

New US Sanctions Against Iran: Implications for Both US and EU Companies

Over the course of the past month, the United States has announced a number of significant new measures that expand US sanctions against Iran. What is significant about these new measures is that they explicitly target certain **activities of non-US companies as well as US companies**.

Businesses on both sides of the Atlantic therefore need to be up-to-speed with the new measures and the implications on their commercial activities.

Senate Bill

At the beginning of this week, the US Senate approved a new package of sanctions on Iran (the Bill). The Bill now needs to be reconciled with the House of Representatives before it is signed into law by President Obama.

Key provisions of the Bill include:

- **Liability of US Firms for Activities of their Foreign Subsidiaries:** The Bill requires the imposition of civil penalties of up to twice the amount of the transaction on US parent companies for the activities of their foreign subsidiaries which, if undertaken in the US or by a US person, would violate US sanctions law.
- **Mandatory Disclosure of Iran-related Activity to the Securities and Exchange Commission:** The Bill requires firms whose stock is traded on US exchanges to disclose whether they or their affiliates have engaged in activities which may be subject to sanctions under US law.

US parents are therefore likely to need to carefully consider the activities of their foreign subsidiaries. Likewise, foreign subsidiaries will need to consider their position and should seek

legal advice as to ensuring compliance with US sanctions provisions.

Any US listed company will also likely need to consider the new disclosure requirements. Are you fully up to speed with the activities of your affiliates? How do you verify information provided by your affiliates?

Executive Order 13608

On 1 May 2012, President Obama issued an Executive Order (the Order) that punishes foreign parties seeking to evade Iran and Syria sanctions by barring such parties, termed "sanctions evaders", from engaging in any commercial interactions with US parties and from entering into the United States or its territories.

The Order therefore applies to any activity by non-US persons that violates US sanctions against Iran and Syria, as well as conduct by non-US persons that, while not directly violating US sanctions measures, causes others to violate those sanctions. Non-US parties may therefore violate US sanctions laws and regulations when they cause or procure a violation of such laws or regulations by a US person.

The Order significantly increases the breadth and potential impact of US sanctions against non-US entities that are doing business with Iran and Syria by threatening isolation from US markets.

The Order also adds significant additional risk to non-US companies and persons that engage in ongoing dealings with Iran or Syria that could have some nexus to the US market.

Key Considerations

- For non-US companies, the provisions of the Order should be borne in mind when balancing considerations of the importance of the US market against business opportunities involving Iran or Syria.
- For US companies, the Order requires heightened awareness of the risks of dealing with otherwise legitimate non-US business partners that in turn do business in Iran or Syria. What due diligence do you conduct on your partners?
- How are you assessing whether any of your affiliates are doing business with Iran or are indirectly connected to or associated with a sanctioned entity or individual?
- For US parents, are your European subsidiaries aware of US sanctions requirements and how they ensure compliance?
- For EU subsidiaries, are you up to speed with US sanction provisions? What compliance systems, policies and procedures do you have in place to ensure compliance? Do you screen against both EU and US sanction lists?

As it is such a common stumbling block, it is also worth noting that it is a common mistake for businesses to believe that if you are based in the US, you only need comply with US sanctions and likewise, if you are in the EU, only EU sanctions apply. **This is not the case.**

US sanctions prohibit transactions by US citizens **regardless of where they are located**. Similarly, EU sanctions will apply to entities incorporated in any EU member state, all individuals and entities within the EU and again, all EU citizens **regardless of where they are located**.

Businesses with an international presence or whose employees travel for business therefore need to carefully consider their position.

Background

Since 1995, the US has maintained comprehensive sanctions against Iran which prohibit US companies and US persons from exporting, importing, or investing in Iran.

EU sanctions against Iran are intended to persuade Iran to comply with its international obligations and to constrain its development of sensitive technologies in support of its nuclear and missile programmes. EU measures both implement UN sanctions resolutions and include additional autonomous EU measures.

The most recent EU sanctions against Iran entered into force in January and March of this year and predominantly focus on restricting EU activity with Iran's crude oil, petroleum and petrochemical industry. For more information, see our February *DechertOnPoint* "[EU Sanctions Against Iran](#)" and March *DechertOnPoint* "[The Expansion of EU Sanctions](#)".

How Dechert Can Help You?

Dechert's Trade and EU Government Affairs Practice regularly works with corporate and financial institutions on the application of international sanctions measures. We provide an experienced partner able to offer sound commercially focused advice in relation to specific transactions, or wider compliance programming, including:

- Knowledge of the development, implementation, interpretation and legal and practical implications of economic sanctions and trade embargoes applied by the United Nations European Union, United States and Individual EU Member States.
- Designing compliance programmes tailored to individual needs, to minimise compliance risks, as well as reviewing existing company procedures, conducting internal audits and establishing improved compliance plans.
- Advising on jurisdictional issues associated with the administration of economic sanctions, including potential extraterritorial

- aspects of export, re-export, investment and transactional controls.
- Preparing and negotiating sanctions compliance provisions in contracts, purchase orders, distributor agreements, subcontracts, and supply arrangements and related representations and warranties in connection with mergers, acquisitions and joint ventures.
 - Assisting with licence applications and obtaining authorisations in relation to regulatory exemptions and the interpretation of limitations in sanctions provisions.
 - Investigating potential violations, responding to enforcement inquiries and representing clients before European and US regulatory and enforcement agencies in connection with voluntary disclosures, enforcement and criminal and civil (administrative) investigations.
 - Advising persons and entities which have been targeted under EU and US lists of “designated” entities with regards to their legal rights and obligations and wider public relations considerations.
- Conducting trade embargo and economic sanctions due diligence in connection with exports and reexports, distributor/supply agreements, mergers, acquisitions and joint ventures.
 - Counselling clients with respect to their exposure for sanctions violations committed by third parties and potential courses of action to protect their business interests.
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Dechert’s EU Trade and Government Relations team advises on all aspects of trade law and policy, including sanctions, export control, WTO matters, anti-dumping, customs law and trade agreements. We bring together international trade lawyers and practitioners with political advisors to offer a unique blend of legal and strategic trade advice. We have wide ranging experience in advising European, US and other companies and financial institutions on transactions involving countries, entities and individuals subject to sanctions regimes. We draw on the first hand experience of ex regulators to provide legal advice and minimise corporate and personal exposure to enforcement proceedings.

Practice group contacts

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