

Korea's New Guideline Regarding Transactions with Iran

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With a view to partaking in the international community's effort to curb Iran's nuclear program, Korea has been undertaking specific measures in the areas of finance, trade, transportation and energy to restrict and monitor the private sector's transactions with Iran.

Most recently, closely following the heels of the resolution adopted by the IAEA Board of Governors on November 18, 2011 ("[IAEA Resolution](#)"), the Korean government has announced an additional set of guidelines on December 16, 2011.

The following analysis provides a summary of Korea's new guideline ("[Guideline](#)"), and how it is expected to affect the private sector in doing business with Iran. Please note that in lock steps with future legislation in the U.S. and other United Nations member states, Korea may further reinforce its sanctions against Iran.

1. Overview of the Guideline

(1) Designation of additional entities subject to financial sanctions

- Under the Guideline, in addition to the 102 entities and 24 individuals already designated as targets for financial sanctions under the measures introduced on September 8, 2010 on top of existing 116 entities designated earlier, the Korean government has newly identified 99 entities and 6 individuals related to Iran's nuclear development program, some of which overlap with the ones that have newly been designated under the U.S. Executive Order No. 13590 issued on November 21, 2011 ("[E.O. 13590](#)").
- Also, under the Guideline, all Korean companies/individuals will be required to obtain prior authorization from the Bank of Korea before conducting any foreign exchange transactions with these designated entities or individuals.

(2) Regarding Iran's development of petroleum resources and maintenance or expansion of the petrochemical industry

- The Korean government will inform the Korean companies of the IAEA Resolution, E.O. 13590, and other sanctions already or soon to be adopted by the European Union, Canada, Japan and other members of the international community, and will ask the private sector to exercise due caution in engaging in transactions which may be seen as

relevant to Iran's development of petroleum resources and maintenance or expansion of its petrochemical industry.

(3) Notable features of the Guideline

- In Korea, all matters concerning authorization, embargo and sanction with regards to exporting strategic goods are regulated by virtue of Korea's commitments under international agreements and UN Resolutions, and there is no stand alone law unique to Korea that is different from such international obligations. Accordingly, none of the various measures Korea has introduced in the wake of the United Nations Security Council Resolution No. 1929 (adopted on June 9, 2010) require any legislative or regulatory amendment or enactment of law. In a similar vein, the Guideline simply informs and cautions the private companies to be aware of the risk arising from sanctions adopted by other countries.
- Most notably, the Guideline is absent of any explicit measures relating to sanctions against Iran's Central Bank, unlike the E.O. 13590. Nor does it impose any explicit ban on importing Iran's petrochemical products.
- However, the Guideline merely provides that the Korean government will seek to ensure that the Korean companies "exercise due care" in conducting transactions with respect to Iran's petrochemical sector, since the payments to or remittance from Iran would be subject to approval from the Bank of Korea, and there is possibility that the approval would be withheld.

2. Regulatory Framework of Korea's Iran Sanctions

While the Korean government does not directly impose any regulation on private entities or individuals doing business with Iran, by way of indirect regulation, such public entities as the Bank of Korea and the Korea International Trade Association ("KITA") have issued guidelines in order to comply with Korea's international obligations. Under such guidelines, Korea placed:

(1) Restriction on financial transactions with Iran

- As seen above, Korea has designated 102 organizations and 24 individuals as entities subject to financial sanction under the Ministry of Strategy and Finance Notification released on September 9, 2010 on top of existing 116 entities designated earlier, requiring any foreign exchange remittance to or receipt from such entities to obtain prior approval from the Bank of Korea. In practice, application for such approval has been rejected in many cases.

- At the same time, on January 1, 2011, the Ministry of Strategy and Finance announced another Notification which stipulates that any single transaction with any Iranian individuals or entities that has a fair market value of 40,000 EUR or more (or if a series of transactions from the same entity have a fair market value of 40,000 EUR or more in a 12-month period) must be **approved** by the Bank of Korea, while a single foreign exchange transaction with a fair market value of 10,000 EUR or more with any Iranian individuals or entities must be **reported** to the Bank of Korea.
- Through this approval or reporting process, the transaction related with energy or petrochemical industry could be discouraged in practice.

(2) Restriction on bilateral trade with Iran

- Under the Foreign Trade Law and “Guideline on Trade with and Investment in Iran” issued by the KITA (“KITA Guideline”), all strategic goods, including the dual-use goods as defined under the five international export control regimes (Nuclear Suppliers Group, Missile Technology Control Regime, Australian Group, Zangger Committee and Wassenaar Arrangement), cannot be exported to Iran.
- Also, under this KITA Guideline, companies in Korea intending to transact with Iranian entities and individuals are required to obtain a written confirmation from the Korea Strategic Trade Institute (“KOSTI”) that their investment or trading does not directly or significantly contribute to enhancing Iran’s capability to import or produce refined petroleum product (which includes providing ships or shipping service for importing refined petroleum products), subject to certain thresholds, and that their transaction parties are not among the designated Iranian entities and individuals

(3) Restrictions with respect to Iran’s energy development

- Apart from the KITA, the International Contractors Association of Korea (“ICAK”) also adopted its own “Guideline on Contracts for Overseas Construction with Iran” (“ICAK Guideline”). According to the KITA and ICAK Guidelines, Korean companies intending to trade with Iranian entities are required to submit to Korean banks a confirmation letter from either the ICAK or KOSTI, certifying that the companies’ transaction parties in Iran are not included in the blacklist and the items that they want to export to Iran are not prohibited items. The ICAK and KOSTI must not issue the confirmation letter if (i) the transaction counterparty and transaction items are engaged in specifically designated global terrorism or proliferation of weapons of mass destruction programs; or (ii) the project subject to the certificate relates to oil development and petrochemical productions within Iran and export to petrochemical

products to Iran. Without the requisite certificate and the reporting to or approval of the Bank of Korea, Korean banks will not permit remittance or receipt of foreign currencies pursuant to a new guideline issued by the Korea Federation of Banks.

- Accordingly, those companies in Korea intending to trade with Iran must either obtain prior approval of the Bank of Korea, and the certificate issued by the ICAK or KOSTI stating that their transactions are not subject to the new sanctions imposed against Iran. Such approval or certificate must be submitted to the relevant bank which will review permissibility of overseas remittance or receipt of funds.

3. Practical Implications for Businesses

- On October 1, 2010, the Korean government established a system under which the Korean companies engaged in legitimate business with Iran could settle their outstanding payables/receivables with Iranian counterparts. (However, transactions with parties subject to the financial sanction are still prohibited.) Under this system, Iran's Central Bank opened a Korean Won-denominated account in Korea, through which the Korean companies could get paid for goods or services exported to Iran. It appears that some Korean companies utilized this channel to their benefit. However, as the Guideline remains silent on how such transactions with Iran's Central Bank will be viewed by the Korean government, uncertainty remains on whether such financial operations through the Korean Won-denominated account will also be affected.
- The Guideline is short in its length and appears to be straightforward and simple in its language. However, caution is recommended for businesses in practice, as such existing requirements as the KOSTI or ICAK confirmation or the prerequisite approval from the Bank of Korea can be used as a *de facto* screening mechanism to restrict trade and financial transactions with Iran.

Our thanks to law firm Kim & Chang in South Korea who have provided this guidance for us. Members wishing to contact the firm should refer to the following:

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