FOLEY HOAG LLP

Cross-Border Compliance UPDATE

In This Issue:

March 2020

Editors:

Gwendolyn Jaramillo

Shrutih Tewarie

Authors:

Anna Annino

Shrutih Tewarie

Foley Hoag LLP has formed a firm-wide, multi-disciplinary task force dedicated to client matters related to the novel coronavirus (COVID-19). In the rapidly changing global health environment, Foley Hoag will provide clients with the resources required to develop and implement legal and operational policies and procedures, as well as business strategies during the outbreak and beyond. For more information, see our Task Force statement here.

With an overwhelming majority of US companies feeling supply chain disruptions as a result of COVID-19, companies are facing shortages, longer lead time, and uncertainty around revenue targets. With a long history of working with clients from a broad range of industries, our Trade Sanctions & Export Controls team is equipped to guide and counsel clients as issues undoubtedly arise in the coming days, weeks and potentially months. For the latest updates, see our alert on COVID-19 Impacts on Trade, Export Controls, and Supply Chain.

Latest in Iran Sanctions:

COVID-19 and Compliance: OFAC Releases New Iran-Related FAQ

The impact of COVID-19 on sanctions is still developing, but on March 6, 2020, OFAC released a new FAQ on humanitarian assistance to Iran related to fighting the global pandemic. FAQ 828 sets forth guidance for how to provide medical assistance and humanitarian donations to Iran in compliance with U.S. sanctions. One important reminder is that an actions taking place under General License E, which allows NGOs to engage in certain nonprofit activities with Iran, must be undertaken by the NGO itself, and not directly by U.S. individuals. For more information, see the FAQ here.

Further Sanctions on Iranian Petrochemical Industry

The Iranian petrochemical industry continues to be the focus of State Department sanctions. On March 18, 2020, the Department of State sanctioned seven additional entities for knowingly engaging in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran. The entities were sanctioned were pursuant to EO 13846, which reimposed certain sanctions on Iran following the U.S.'s withdrawal from the Joint Comprehensive Plan of Action (JCPOA) in 2018. The sanctioned entities are incorporated in South Africa (SPI International Proprietary Limited), Hong Kong (McFly Plastic HK Limited, Saturn Oasis Co., Limited, and Sea Charming Shipping Company Limited) and China (Dalian Golden Sun Import & Export Co., Ltd., Tianyi International Co., Ltd., and Aoxing Ship Management Ltd.). In addition, three executives of those entities were also sanctioned. In their press release, Secretary of State Michael Pompeo said "[t]he actions of these individuals and entities provide revenue to the regime that it may use to fund terror and other destabilizing activities, such as the recent rocket attacks on Iraqi and Coalition forces located at Camp Taji in Iraq."

For more information, see the State Department fact sheet regarding the sanctions.

Nicaraguan National Police Sanctioned

On March 5, 2020, the Nicaraguan National Police (NNP) and three NNP commissioners were sanctioned pursuant to Executive Order (EO) 13851: Blocking Property of Certain Persons Contributing to the Situation in Nicaragua and the Nicaragua Human Rights and Anticorruption Act of 2018 (NHRAA). U.S. persons are now prohibited from engaging in transactions with the NNP. The U.S. Department of the Treasury simultaneously released General License No. 2 (subsequently amended and superseded by General License 2A) to authorize certain "winding down" transactions with the NNP until May 6, 2020. The NNP sanctions were due to acts of violence and serious human rights abuse committed against protesters. In their press release, the State Department describes that "the Ortega regime uses the NNP as its primary tool of violent repression against the Nicaraguan people. The NNP has used live ammunition against protesters, participated in death squads, and carried out extrajudicial executions, disappearances, and arbitrary arrests."

Settlement Agreement for Société Internationale de Télécommunications Aéronautiques SCRL (SITA)

On February 26, 2020 the Office of Foreign Assets Control (OFAC) announced that Société Internationale de Télécommunications Aéronautiques SCRL (SITA) had agreed to a settlement of $7,829,640 for 9,256 apparent violations of the Global Terrorism Sanctions Regulations. SITA is a Belgian company headquarter in Switzerland operating in the civilian air transportation industry, which offers services related to reservations, flight planning and dispatch, border management, messaging, baggage claim and movement software, cargo movement software, and emissions tracking software. While SITA is a non-U.S. person, some of the services provided by SITA relied on U.S.-origin software or technology. Between April 2013 and February 2018, SITA allegedly provided commercial services and software that were subject to U.S. jurisdiction to airlines that were designated by OFAC as specially designated global terrorists pursuant to EO 13224: Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism. SITA failed to disclose the alleged violations to OFAC, however, the violations were deemed non-egregious due to factors such as "extensive" remedial efforts by SITA, cooperation including "well-organized submissions in response to OFAC's numerous requests for information," the lack of a Penalty Notice in the past five years, and the fact that the transactions composed a small percentage of SITA's overall business.

This is a significant OFAC action because it imposes sanctions compliance on a non-U.S. person for violations based on the use of U.S.-origin software and technology. As a takeaway, entities that rely on U.S.-origin technology, software, or hardware should ensure that they have an effective U.S. sanctions compliance policy, even if they operate outside of the U.S. and are not a U.S. entity. More information on the settlement is available here.

Proposed Rules Set New CFIUS Fees

On March 9, 2020, the Committee on Foreign Investment in the United States (CFIUS) released a proposed rule that would establish filing fees for certain transactions subject to CFIUS review. "Short-form" declarations would not trigger a fee, however filing a notice will, even if a short form declaration was previously filed. As reported in our earlier Client Alert, new CFIUS regulations went into effect on February 13, 2020 which updated filing procedures and expanded CFIUS jurisdiction, but left the question of filing fees unresolved.

The proposed rule would set fees based on the value of the transaction:

- $750 million or more: a filing fee of $300,000
- $250 – $750 million: a filing fee of $150,000
- $50 – $250 million: a filing fee of $75,000
- $5 – $50 million: a filing fee of $7,500
- $500,000 – $5 million: a filing fee of $750
- Under $500,000: no filing fee

Under the proposed rule, CFIUS will not review a transaction until the filing fee is paid. There is not yet a date for when the proposed fees will go into effect. CFIUS invites written comments on the proposed rule through April 8, 2020. For more information, see the Federal Register notice.

CFIUS Mandates Divestment of Hotel Software Company from Beijing Shiji Information Technology Co.

Following a review by CFIUS, on March 6, 2020, President Trump ordered the divestment of StayNTouch, Inc. (StayNTouch) from Beijing Shiji Information Technology Company (Shiji). StayNTouch, a U.S. company that provides cloud-based software to hotels used for tracking reservations and room inventory, was acquired by the Chinese company Shiji in 2018.

The Executive Order issued by President Trump states that there is "credible evidence" that Shiji "might take action that threatens to impair the national security of the United States" through its acquisition of StayNTouch. Pursuant to the EO, Shiji has 120 days to completely divest its entire interest in StayNTouch. While the EO does not describe the potential national security threats of the acquisition, it does order Shiji to immediately stop the potential access to personal data, including a large amount of personal and financial data provided during the hotel room booking process. This is an important reminder that transactions involving personal data are squarely within the scope of CFIUS jurisdiction pursuant to the new regulations. For more information, see the EO here.

Department of Justice Update: Iran-Related Conviction; Extradition

Conviction for Sanctions Evasion through $115 Million Money Laundering Scheme

On March 16, 2020, Ali Sadr Hashemi Nejad was convicted in the U.S. District Court for the Southern District of New York for violating U.S. sanctions by moving over $115 million in payments from a Venezuelan housing project through multiple front companies, with the profits ultimately received by Iranian entities and individuals. Sadr was found guilty of conspiracy to violate the International Emergency Economic Powers Act; conspiracy to defraud the U.S.; bank fraud; conspiracy to commit bank fraud; and money laundering.

The violations were based on a money laundering scheme where Sadr used front companies in Switzerland and Turkey to receive U.S. dollar profits from a $476 million deal to build a 7,000-unit housing project in Venezuela. The profits were then moved from the Swiss and Turkish front companies into another front company located in St. Kitts and Nevis, and from there into different accounts across the world, where the profits were ultimately received by Sadr's Iranian business and his relatives in Iran. In addition to the use of the front companies, Sadr deliberately removed the word "Iran" from relevant bank documents and backdated contracts in order to conceal the connection to Iran. Manhattan U.S. Attorney Geoffrey S. Berman stated that "Sadr's conviction shows that U.S. economic sanctions against Iran are for real, and violators will be exposed and prosecuted."

For more information, see the Department of Justice press release.

Iranian National Extradited for Exports of Military Items to Iran

On March 14, 2020, Merdad Ansari, a citizen of Iran and a resident of the United Arab Emirates, was extradited from Georgia to San Antonio to face federal charges in connection with violating U.S. sanctions on Iran by shipping sensitive military parts from the U.S. to Iran. The parts had dual-use military and civilian capability, and could potentially be used in connection with nuclear weapons, missile guidance and development, secure tactical radio communications, offensive electronic warfare, military electronic countermeasures (radio jamming), and radar warning and surveillance systems.

In 2012, Ansari and co-defendant Mehrdad Foomanie were convicted of conspiracy to violate the Iranian Transactions Regulations (ITR), conspiracy to launder money and conspiracy to commit wire fraud. Foomanie currently remains a fugitive. Ansari conducted or attempted to conduct 599 transactions with 63 different U.S. companies without notifying the U.S. companies that the acquired parts were intended for Iranian end-use. Ansari engaged these transactions without applying for an OFAC license or Department of Commerce export license. If convicted, Ansari faces up to 20 years in federal prison for conspiracy to violate the ITR, up to 20 years in federal prison for conspiracy to launder money and up to five years in federal prison for conspiracy to commit mail fraud.

For more information, see the Department of Justice press release.

New Designation in Response to Violence in Northern Syria

On March 17, 2020, the Department of State sanctioned Lieutenant General Ali Abdullah Ayoub, the Minister of Defense for the Assad regime in Syria. The sanctions are pursuant to EO 13894, which blocks the property and suspends entry of certain persons contributing to the situation in Syria. Since December 2019, Ayoub has acted deliberately to prevent a cease fire in northern Syria, which contributed to the displacement of almost one million people in need of humanitarian aid. In its press release, the State Department stated that "[a]s we enter the tenth year of the Syrian conflict, the United States will continue to use all diplomatic and economic tools at our disposal to pressure the Assad regime and its backers, including Russia."

Sanctions Target Mexican Businesses Linked to Drug Cartels

On March 12, 2020, the State Department announced new sanctions on four Mexican businesses pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act). The businesses were affiliated with the Cartel de Jalisco Nueva Generacion (CJNG) and the Los Cuinis Drug Trafficking Organization (Los Cuinis), which are known as two of the most powerful drug trafficking organizations in Mexico. The four businesses are: International Investments Holding S.A. de C.V., GBJ de Colima, S.A. de C.V., a gas station company located in Villa de Alvarez, Colima, Mexico, Corporativo Sushi Provi, S. de R.L. de C.V., and Master Reposterias Y Restaurantes, S.A. de C.V. Additionally, a previously sanctioned cabin rental business was designated under its two new names (Cabanas La Loma en Renta and Cabanas La Loma Tapalpa) for providing material assistance to CJNG drug traffickers. For more information, see the State Department press release.

For more information about cross-border compliance, visit the Foley Hoag Trade Sanctions & Export Controls Practice Group.

FOLEY HOAG LLP

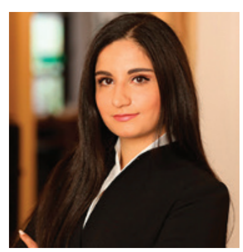
New CFIUS Real Estate Mapping Tool Released

Under the new regulations which went into effect on February 13, 2020, CFIUS jurisdiction expanded to cover certain real estate transactions that are located in proximity to military installations and other sensitive national security sites (31 CFR Part 802). On March 25, 2020, the U.S. Department of the Treasury released a new interactive Geographic Reference Tool to help locate real estate in proximity to military installations. The mapping tool allows users to input an address and determine the distance to certain military installation by using publicly available Department of Defense property data. Not all the properties displayed on the map are relevant to Part 802 jurisdiction. This mapping tool was developed as a way to assist the public and should be used for reference only – it does not serve as guidance or as a CFIUS advisory opinion. Also note that the following are not displayed on the map:

- Offshore areas as identified in Part 4 of Appendix A to Part 802;
- Covered airports; and
- Covered maritime ports.

About the Contributors:

Gwendolyn Jaramillo
Partner | **Editor**



Shrutih Tewarie
Associate | **Editor, Author**

Anna Annino
Associate | **Author**