US, EU and International Sanctions Against Libya

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In response to the recent political turmoil in Libya, countries around the world have begun to impose targeted trade and investment sanctions on Libya. In the US, President Obama signed an Executive Order, effective February 25, requiring all US persons (including businesses and their overseas branches) to comply with new sanctions against Libya. On March 2, the EU enacted sanctions against Libya as well, with additional restrictions on Libya's sovereign wealth fund and related financial entities reported to have been agreed upon on March 8. Several EU Member States, as well as Canada and Australia, have also taken action, and a UN Security Council Resolution calls on all UN Member States to impose sanctions on Libya.

Some of the new sanctions cast a wide net. Anyone doing business with Libya or any Libyan counterparties should review such transactions or dealings, carefully study the new sanctions provisions (and monitor any additional sanctions that may still be imposed), and take appropriate action to maintain compliance. Coverage may include transactions or business dealings that pre-date these sanctions.

Broad Scope for US Sanctions

The US sanctions target not only the Gaddafi family and the Libyan leadership, but also agencies and instrumentalities of the Libyan government, including the Central Bank of Libya and the Libyan National Oil Corporation. Any business involving the Libyan government or the Gaddafi family could fall within the ambit of these sanctions. In addition, US export controls applicable to Libya have become more restrictive, with all licenses for export and reexport to Libya issued under the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) suspended.

The Executive Order enacting the sanctions allows the Secretary of the Treasury to extend the US sanctions to anyone who has participated in human rights abuses in Libya, as well as to anyone who has supported or acted on behalf of such persons. To date, the Secretary has not exercised this authority.

Duties of US Businesses and Individuals

US persons (including businesses and their overseas branches, as well as US individuals) may not engage in transactions involving property or property interests that belong to any persons or entities targeted by the sanctions. US persons also must comply with blocking requirements applicable to any property or property interests that belong to such Libyan targets. In doing so, US persons must report such blocking action to the Treasury Department's Office of Foreign Assets Control (OFAC).

The Treasury Department's Financial Crimes Enforcement Network (FinCEN) has issued special guidance for financial institutions. This guidance advises financial institutions to take "reasonable risk-based steps" to prevent transactions that might circumvent US sanctions.

Exceptions to US Sanctions

OFAC has issued four general licenses related to the Libyan sanctions (one of which has been repealed). General License No. 1A (which replaced General License No. 1) authorizes transactions involving banks that are owned or controlled by the Government of Libya but are organized under the law of a country other than Libya. General License No. 2 authorizes certain transactions with Libyan diplomats in the United States, unless they qualify as "agencies, instrumentalities, [or] controlled entities" of a person whose property and property interests were blocked by the Executive Order. General License No. 3 authorizes the provision of certain legal services to the persons and entities targeted by the US sanctions against Libya.

UN and EU Sanctions on Libya

On February 26, the United Nations Security Council (UNSC) approved a resolution calling on all UN Member States to impose sanctions on Libya, including an arms embargo, a visa ban upon certain members of the Gaddafi family and top Libyan officials, and an asset freeze on those individuals and anyone else acting on their behalf.

Pursuant to the UNSC resolution, the Council of the EU adopted sanctions against Libya on February 28, and corresponding regulations were adopted on March 2. The EU sanctions target a wider group of individuals than their US counterparts. They also go beyond the US sanctions by placing an embargo on the transfer to Libya of arms, as well as "goods which might be used for internal repression." (A list of the restricted types of goods is appended to the regulations.) The EU sanctions are narrower than those of the US Executive Order in that they do not target agencies and instrumentalities of the Libyan government as such.

As always, the EU affords Member States some flexibility in administering these sanctions. In certain circumstances, individual Member States may authorize discrete transactions that would otherwise be prohibited under the EU sanctions regime, e.g., in the case of contracts formed prior to the entry into force of the sanctions, or in other exceptional circumstances. Authorization will, however, have to be sought. Member States may also enact tougher sanctions on their own initiative. Effective today, Germany, Austria and the United Kingdom, for example, have all imposed additional restrictions on the Libyan Investment Authority (LIA), a sovereign wealth fund with approximately $70 billion in assets; Germany had also adopted certain asset freeze measures prior to the main EU-level sanctions coming into force.

Recent reports indicate furthermore that political agreement has been reached to extend sanctions against the LIA and related financial institutions at the EU level, with possible implications for the full range of business dealings that companies may have with any of these entities. The new measures are expected to be finalized in the coming days and may be published in the Official Journal of the European Union as early as Friday, March 11.

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