BRYAN CAVE

Memorandum

Bryan Cave LLP
1155 F Street, NW
Washington, DC 20004
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

<u>VIA EMAIL</u>

Date: October 17, 2012

To: Clients and Friends

From: Stanley J. Marcuss

Re: New Executive Order on Iran Subjects Foreign Affiliates to the Same Prohibitions as Their U.S. Parent

---

Executive Order 13628, the new Executive Order expanding U.S. sanctions against Iran and Syria, abolishes for purposes of Iran (but not Syria) the distinction between the prohibitions applicable to U.S. entities, on the one hand, and their foreign affiliates, on the other. It does so by providing that "[n]o entity owned or controlled by a United States person and established or maintained outside the United States may knowingly engage in any transaction … with the Government of Iran or any person subject to the jurisdiction of the Government of Iran, if that transaction would be prohibited by [the Iranian Transactions Regulations and other U.S. sanctions against Iran] if the transaction were engaged in by a United States person or in the United States."

The term "person subject to jurisdiction of the Government of Iran" includes Iranian entities, anyone "ordinarily resident in Iran" and any entity, no matter where located, that is owned or controlled by an Iranian entity or person ordinarily resident in Iran.

Prior to issuance of the Executive Order, the Iranian Transactions Regulations prohibited U.S. persons from engaging in any transaction or dealing "in or related to" (a) goods or services of Iranian origin or goods, technology or services for supply to Iran, (b) making new investments in Iran, (c) entering into contracts relating to Iranian petroleum development or (d) approving, financing, guaranteeing or facilitating a foreign person's transactions if the transaction were impermissible for U.S. persons. None of these prohibition applied to a U.S. person's foreign subsidiary. That is no longer the case. That is also no longer the case under any other regulations or executive orders imposing sanctions against Iran.

The new Executive Order permits penalties for a foreign subsidiary's violation of Iranian sanctions to be assessed against the foreign subsidiary's U.S. parent, but waives the imposition of any penalties if the U.S. parent "divests or terminates its business with" the subsidiary.

This is the first time foreign subsidiaries have been subjected to the same prohibitions as those applicable to their U.S. parent since President Reagan did so in 1982 when he expanded U.S. sanctions against the Soviet Union relating to oil and gas exploration and production and repression in Poland. The outcry from Europe forced Reagan to retreat less than six months later.

Reagan's action in subjecting foreign subsidiaries to the same prohibitions as those applicable to their U.S. parent was taken on his own initiative. The current Executive Order's action was mandated by Congress when it passed the Iran Threat Reduction and Syria Human Rights Act of 2012.

It is interesting that Congressional proponents of the action described the pre-existing situation as a "loophole." But it was hardly a loophole. It reflected a conscious policy choice reflected in every U.S. economic sanctions regime promulgated over the last thirty years since the Reagan retreat.