneftekhim Concern, Belarus' largest petrochemical conglomerate. Belneftekhim Concern was placed on OFAC's [SDN List in November 2007](#). The newly-listed entities are: (1) Naftan OAO, a subsidiary of Belneftekhim Concern that supplies petroleum products to Belarus in addition to producing and refining diesel fuel; (2) Grodno Azot OAO, a subsidiary of Belneftekhim that is a major manufacturer of fertilizers and consumer goods; (3) Grodno Khimvolokno JSC, a manufacturer of nylon and polyester yarns and fibers; and (4) Belshina OAO, reportedly one of Europe's largest tire manufacturers.

OFAC Sanctions Challenge Humanitarian Organizations Efforts in Somalia

East Africa is currently experiencing the region's worst drought in over 60 years, which has led to massive food shortages in Somalia. Private US aid organizations have so far been reluctant to engage fully in Somalia because of issues related to US sanctions as well as security concerns. Specifically, aid organizations are concerned about the possibility of running afoul of OFAC sanctions, as providing aid in Somalia could involve interaction with the al-Shabaab militia, which controls large areas of Somalia and has [since March of 2008](#) been designated by OFAC as a Specially Designated Global Terrorist and a Foreign Terrorist Organization.

Recognizing the severity of the situation in Somalia, on August 4, 2011, OFAC issued [guidance](#) on private famine relief efforts in Somalia confirming that non-governmental organizations (NGOs)

could provide humanitarian assistance in Somalia without the need for a license from OFAC. OFAC cautioned, however, that NGOs facing demands for large or repeated payments in al-Shabaab controlled areas should consult with OFAC.

Managing Legal and Compliance Risks

The evolving nature and broad scope of the sanctions discussed above underscore the need for all companies with international operations or sales to monitor new sanctions and to screen all transactions and parties against ever-expanding lists of targeted persons and entities. It is also critically important for US companies and other US persons, as well as non-US companies with operations in the US, to understand the broad extraterritorial reach of sanctions and the far-reaching effect of blocking orders and assets freezes, as well as prohibitions on "facilitation" of activities by overseas affiliates or even independent companies.

The immediate impact of new sanctions (without "grandfathering") and the risk of new sanctions underscore the importance of careful business planning and contractual and other protections, including robust due diligence in transactions, strong representations and covenants, and clearly defined "force majeure" clauses in contracts. And finally, where suspected violations or compliance failures are identified, or where government inquiries are received, it is vitally important for companies to handle these issues with extreme care, as there are many traps for the unwary.

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The US and EU 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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