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CLIENT ALERT

U.S. Government Issues First Designations under the Caesar Act as Part of Larger Set of Designations Targeting the Syrian Government

June 25, 2020

On Wednesday, June 17, 2020, the U.S. government designated 39 individuals, including Syrian President Bashar Al-Assad and his wife Asma al-Assad, for sanctions, including the first designations under the Caesar Syria Civilian Protection Act ("Caesar Act" or "Act"). The Caesar Act, named after the codename of a Syrian defector who turned over tens of thousands of pictures of atrocities by the Syrian government against civilians, authorizes blocking and visa sanctions against foreign (non-U.S.) persons knowingly providing support (*e.g.*, financial, material, or technological) or selling or providing certain goods and services to the Syrian government and military and in certain circumstances to other foreign persons in connection with the conflict in Syria.

Background

The United States' economic pressure on Syria began in 1979, when it designated Syria a State Sponsor of Terrorism, which resulted in restrictions on U.S. foreign assistance, a defense exports and sales ban, dual use goods export controls, and other restrictions. In 2004, the U.S. government intensified this pressure by imposing broader prohibitions on U.S. exports, prohibiting Syrian-owned airlines from providing services in the United States, and imposing blocking sanctions on designated individuals. Successive executive orders issued in 2006 and 2008 provided additional bases for designating targets for blocking sanctions. The sanctions program has expanded dramatically since the Syrian civil war began in March 2011, including, *inter alia*: (1) the imposition of blocking sanctions on the Government of Syria, (2) prohibitions on any new investment in Syria, the export of services to Syria, or any dealing in Syrian oil or petroleum products, and (3) the creation of additional bases for individual designation, including targeting senior Syrian government officials and those that provide material support to the Government of Syria. Over nine years after the onset of the Syrian civil war, however, the conflict continues, and President Assad, with the support of his regional and international allies, remains in power.

The Caesar Act – Sanctions Provisions

In December 2019, Congress passed the Caesar Act as part of the National Defense Authorization Act for Fiscal Year 2020 ("2020 NDAA"). The Caesar Act is aimed at depriving the Assad regime of revenue and support. It provides that the President "shall" impose blocking sanctions and deny or revoke visas on any foreign person that he determines to knowingly:

- Provide significant support to, or engage in a significant transaction with, the Government of Syria or a senior political figure of that government, a foreign person "operating in a military capacity" in Syria on behalf of Syria, Russia, or Iran, or a foreign person subject to sanctions with respect to Syria;
- Sell or provide significant goods, services, technology, information, or other support that significantly facilitates the maintenance or expansion of Syria's oil and natural gas production;

- Sell or provide aircraft or aircraft parts, or significant goods or services for the operation of aircraft, that are used for military purposes in Syria on behalf of the Government of Syria to any foreign person operating in an area directly or indirectly controlled by the Government of Syria or foreign forces associated with the Government of Syria; or
- Directly or indirectly provide significant construction or engineering services to the Government of Syria.

The Caesar Act's sanctions became effective on Wednesday, June 17, 2020. On the same day, the State Department and Treasury Department undertook coordinated actions, resulting in the designation of 39 individuals and entities for blocking sanctions. Of these 39 targets, the State Department designated 15 targets under Executive Order 13894. These include re-designating Bashar Al-Assad and the Iranian militia Fatemiyoun Brigade, and also designating Bashar Al-Assad's wife Asma Al-Assad and the Fourth Division of the Syrian Arab Army. Executive Order 13894 was initially promulgated in order to respond to Turkey's October 2019 military offensive in Syria following President Trump's announcement that U.S. forces would "no longer be in the immediate area" of Turkey's operation. However, it included broad language authorizing sanctions on, *inter alia*, any "foreign person" determined to be responsible for or complicit in, or to have engaged in or financed "the obstruction, disruption, or prevention of a ceasefire in northern Syria," or to be "an adult family member" of such a person. The State Department relied on these authorities in Executive Order 13894 for its designations.

The Treasury Department designated another 24 targets under earlier sanctions authorities related to Syria, primarily under Executive Order 13573 for being agencies or instrumentalities of, or being owned or controlled by, the Government of Syria, and Executive Order 13582 for materially assisting or supporting the Government of Syria.

Of these 24 targets, the Office of Foreign Assets Control (OFAC) also designated nine under the Caesar Act, including individuals and entities involved in large real estate development projects that promise to generate revenue for the Syrian government via concession or joint venture arrangements. The Treasury Department noted that some of these developments are on land confiscated from Syrians displaced by the regime in the course of the civil war.

Secretary Pompeo, in a statement accompanying the designations, emphasized that this action is intended to be the beginning of a sustained campaign, and that the State Department expects "many more sanctions" in the coming months.

The Caesar Act – 311 Special Measures

Separately, the Caesar Act requires the Secretary of the Treasury to determine whether the Central Bank of Syria is a "financial institution of primary money laundering concern" under 31 U.S.C. § 5318A and, if so, to impose one or more of five special measures authorized by that statute. This authority is commonly referred to as "311 Special Measures" because it was established pursuant to section 311 of the USA PATRIOT Act.

Special measures (1) through (4) authorize additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions, and special measure (5) authorizes prohibitions or conditions on the opening or maintaining in the United States of correspondent or payable-through accounts for, or on behalf of, a foreign banking institution, if such correspondent account or payable-through account involves the foreign financial institution found to be of primary money laundering concern. Special measure (5) can function to cut off the target financial institution from access to the U.S. financial system and make it very difficult to transact in U.S. dollars. It is the most frequently-imposed special measure, and must be imposed through rulemaking.

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Because the Central Bank of Syria has been subject to blocking sanctions since the U.S. government designated the Government of Syria in 2011, the practical impact of such restrictions may be less severe than they usually are. Nonetheless, in the event the Treasury Department imposes special measure (5), U.S. financial institutions would have additional affirmative due diligence obligations with respect to correspondent accounts they maintain for foreign financial institutions to ensure they are not used for transactions involving the Central Bank of Syria.

The Caesar Act requires the Secretary of the Treasury to determine whether the Central Bank of Syria is a “financial institution of primary money laundering concern” within 180 days of the passage of the Act. The end of the 180 day period was June 17, 2020, the same day the sanctions provisions went into effect. As of the date of this alert, Treasury has not publicly announced a determination.

Practical Impact

Against the backdrop of the already severe U.S. sanctions program addressing Syria, additional designations under the Caesar Act do not represent a qualitative change in the nature of U.S. person prohibitions on dealing with the regime or doing business in Syria. Indeed, although the State Department addressed the June 17 designations in a release entitled “Syria Caesar Act Designations,” each of the 39 designations could have been made based on pre-existing authorities, and the Caesar Act was not needed to issue them.

The Act does highlight risks for foreign persons doing business in or with Syria that they too can become subject to blocking sanctions, and the authority targeting persons operating in a “military capacity” on behalf of Russia and Iran explicitly focuses on the role those countries are playing in the conflict. Nonetheless, in the pre-Caesar Act period, OFAC had already designated numerous targets – including business cronies of the regime and Russian, Iranian, and other non-Syrian targets – under previous executive orders in the Syria program. Thus, these secondary sanctions authorities in the Caesar Act do not appear to represent a major expansion of the program. However, they may prompt a renewed interest by the administration in targeting such persons. Secretary Pompeo’s statements about a sustained targeting campaign support this notion.

If the Secretary of the Treasury finds that the Central Bank of Syria is a financial institution of money laundering concern, he may then propose one or more special measures. A final rule imposing the fifth special measure pursuant to section 311 would require financial institutions in the United States to undertake specific diligence in order to ensure that the central bank cannot access the U.S. financial system, either directly or through nested correspondent relationships. U.S. banks are already required to block transactions in which the Central Bank of Syria has an interest, but such a 311 special measure could make the required additional diligence more specific.

Finally, though the authorities in the Caesar Act may not appear to effect a dramatic change in the program, to the extent the U.S. government follows up on Secretary Pompeo’s promise to aggressively continue designations, the combined weight of those designations will increasingly weigh on the Syrian economy.

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