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CLIENT ALERT

FinCEN Identifies Iran as Money Laundering Threat While OFAC Announces New Mechanism to Facilitate Humanitarian Assistance There

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On Friday, October 25, 2019 the Financial Crimes Enforcement Network (FinCEN) issued a final rule pursuant to Section 311 of the USA PATRIOT Act finding Iran to be a jurisdiction of primary money laundering concern and imposing special measures prohibiting U.S. financial institutions from maintaining correspondent accounts for or on behalf of Iran. Separately on Friday, the U.S. Departments of the Treasury and State announced the rollout of a new mechanism to facilitate humanitarian trade with Iran.

Finding and Special Measures Against Iran

FinCEN based its finding on the role of Iran's central bank in facilitating terrorist financing, the dominance of Iran's Revolutionary Guard Corps (IRGC) in Iran's economy, Iran's support to terrorist groups, and the regime's efforts to develop weapons of mass destruction (WMD). FinCEN's actions build on comprehensive U.S. sanctions against Iran, which already prohibit U.S. persons, including U.S. financial institutions, from nearly all transactions with Iran and Iranian financial institutions. The primary effect of the new rule is to require U.S. banks to conduct special diligence efforts to ensure that their correspondent relationships are not used indirectly to facilitate transactions by Iran.

This is the second time that FinCEN has found Iran to be a jurisdiction of primary money laundering concern. FinCEN made such a finding in 2011 and proposed a rule that would have imposed the same special measures, but never finalized it. FinCEN's new finding and final rule were issued without re-opening the process for public comment, relying on the Administrative Procedure Act's "foreign affairs" exception. This appears to be the first time that FinCEN ever has done this, and suggests that the agency may in the future seek to issue special measures against other targets without public comment. That would be a substantial departure from the agency's recent approach to Section 311. In addition to a long history of submitting proposed Section 311 designations for public comment, even when they were based in part on risks of terrorism financing or the proliferation of WMD, FinCEN in recent years had begun to make the non-classified, non-privileged parts of its administrative record to support such actions available for public review, partly as the result of due process litigation brought by designated foreign financial institutions.

Mechanism for Humanitarian Assistance to Iran

The new mechanism is intended to facilitate exports of agricultural commodities, food, medicine, and medical devices to Iran for humanitarian purposes while preventing such aid from being diverted by the Iranian regime. It is intended in particular to restrict the role of Iran's central bank in such trade, based on that entity's previous facilitation of terrorism financing. The mechanism will require the submission of extensive information about the details of proposed transactions and the identity, affiliations, and beneficial owners of Iranian purchasers. In exchange for providing this information, Treasury would provide written confirmation that an approved financial channel cleared with Treasury will not be subject to U.S. sanctions. U.S. persons, including U.S. financial institutions, taking part in humanitarian trade with Iran are free to also make use of this mechanism, but must continue to abide by existing requirements that apply to them under the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) for humanitarian exports to Iran, as implemented through OFAC regulations. How this new mechanism will actually look and work in practice will become clearer over the coming weeks and months.

Practical Considerations

- U.S. financial institutions that offer correspondent accounts to foreign financial institutions should ensure that they have implemented reasonable, written procedures to prevent the use of their correspondent relationships to provide indirect access to Iran. This may include in particular reviewing their questionnaires for holders of such accounts to capture information on whether account holders maintain accounts for Iranian customers. Based on the responses received you may wish to consider reviewing your current controls around, and risk rating of, that correspondent relationship.
- U.S. persons engaging in humanitarian trade with Iran—exporters, insurers, shipping companies and financial institutions alike—may wish to review OFAC's list and consider whether collecting the same types of information, or participating in the new mechanism, might help them to manage risk. In addition, if U.S. persons are aware that an Iranian buyer in a transaction covered by license will provide its bank, a foreign financial institution, information for submission to Treasury under the new mechanism, then they may wish to also be privy to the same information for their own risk considerations.

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