

CLIENTTOPICS

January 2007

Tightening of US Economic Sanctions Against Iran by Further Targeting of Iranian Banks

Economic Sanctions Developments

The US Treasury Uses Sanctions Authority Against Weapons of Mass Destruction Proliferators to Block (Freeze) Bank Sepah's Assets and Prohibit Transactions with Bank Sepah

On January 9, 2007, Stuart Levey, the US Treasury Department's Under Secretary for Terrorism and Financial Intelligence announced the designation by the United States of Iran's Bank Sepah as a key facilitator of Iran's nuclear weapons program and a supporter of the proliferation of Weapons of Mass Destruction (WMD). The designation of Bank Sepah includes the designation of its wholly-owned UK subsidiary Bank Sepah International Plc, and Bank Sepah's Chairman and Director, Ahmad Derakhshandeh.

According to the US Treasury, Bank Sepah provides financial support and services to Iran's Aerospace Industries Organization (AIO), Shahid Hemmat Industries Group (SHIG), and the Shahid Bakeri Industries Group (SBIG) – all of which were designated by the United States on June 29, 2005 as entities engaged in the proliferation of WMD.

Bank Sepah's designation by the US Treasury Department's Office of Foreign Assets Control (OFAC) means that Bank Sepah's assets within U.S. jurisdiction are required to be blocked (frozen), and that transactions between Bank Sepah and US persons, unless authorized by OFAC after January 9, 2007, are prohibited.

In addition to any assets of Bank Sepah within US jurisdiction on January 9, 2007, US banks and other US persons are required to block, among other assets, funds transfers to, from, via or otherwise involving Bank Sepah after January 9. The burden of complying with this requirement, will, in great part, be borne by banks in the United States that process and clear international payments. The compliance burden in such situations is especially challenging for US branches of several large, European-headquartered banks that process international payments and funds transfers.

Bank Sepah was designated as a supporter of WMD proliferation pursuant to US Executive Order 13382 (June 28, 2005), an authority aimed at freezing the assets of proliferators of WMD and their supporters and to isolating them financially, and United Nations Security Council Resolution (UNSCR) 1737 of December 23, 2006, requiring governments worldwide to take steps to combat Iran's illicit conduct, including freezing the assets of named entities and individuals associated with Iran's nuclear and missile programs, as well as the assets of entities owned or controlled by them. UNSCR 1737 also requires states to prevent the provision to Iran of any financial assistance, or the transfer of any financial resources or services, related to the supply, sale, transfer, manufacture, or use of prohibited items associated with Iran's nuclear and missile programs.

Although the United States maintains comprehensive trade sanctions against Iran impacting Iranian banks and other Iranian entities, the designation of Bank Sepah is the second recent action taken by OFAC specifically against Iranian banks. In September of 2006, OFAC cut off Iran's Bank Saderat from the US financial system. The action in September against Bank Saderat was based on the authority of the current economic sanctions against Iran which have been in place pursuant to a series of US Presidential Executive Orders since 1995 and which are governed by the Iranian Transactions Regulations (the "ITR"). Bank Saderat was cut off from the US financial system based on Bank Saderat's significant role in facilitating and supporting the activities of terrorist organizations, including Hizbollah, Hamas, the Popular Front for the Liberation of Palestine-general Command, and Palestinian Islamic Jihad.

Bank Sepah, as an Iranian government-owned and controlled entity, was and continues to be a sanctions target under US economic sanctions against Iran that have been in place since 1995. However, the prohibitions and requirements of Executive Order 13382, under which Bank Sepah has been designated, now supersede the application of the ITR's prohibitions (and several exceptions) to transactions and activities involving Bank Sepah.

The ITR implement comprehensive US trade sanctions against Iran imposed in 1995, and with few exceptions, prohibit US exports to, US imports from Iran, and transactions involving Iran. The ITR do not block (or freeze) Iranian assets or property. The ITR, among other things, authorizes US dollar-clearing banks to process payments (also known as U-turn transactions) between Iranian banks and non-US banks (general license for dollar clearing transactions involving Iran, ITR, § 560.516). OFAC cut Bank Saderat off from the US financial system in September 2006 by amending the ITR to exclude Bank Saderat from the application of the limited authorization dealing with dollar-clearing set forth in § 560.516 of the ITR and from the general license dealing with transactions incident to certain authorized trade between the US and Iran involving with food, medicine, and medical devices. Although the OFAC action against Saderat in September did not block Saderat assets, the prohibitions of the ITR and the exclusion of Saderat from involvement in dollar-clearing and authorized trade nevertheless precludes most transactions with or involving Bank Saderat.

The action taken by OFAC against Bank Saderat in September and the designation of Bank Sepah on January 9, 2007, represents the strengthening of economic sanctions against Iran and illustrates the different legal authorities that the United States is using to achieve this purpose. In light of Iran's nuclear activities and its defiance of the will of the international community, the further deterioration of relations between Iran and the United States, and UNSCR 1737, it can be expected that any further sanctions measures that the United States may take against Iran in response to Iran's nuclear activities will utilize the stronger sanctions measures provided by the asset/property blocking and comprehensive transaction-prohibiting provisions of Executive Order 13382 rather than the prohibitions contained in the ITR and its underlying Executive Orders.

Bank Sepah's designation by the United States will likely cause persons outside the general jurisdiction of OFAC, especially European and Middle Eastern banks, to curtail, if not all together stop, their dealings with Bank Sepah given the interdependence of the world financial system and parts of that system which come under US jurisdiction. And, it remains to be seen if any other Iranian banks will assume Bank Sepah's role as the facilitator of Iran's nuclear weapons program. Major Iranian banks that could suffer the US fate of Bank Sepah include:

Iranian Government Banks:

The Central Bank of the Islamic Republic of Iran, Bank Mellat, Bank Keshavarzi, Bank Refah Kargaran, Bank Melli Iran, Bank Tejarat, Bank Saderat Iran, Bank of Industry & Mine, Export Development Bank of Iran, Bank Keshavarzi, and Bank Maskan.

Private Banks:

Eghtesad Novin Bank, Karafarin Bank, Parsian Bank, Pasargad Bank, Saman Bank Corp., and Sarmayeh Bank.

* * *

For more information specifically with respect to the US economic sanctions against Iran or economic sanctions more generally, please contact:

Hal Eren	Washington, DC	☎ + 1 202 429 9883	hal.eren@erenlaw.com
Steven Pinter	Washington, DC	☎ + 1 202 429 1881	steven.pinter@erenlaw.com
Victor Comras	Washington, DC	☎ + 1 202 429 1881	victor.comras@erenlaw.com

The Eren Law Firm is a leading economic sanctions and anti-money laundering boutique firm based in Washington, DC. Prior to private law practice, Mr. Pinter and Mr. Eren of The Eren Law Firm served at the US Department of the Treasury's Office of Foreign Assets Control (OFAC), the agency that administers US economic sanctions, for a combined 25 years, between 1987 and 2004. Victor Comras, Special Counsel to The Eren Law Firm, formerly of the US Department of State, is a leading expert and frequent speaker on international trade embargoes and economic sanctions, and the global effort to combat terrorism financing and money laundering.

Mr. Pinter. During his 17-year tenure in a senior capacity at OFAC, Mr. Pinter participated in the shaping of economic sanctions programs administered by OFAC, and in the formulation, implementation, modification and termination of sanctions. Mr. Pinter was OFAC's Chief of Licensing between 1987 and 2002, and later oversaw OFAC's Civil Penalties program.

Mr. Eren. Between 1992 and 2000, Mr. Eren participated in the formulation of OFAC-administered laws and regulations, including the Iranian Transactions Regulations, and dealt with OFAC adjudications and decisions involving the application of sanctions laws and regulations to complex trade and financial transactions. Issues and cases involving Iran comprised the major part of Mr. Eren's portfolio at Treasury. Between 2000 and 2002, Mr. Eren was a lawyer at Clifford Chance, where he advised the firm's clients and the firm itself on US economic sanctions and anti-money laundering matters.

Mr. Comras. From 1992 to 2001, Mr. Comras held senior positions at the US State Department dealing with strategic trade regulation and bilateral and international economic and financial issues. From 1992 to 1994, Mr. Comras was the chief US architect of the international economic sanctions against Yugoslavia and directed US efforts to ensure the effective international implementation and enforcement of these sanctions. In 1994, Mr. Comras served as US envoy to the Former Yugoslav Republic of Macedonia. Prior to joining The Eren Law Firm, Mr. Comras served at the United Nations, under appointment by Secretary General Kofi Annan, as one of five international monitors to oversee the implementation of Security Council measures against terrorism (al-Qaeda) and terrorism financing.

Mr. Pinter and Mr. Eren advise banks, broker-dealers, other financial institutions, financial services companies, and other businesses on all aspects of OFAC-administered economic sanctions, the US Bank Secrecy Act, the anti-money laundering (AML) provisions of the USA Patriot Act, and their implementing regulations. Mr. Eren and Mr. Pinter also design OFAC and AML compliance programs for US as well as non-US financial institution clients and represent clients in applications for OFAC licenses (such as for the unblocking of funds and accounts), other sanctions relief, and in sanctions and anti-money laundering enforcement actions. Mr. Comras advises clients on policies underlying US economic sanctions, big-picture sanctions issues, and frequently comments and provides insights on the economic and financial fight against terrorism.

This Client Topic has been prepared and disseminated by The Eren Law Firm for informational purposes only and it does not constitute legal advice. The information contained in this Client Topic is not intended to create, and the receipt of it does not constitute, an attorney-client relationship. Readers are advised not to act on the information contained in this Client Topic without first obtaining competent legal advice. © Copyright 2007. The Eren Law Firm. All Rights Reserved.