

US Extraterritorial Iran Sanctions Imposed on Companies Based in China, Singapore, and the UAE

Today, the US Department of State ("State") imposed sanctions on Zhuhai Zhenrong Company ("Zhenrong") of China, Kuo Oil (S) Pte. Ltd. ("Kuo") of Singapore, and FAL Oil Company Limited ("FAL") of the UAE under the Iran Sanctions Act ("ISA"), as amended by the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 ("CISADA").¹ State has now imposed CISADA sanctions on a total of twelve firms.

The sanctions against Zhenrong, Kuo, and FAL prohibit the three companies from receiving loans over \$10 million from U.S. financial institutions or any US Ex-Im Bank financing or US export licenses. These sanctions are at the lighter end of the range available to State under CISADA, and, like sanctions imposed against Petróleos de Venezuela S.A. on 24 May 2011, appear intended as much for political and deterrent effect rather than to put the three companies out of business. In particular, OFAC today confirmed that Zhenrong, Kuo and FAL have not become Specially Designated Nationals and their property and/or interests in property are not blocked.

Nevertheless, the sanctions could be commercially disruptive for the targeted firms because the global banking and financial services community can be expected to impose enhanced diligence in regard to transactions involving these companies to ensure that they do not indirectly benefit Iran.

The designations follow a significant expansion over the past three months of the extraterritorial authority asserted by the US Government to retaliate against non-US firms whose conduct has no US jurisdictional nexus but who engage in proscribed Iranian business as defined by the United States.

For example, US Executive Order 13590, effective 21 November 2011, expanded the scope of proscribed non-US activity involving Iran's energy and petrochemical sector that may be subject to retaliation. Further, on 31 December 2011, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2012 (the "**Act**"), including Section 1245 of the Act. Once implemented, Section 1245 will, among other things, expose non-US banks to potential retaliation if they "knowingly conduct or facilitate any significant financial transaction" with Bank Markazi in any currency. However, the Act would not apply to transactions with Bank Markazi that occur less than 60 days after enactment of the Act. In addition, the Amendment does not require US retaliation in

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response to all transactions with Bank Markazi that occur after its enactment; rather, the President would have some flexibility in regard to the application of Section 1245.

CISADA

Among other things, CISADA authorizes State, under delegated authority from the President, to impose sanctions on non-US firms in response to entirely non-US conduct related to Iran's energy sector, including: (1) providing goods, services, technology, information or support worth \$1,000,000 or more that directly and significantly facilitates the maintenance or expansion of Iran's domestic production of refined petroleum products; (2) exporting to Iran refined petroleum products valued at \$1,000,000 or more or providing goods or services worth \$1,000,000 or more to Iran that directly and significantly contribute to Iran's ability to import refined petroleum products; or (3) making an "investment" of more than \$20 million in Iran's energy sector.

The sanctions available under CISADA range from denial of US Export-Import Bank ("Ex-Im") facilities, ban on US Government procurement, denial of US export licenses or import privileges, restrictions on access to the US banking system or substantial bank loans, up to and including an outright blacklisting to prevent the sanctioned firm from access to US business or the US financial system.

Sanctions Against Zhenrong, Kuo, and FAL

In announcing the new CISADA sanctions, State indicated that "Zhenrong brokered the delivery of over \$500 million in gasoline to Iran between July 2010 and January 2011." In regards to Kuo, State commented that "Kuo provided over \$25 million in refined petroleum to Iran between late 2010 and early 2011." Similarly, for FAL, State determined that that "FAL provided over \$70 million in refined petroleum to Iran over multiple shipments in late 2010." In all three instances, State claimed that transactions involved "individual deliveries worth significantly more than the \$1 million threshold under U.S. law and the total value of the transactions well above the \$5 million threshold for sanctionable activities within a 12-month period".

Today's announcement and the drumbeat of proposed additional measures illustrates that the Obama Administration is prepared not only to threaten retaliation but actually to retaliate in a selective manner against at least some non-US firms that have refused to accommodate US sanctions program objectives. It is an extraordinary period in the history of US sanctions enforcement in view of the completely extraterritorial character of the proscribed conduct and the Administration's willingness to deprive non-US firms of US market access on that basis.

What is now clear, however, is that the Obama Administration no longer acknowledges or accepts any international law restraints on the use of extraterritorial measures to punish (or at least threaten to punish) non-US firms engaged in business entirely outside the jurisdiction of the United States with Iran.

¹ *Three Companies Sanctioned Under the Amended Iran Sanctions Act*, State Department Media Note, January 12, 2012, available at <http://www.state.gov/r/pa/prs/ps/2012/01/180552.htm>.

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