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Obama Bans Transactions with Libyan Government and its Controlled Entities

United Nations and European Union Add Less Stringent Sanctions

The noose on conducting commercial transactions with Libya is tightening as a result of actions taken by President Obama this past Friday, February 25, followed soon thereafter by similar actions taken by the United Nations ("U.N.") and the European Union ("E.U.").

The United States has blocked the property of Libyan dictator Muammar Qadhafi and select members of his family, as well as the property and interest in property of the government of Libya and its controlled entities, such as the National Oil Company of Libya, and the Central Bank of Libya. Any property of these individuals or entities that comes within the possession or control of a U.S. person, wherever located, is blocked and may not be dealt in unless a specific license is granted by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury. The only exceptions are transactions with financial institutions owned or controlled by the Government of Libya that are organized under the laws of a country other than Libya. These have been authorized pursuant to a General License issued simultaneously with the announcement of the new sanctions.

Regarding all other transactions, however, a specific license is required even for transactions that were initiated, but not concluded, before the effective date of the new sanctions, which was 8 p.m. Eastern time, Friday, February 25. No "grace period" was provided, and the Executive Order announcing the sanctions expressly states that its prohibitions apply, "notwithstanding any contract entered into." Furthermore, any activity that evades or avoids, or has the purpose of evading or avoiding, the new sanctions is prohibited.

Realizing the time-sensitivity of many in-process transactions, OFAC is allowing the submission of license applications by email. License applications have to provide a written description of the transaction, payment details, and details about all parties to the transaction. OFAC has said that it will strive to handle each application as quickly as possible, but the agency has given no expected time frame for issuing decisions. In addition, the U.S. government announced that, as of Saturday, February 26, all export licenses for exports to Libya that were issued pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations are suspended until further notice and that no exemptions may be utilized for exports to Libya.

On other fronts, the U.N. passed a Security Council Resolution that, among other things, imposes an arms embargo on Libya; a travel ban on Muammar Qadhafi, members of his family, and select members of his government; and a freeze of all assets of Muammar Qadhafi and members of his family. The U.N. Resolution does call upon member states to facilitate and support the return of humanitarian agencies to Libya, and to make available humanitarian assistance. Nonetheless, any such humanitarian assistance provided by U.S. persons can only be provided consistent with U.S. sanctions and many questions remain as to how that is to be done.

Just yesterday, the E.U. announced its own freeze of the assets of Muammar Qadhafi, members of his family, and certain Libyan government officials, as well as a travel ban and an arms embargo.

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