King & Spalding

Client Alert

International Trade & Litigation Practice Group

October 12, 2012

New Executive Order Expands Iran Sanctions to Cover Foreign Subsidiaries of U.S. Companies

On October 9, 2012, the President signed a new executive order ("Executive Order") implementing certain provisions of the Iran Threat Reduction and Syria Human Rights Act of 2012 (now referred to as the TRA). The TRA expanded sanctions against Iran's financial, energy, and transportation sectors. The Executive Order addresses a number of provisions in the TRA that required presidential action within 60 days of the law's enactment.

Most notably, Section 218 of the TRA called for sanctions to be extended to U.S. owned or controlled foreign subsidiaries, joint ventures, and other entities, when those entities knowingly engage in transactions, directly or indirectly, with Iran or the Government of Iran. Section 4 of the Executive Order implements Section 218. Under Section 4, 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. A U.S. person may be subject to civil penalties if a foreign entity it owns or controls engages in these prohibited transactions.

The phrase "any person subject to the jurisdiction of the Government of Iran" is intended to cover companies organized under the laws of Iran or any jurisdiction within Iran, as well as persons in Iran, persons ordinarily resident in Iran, or persons owned or controlled by any of these entities.

Foreign subsidiaries may engage in transactions authorized under a general license. Similarly, a foreign subsidiary or its U.S. parent may apply for a specific license for the foreign subsidiary to engage in transactions. Licenses granted to a foreign subsidiary's U.S. parent may not necessarily cover the foreign subsidiary, unless the terms of the specific licenses and the scope of the authorized activities clearly include the activities of the foreign subsidiary as well.

Pursuant to Section 218 of the TRA, Section 4 of the Executive Order contains a safe harbor provision. Civil penalties will not apply for violations of Section 4 if the U.S. person divests from or terminates its business with the violating foreign subsidiary no later than February 6, 2013.

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The Executive Order implements a number of other provisions of the TRA:

- Section 1 of the Executive Order expands the possible sanctions that can be imposed under the Iran Sanctions Act of 1996, as amended (ISA), including a ban on investment in the equity or debt of a person sanctioned under the ISA. Section 1 also allows for sanctions to be applied to the principal executive officers of a company sanctioned under the ISA.

- Section 2 of the Executive Order blocks the property and interests in property within the United States of persons that have provided goods or technologies to Iran that are likely to be used by the Government of Iran, its agencies or instrumentalities, or any other person to commit serious human rights abuses against the people of Iran. Sanctions may also be applied to those that have provided services with respect to such goods or technologies, as well as to those that have materially assisted, sponsored, or provided financial, material, or technological support for such goods or services.

- Section 3 of the Executive Order blocks the property and interests in property within the United States of persons that have engaged in censorship or other activities with respect to Iran on or after June 12, 2009, that prohibit, limit or penalize the exercise of freedom of expression or assembly by citizens of Iran, or that limit access to print or broadcast media. Section 3 also covers those who have materially assisted, sponsored, or provided support for censorship activities.

- Section 10 of the Executive Order prohibits the issuance of visas to violators of Sections 2 and 3.

For more information regarding the TRA, please see the August 27, 2012 King & Spalding Client Alert entitled "United States Adopts Additional Expansive Sanctions Against Iran."

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