

## **DETERMINATION THAT NIOC IS AN AGENT OR AFFILIATE OF IRGC**

Section 312 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHRA) requires the Secretary of the Treasury, no later than 45 days after the date of the enactment of ITRSHRA, to determine whether the National Iranian Oil Company (NIOC) or the National Iranian Tanker Company (NITC) is an agent or affiliate of Iran's Islamic Revolutionary Guard Corps (IRGC), and to report to Congress on these determinations and the reasons for them. On September 24, 2012, the Department of the Treasury made a determination that NIOC is an agent or affiliate of the IRGC. Based on the information currently available, Treasury is not able to determine at this time whether NITC is an agent or affiliate of the IRGC.

### **Isn't NIOC already subject to sanctions?**

Yes. Executive Order 13622 provides for sanctions on foreign financial institutions found to have knowingly conducted or facilitated significant financial transactions with NIOC (except for sales of refined petroleum products to NIOC that fall below the dollar threshold that could trigger sanctions under the Iran Sanctions Act). Executive Order 13622 also provides authority for the Secretary of the Treasury to block the property and interests in property of persons determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NIOC (as well as other specified entities). Note, however, that these sanctions are not applicable to certain transactions related to the Shah Deniz pipeline project, in which NIOC has a minority stake, under Executive Order 13622. In addition, NIOC was already blocked as an entity of the Government of Iran under Executive Order 13599, which was issued pursuant to the International Emergency Economic Powers Act (IEEPA), as amended, among other authorities. Nevertheless, as described below, the determination that NIOC is an agent or affiliate of the IRGC carries consequences.

### **What is the effect of the NIOC determination? Are there CISADA implications?**

As a result of this ITRSHRA section 312 determination, NIOC now is also a person described under section 104(c)(2)(E)(i) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) as an agent or affiliate of the IRGC whose property or interests in property are blocked pursuant to IEEPA. This means that foreign financial institutions determined to knowingly facilitate significant transactions or provide significant financial services for NIOC are exposed to CISADA sanctions, including prohibitions or the imposition of strict conditions on the opening or maintaining of correspondent or payable-through accounts in the United States.

In addition, section 302 of ITRSHRA requires sanctions on foreign persons determined to have knowingly provided certain material support to, or engaged in significant transactions with, the IRGC or its officials, agents, or affiliates whose property or interest in property are blocked. Consequently, foreign persons that knowingly engage in significant transactions with NIOC after the September 24, 2012 determination could be exposed to sanctions.

An "IRGC" identifier will be added to NIOC's entry on the Specially Designated Nationals and Blocked Persons List available on OFAC's website.

As noted below, the potential application of sanctions under section 104(c)(2)(E)(i) of CISADA and section 302 of ITRSHRA is affected by whether the country with primary jurisdiction has received a significant reduction exception from the Secretary of State.

**What are the implications for petroleum purchase transactions involving NIOC by financial institutions and entities in countries that have received a significant reduction exception from the Secretary of State?**

Significant transactions, financial services, or material support involving NIOC for the purchase of Iranian petroleum or petroleum products by a foreign financial institution or entity based in a country that has received a significant reduction exception from the Secretary of State do not carry potential sanctions consequences – under CISADA, sections 302 and 312 of ITRSHRA, section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), or sections 1 and 2 of Executive Order 13622. Sections 302 and 312 of ITRSHRA authorize the President not to impose sanctions for the purchase of petroleum or petroleum products from Iran if an exception under subsection 1245(d)(4)(D) of the NDAA applies to the country with primary jurisdiction over the foreign financial institution at the time of the transactions or the provision of services. Notwithstanding the foregoing, any significant transaction for other sanctioned entities (such as Iranian designated banks or other persons described in section 104(c)(2)(E) of CISADA) may result in sanctions, regardless of whether the transaction is for the purchase of petroleum or petroleum products and involves NIOC.

**Does the determination regarding NITC mean that there is no affiliation between NITC and the IRGC?**

This statement means only that, based on the currently available information, Treasury is not able to determine at this time that NITC is an agent or affiliate of the IRGC.

**How does the effect of this determination compare to the effect of section 1(a) of Executive Order 13622 as to transactions with NIOC?**

The effect of the determination is similar to the effect of Executive Order 13622 section 1(a), which provides for prohibitions on the opening of and prohibitions or strict conditions on maintaining correspondent accounts or payable-through accounts in the United States for foreign financial institutions determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have knowingly conducted or facilitated significant financial transactions with NIOC. Executive Order 13622 likewise contains an exception that covers transactions with NIOC conducted or facilitated by foreign financial institutions based in NDAA-exception jurisdictions. A significant difference between these authorities is that the NDAA exception in ITRSHRA section 312 is limited to transactions or financial services for the purchase of petroleum or petroleum products from Iran.