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New CFIUS Regulations Released: Final Rules Impact Foreign Investment in Technology, Infrastructure, and Data (TID) Businesses and Real Estate

On January 13, 2020, the Department of the Treasury issued final regulations (31 CFR §§800, 802) which implement the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). The regulations go into effect on February 13, 2020. For information on how these changes impact foreign investment, see the January 31, 2020 [Foley Hoag Client Alert](#).

Looking Ahead to Cross-Border Compliance Trends in 2020

As 2020 kicks off, the Foley Hoag [White Collar Crime & Government Investigations Blog](#) is looking ahead to identify cross-border trends that we can expect to see this year. The [Anti-Corruption Trends in 2020](#) article highlights key Foreign Corrupt Practices Act (FCPA) enforcement actions from 2019 and identifies areas of focus for 2020, such as prosecution of foreign executives, victims’ rights in FCPA cases, and continued cross-border collaboration with foreign regulators; and the [Sanctions/Export Controls Trends in 2020](#) article identifies the key industries and countries that we expect to be the continued focus of export controls and sanctions in the upcoming year.

Latest in Iran Sanctions

Military tensions increased between the U.S. and Iran after the U.S. killed Iranian General Qassim Suleimani in a military drone strike on January 3, 2020, and Iran responded by firing over 20 ballistic missiles at U.S. military bases in Iraq. The U.S. has intensified its “maximum pressure” economic campaign on Iran with a surge of new sanctions intended to deny the Government of Iran any sources of revenue.

Executive Order targets additional Iranian industries. The President released a [new Executive Order 13902](#), “Imposing Sanctions with Respect to Additional Sectors of Iran.” As of January 10, 2020, the order blocks the property of any person who operates in or engages in transactions with “the construction, mining, manufacturing, or textiles sectors of the Iranian economy, or any other sector of the Iranian economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.” In addition, the EO imposes a visa ban on those blocked persons and sanctions financial institutions that facilitate financial transactions related to the above Iranian industries. For more information, see the President’s statement to Congress regarding the EO [here](#).

New OFAC designations. Simultaneously with EO 1302, the Office of Foreign Assets Control (OFAC) sanctioned eight senior Iranian officials along with seventeen Iranian steel, aluminum, copper, and iron manufacturers, three China- and Seychelles-based entities involved in the Iranian metal trade, and a Chinese vessel used for the purchase and transfer of Iranian metal. Secretary Steven T. Mnuchin stated that “[t]he United States is targeting senior Iranian officials for their involvement and complicity in [the] ballistic missile strikes. These sanctions will continue until the regime stops the funding of global terrorism and commits to never having nuclear weapons.” For more information, see the Department of the Treasury’s press release [here](#).

New Petrochemical Industry Sanctions. On January 23, 2020, the Department of State announced sanctions on Shandong Qiwangda Petrochemical Co. Ltd., Triliance Petrochemical, and Jiayang Industry Hong Kong Limited, as well as certain of their executive officers, for knowingly engaging in the purchase, acquisition, sale, or transport of petrochemical products from Iran. These sanctions were issued pursuant to [Executive Order 13846](#), which reimposed sanctions on Iran in 2018 after the U.S. withdrew from the Joint Comprehensive Plan of Action (JCPOA). Also on January 23, the Department of the Treasury designated Triliance Petrochemical, Sage Energy HK Limited, Peakview Industry Co., and Beneathco DMCC, for assisting or supporting the previously sanctioned National Iranian Oil Company (NIOC). The above sanctioned entities are all Chinese or Hong Kong-based companies, with the exception of Beneathco DMCC, which is a UAE entity. In a [press release](#), the Department of State announced that “[a]s long as the Iranian regime continues to exploit revenue from its petroleum and petrochemical industries to fund destabilizing activities, we will sanction any entity or individual that facilitates such trade.”

EU countries trigger JCPOA Dispute Resolution Mechanism. On January 5, 2020, the Government of Iran formally announced that it was reducing its commitments under the JCPOA related to uranium enrichment, stockpiling, and nuclear development. On January 14, 2020, the Foreign Ministers of France, Germany and the UK announced that they have triggered the JCPOA’s Dispute Resolution Mechanism (DRM) in response to Iran’s withdrawal. The DRM process can result in the snap-back of earlier EU and UN sanctions on Iran. In their

statement, the Ministers stressed that “our 3 countries are not joining a campaign to implement maximum pressure against Iran. Our hope is to bring Iran back into full compliance with its commitments under the JCPOA.” For more information, see the [press release](#) here and [this statement](#) by the Coordinator of the JCPOA Joint Commission, who oversees the DRM process.

UK Announces Intent to Propose Post-Brexit “Magnitsky-Style” Sanctions

During a press conference with Minister François-Philippe Champagne of Canada on January 10, 2020, UK Foreign Secretary Dominic Raab announced that following the UK’s withdrawal from the EU, the UK will impose a “Magnitsky-style mode of human rights sanctions. . . against those responsible for the very worst human rights abuses.” Foreign Secretary Raab stated that “[t]hese sanctions are a powerful new tool to hold the world’s killers and torturers to account and keep human rights abuses and their blood money out of our respective countries.” For more information, see the press release [here](#). [The Global Magnitsky Human Rights Accountability Act of 2017](#) was passed by Congress to allow the U.S. government to sanction foreign government officials for extraterritorial human rights abuse.

BIS Restricts Export of AI-Powered Geospatial Imagery Software

On January 6, 2020, the Bureau of Industry and Security (BIS) published an interim final rule to amend the Export Administration Regulations (EAR) in order to add licensing requirements for the export and reexport of “software specially designed to automate the analysis of geospatial imagery.” Export Control Classification Number (ECCN) 0Y521 is an extremely restrictive classification that only permits exports to Canada without a license exception. Although the rule went into effect upon publication as “the government believes that it is in the national security interests of the United States to immediately implement these controls,” the rule is in interim form and the public is invited to share comments regarding the change. All comments must be received by March 6, 2020 to be considered. More information on the rule and how to submit a comment is available [here](#).

Federal Judge Finds in Exxon's Favor in Dispute Against OFAC

In a significant and rare loss for OFAC, on December 31, 2019, the U.S. District Court for the Northern District of Texas vacated \$2 million penalty notice issued by OFAC for alleged violations of the Ukraine-Related Sanctions Regulations by ExxonMobil Corporation (Exxon). Previously, in July 2017, OFAC had announced a \$2 million [enforcement action](#) against Exxon for entering into oil and gas contracts with Rosneft OAO (Rosneft), a Russian petroleum company. The contracts were signed by Rosneft's president, Igor Sechin, who was added to the Specially Designated Nationals (SDN) List in April 2014. In its action, OFAC stated that "ExxonMobil demonstrated reckless disregard for U.S. sanctions requirements when it failed to consider warning signs associated with dealing in the blocked services of an SDN."

In its complaint, Exxon argued that OFAC failed to provide fair notice of the fine, in violation of due process rights under the Fifth Amendment. The Court agreed with Exxon and held that by not clearly defining what constitutes a receipt of services, the regulations failed to provide "ascertainable certainty," in violation of due process. The Court also held that in these circumstances public statements, such as FAQs released by the Department of Treasury, were not sufficient to provide fair notice. Judge Boyle stated that "[t]hrough the regulations and public statements, taken together, would likely lead a regulated party, acting in good faith, to hesitate before completing transactions like Exxon's, they do not create ascertainable certainty that such conduct would be prohibited." However, note that the holding narrowly applies to certain public statements that were released *after* Exxon's actions. The specific acts that Exxon undertook were later explicitly prohibited in FAQs released by the Treasury, and if that information was publicly available earlier, Exxon's argument regarding lack of fair notice would likely have failed. Read the full decision [here](#).

Even Further Restrictions on Air Travel to Cuba

With ongoing concerns of "veiled tourism," the Department of Transportation (DOT) has created even more restrictions on U.S. travel to Cuba. On January 10, 2020, DOT suspended all public charter flights between the United States and Cuban destinations other than Havana's José Martí International Airport. This impacts nine Cuban airports at which U.S. public charter flights currently land. As reported in our [November 2019 Update](#),

DOT had previously suspended all commercial flights from the U.S. to airports other than José Martí International Airport and placed further restrictions intended to limit non-family travel to the island. In a [public statement](#), Secretary of State Michael Pompeo stated that this action will "restrict the Cuban regime's ability to obtain revenue, which it uses to finance its ongoing repression of the Cuban people and its unconscionable support for dictator Nicolas Maduro in Venezuela."

Additional Sanctions on Venezuelan Officials

The U.S. continues to use sanctions as a tool to support Venezuelan opposition leader Juan Guaidó in the power struggle against incumbent President Nicolas Maduro. On January 13, 2020, the U.S. sanctioned seven officials of the Government of Venezuela for "attempting to circumvent the Venezuelan National Assembly's democratic process" after pro-Maduro officials blocked Guaidó from entering the National Assembly and restricted legislators supporting the opposition movement from voting. [Executive Order 13692](#) of March 8, 2015, "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela," authorizes U.S. sanctions against current or former Venezuelan officials. More information is available in Secretary of State Michael Pompeo's [press statement](#).

Export Control for Small Arms Transferred from USML to CCL

In 2010, the [Obama Administration](#) first initiated "export control reform" (ECR) to reconcile various definitions, regulations, and policies for export controls. As part of ECR, certain items on the U.S. Munitions List (USML), which is subject to the International Traffic in Arms Regulations (ITAR) and regulated by the Department of State, were transferred to the Commerce Control List (CCL), which is subject to the Export Administration Regulations (EAR) and regulated by the Department of Commerce. This review and reform was then continued by the Trump Administration, but the transfer of certain items from Categories I, II, and III of the USML to the CCL, initially proposed in May 2018, was opposed by Senator Bob Menendez, Ranking Member of the Senate Foreign Relations Committee, who as reported in our [December Update](#) blocked the move in February and again in December 2019.

Notwithstanding these efforts to prevent the move, on January 23, 2020, the Department of State and BIS issued final rules implementing the migration of items from Categories I, II, and III, amending the ITAR and the EAR, respectively. As a result of this final rule, certain firearms, ammunition and related items previously classified under Categories I, II, and III (such as handguns, rifles, and shotguns) are no longer be subject to the ITAR and will be removed from the USML. As non-ITAR controlled items, these guns and ammunitions are now listed on the CCL, primarily under O series ECCNs. One impact of this migration will be that Congressional approval for exports of firearms over \$1 million will not apply to items governed by the EAR, as it does to items governed by the ITAR, and weapon design plans for items now subject to the EAR, will be subject to EAR-based technology and/or software controls, rather than subject to the USML. For more information, see the final rule [here](#).

Lobbying Firm Settles for Apparent Violations of the Global Terrorism Sanctions Regulations

OFAC [announced](#) on January 21, 2020 that it had entered into a settlement agreement with lobbying firm Park Strategies, LLC for apparent violations of the Global Terrorism Sanctions Regulations (GTSR). In 2017, Park Strategies entered into an agreement with Al-Barakaat Group of Companies Somalia Limited (Al-Barakaat) - a company that Park Strategies' executives knew was a Specially Designated Global Terrorist (SDGT) - "to engage in lobbying activity before the administrative, executive, and legislative branches of the United States government, and its political subdivisions," and received payments for those services. Park Strategies was not a law firm at the time of the apparent violations, and the services Park Strategies contracted to provide Al-Barakaat were outside the scope of generally authorized activities under the GTSR, including the GTSR general license for legal services.

The settlement highlights that business service providers should be mindful that while general licenses in many sanctions regimes cover the provision of specifically enumerated legal services, any services not enumerated in

these general licenses, including lobbying, public relations, government affairs, consulting, and business development, requires a specific license from OFAC.

UK Serious Fraud Office Release New Compliance Guidelines

On January 17, 2020 the UK Serious Fraud Office (SFO) [released updated guidelines](#) for evaluating compliance programs. The guidance is part of the SFO Operational Handbook, and will be used by the SFO to assess 1) whether prosecution is in the public interest; 2) whether the organization should be invited into Deferred Prosecution Agreement (DPA) discussions, and what conditions a DPA should include; 3) if an organization has a defense of "adequate procedures" under the Bribery Act 2010; and 4) whether the existence and nature of the compliance program should affect sentencing considerations. Highlights of the SFO guidance include the importance of top-down commitment, comprehensive risk assessment and due diligence, internal communication on bribery prevention policies and procedures, employee training, effective monitoring, and regular review of compliance initiatives. The guidance shares several similarities with the Department of Justice (DOJ) Criminal Division's guidance on the "Evaluation of Corporate Compliance Program" released in 2019, which we previously discussed [here](#).

If you have questions regarding or would like additional assistance in developing and effectively implementing compliance policies and procedures, contact a member of the [Foley Hoag Trade Sanctions and Export Controls](#) practice, or your lawyer at Foley Hoag.

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



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