

Client Alert

International Trade & Litigation Practice Group

January 22, 2013

The New Year Brings New Sanctions Against Iran

As 2013 begins, the United States has reiterated its commitment to countering the threat posed by Iran by passing new legislation, issuing new regulations and guidance, and bringing into effect new requirements to increase economic pressure. These new restrictive measures are likely to have a measureable impact on companies in all sectors of the economy.

Iranian Transactions and Sanctions Regulations

On December 26, 2012, the Office of Foreign Assets Control (OFAC) amended the Iranian Transactions and Sanctions Regulations (ITSR) to implement Section 218 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA). Section 218 of the TRA states that no entity that is owned or controlled by a U.S. person and established or maintained outside the United States may “knowingly engage in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran” if the transaction would be prohibited if performed by a U.S. person or a person in the United States. The amendments to the ITSR track the language of Section 218 and Executive Order 13628, detailed in our Client Alert of October 12, 2012. Most notably, Section 560.555 of the ITSR extends the safe harbor provision of Section 218 and authorizes all transactions ordinarily incident and necessary to the winding-down of transactions with Iran until March 8, 2013 (extended from February 6, 2013), so long as the transactions do not involve a U.S. person or occur in the United States.

Iran Freedom and Counter-Proliferation Act of 2012

On January 2, 2013, the President signed into law the National Defense Authorization Act for FY 2013 (NDAA 2013). Subtitle D of the NDAA 2013, entitled “Iran Freedom and Counter-Proliferation Act of 2012” (IFCP), includes new sanctions against Iran. The IFCP:

- Designates entities that operate ports in Iran and entities in the energy, shipping, and shipbuilding sectors of Iran (including the National Iranian Oil Company, the National Iranian Tanker Company, and the Islamic Republic of Iran Shipping Lines) as entities of proliferation concern;

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- Gives the President until July 1, 2013 to block all property and interests in property of those who (1) are part of the energy, shipping, or shipbuilding sectors of Iran, (2) operate ports in Iran, and (3) knowingly provide significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of those entities, or any other entity on the SDN List;
- Allows for sanctions against entities for selling, supplying, or transferring to or from Iran significant goods or services used in connection with the energy, shipbuilding, or shipping sectors on or after July 1, 2013. Notably, these sanctions do not apply to those countries that have obtained a waiver with respect to the purchase of petroleum or petroleum products under Section 1245(d)(4)(B) of the National Defense Authorization Act for Fiscal Year 2012 (NDAA 2012) or to the sale, supply, or transfer to or from Iran of natural gas;
- Imposes sanctions on persons engaged in the sale, supply, or transfer to or from Iran of precious metals on or after July 1, 2013;
- Imposes sanctions on persons engaged in the sale, supply, or transfer to or from Iran of certain graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes on or after July 1, 2013;
- Imposes sanctions on persons who knowingly provide underwriting services or insurance or reinsurance for activities or persons with respect to which sanctions have been imposed, on or after July 1, 2013, unless such services fall within certain limited exceptions or the President has issued a waiver;
- Prevents foreign financial institutions from opening a correspondent account or payable-through account, and prohibits or imposes strict conditions on the maintaining of such an account, in the United States if the President determines that they knowingly facilitated a significant financial transaction on behalf of any Iranian person on the SDN List on or after July 1, 2013, unless the transaction falls within certain limited exceptions;
- Amends the NDAA 2012 to require the Secretary of State to certify that the country with primary jurisdiction over the foreign financial institution faces “exceptional circumstances” that prevented the country from being able to significantly reduce its volume of crude oil purchases in order to grant a waiver of sanctions for financial institutions of countries that import Iranian petroleum;
- Includes the Islamic Republic of Iran Broadcasting and its president on the list of Iranian human rights abusers maintained under the Comprehensive Iran Sanctions Accountability and Divestment Act of 2010 (CISADA); and
- Allows the President to impose sanctions on persons who have engaged in corruption or other activities related to the diversion of goods intended for the people of Iran or the misappropriation of proceeds from the sale or resale of such goods, and to create a publicly available list of such persons.

Advisory Regarding Third-Country Exchange Houses and Trading Companies

On January 10, 2013, OFAC issued an advisory (“Advisory”) regarding the use of third-country exchange houses and trading companies to evade U.S. sanctions against Iran. The Advisory warned of evasive practices by certain exchange

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houses and trading companies when moving funds on behalf of Iran, such as omitting references to Iranian addresses, omitting the names of Iranian persons or entities, and transmitting funds to or through the United States without referencing the involvement of Iran or designated persons. OFAC encouraged U.S. financial institutions to diligently monitor third-country exchange houses or trading companies exhibiting suspicious behavior. OFAC stressed that the Advisory “is not intended to suggest that U.S. financial institutions close accounts” for all such institutions, as not all third-country exchange houses or trading companies are “necessarily facilitating illicit finance.”

Disclosures to the SEC Regarding Sanctionable Activities are Required Beginning in February

The Securities and Exchange Commission (SEC) reporting requirement included in Section 219 of the TRA takes effect on February 6, 2013. Under this reporting requirement, public companies must disclose in their annual or quarterly report if they knowingly engaged in prohibited activities with respect to Iran, or in transactions or dealings with individuals whose property and interests in property are blocked. The disclosure must provide a detailed description of the activity, including the nature and extent of the activity, the gross revenues and net profits, if any, attributable to the activity, and whether the company or its affiliate intends to continue the activity. The SEC will be required to transmit any disclosures to the President and Congress, and to make the disclosure publicly available on the SEC’s website. Public companies should review their activities and the activities of their affiliates, and should be prepared to update any quarterly and annual reports with a due date after February 6, 2013 accordingly. Guidance from the SEC regarding this reporting requirement is available [here](#).

If you have any questions regarding sanctions on Iran, please contact Christine Savage at +1 202 626 5541, Mark Wasden at +1 202 626 5529, Jane Cohen at +1 202 661 7842, or Shannon Doyle at +1 202 626 5607.

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.