Iran Sanctions Liability May Reach Non-U.S. Subsidiaries in Near Future

If enacted, a proposed law would require foreign subsidiaries of U.S. companies to comply with U.S. sanctions against Iran, as if they were U.S. companies.

On August 3, 2012 Congress presented the Iran Threat Reduction and Syria Human Rights Act of 2012 (“the Act”) to President Obama for signature. It is widely expected that the President will sign the Act into law before August 15, particularly given Iran's lack of cooperation or concessions with regard to its nuclear program.

In order to minimize liability under the Act, U.S. companies with foreign subsidiaries should undertake careful review of their foreign subsidiaries’ existing business dealings with Iran and determine whether their activities comply with U.S. law.

Expanding the Scope of Iran Sanctions

Until now, a U.S. company generally was not held liable for the sanctions violations of its foreign subsidiaries, unless the U.S. company was involved directly or indirectly in or otherwise facilitated the Iran-related activities. As a result, it has been legally permissible for foreign subsidiaries of U.S. entities to engage in transactions with Iran that would have been illegal for the subsidiaries’ U.S. parent, so long as those activities were done without U.S. involvement or facilitation. Under the Act, however, if any U.S.-owned or -controlled foreign subsidiary violates U.S. sanctions against Iran, the U.S. parent company may be assessed all of the same penalties as if it had committed the violation itself.

If U.S. companies determine that any foreign subsidiary is involved in Iran-related transactions, the subsidiary’s business may need to cease or, at a minimum, change to become compliant with U.S. sanctions.

While the Act implies that non-U.S. subsidiaries may engage in activities that would be lawful if done by a U.S. company, it remains to be seen whether and how the existing sanctions regulations will be updated to articulate this expressly, or whether General Licenses might be issued to cover conduct by non-U.S. subsidiaries of U.S. companies.

We anticipate that the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) will continue to permit U.S. companies to engage in certain limited activities such as exporting and reexporting food and "agricultural commodities" to Iran. It is our understanding, and would be consistent with U.S. policy, for OFAC even after the Act is implemented to permit non-U.S. subsidiaries to export or reexport food and agricultural commodities (even non-U.S. origin product). It is unclear, however, whether or how OFAC might authorize those activities (ex. changes to the existing sanctions regulations or new General License(s)).

Compliance Timeline for the Expansion of U.S. Sanctions under the Act

- As soon as the President implements the Act

(1) U.S. companies should carefully review the implementing guidelines and/or regulations to understand the contours of the impact on U.S. and non-U.S. business with Iran.

- No later than 60 days after the President signs the Act into law

(1) The President is required to implement the Act. It is anticipated that implementation will be accomplished by Executive Order or regulations administered by OFAC.

- Within 180 days after the President signs the Act into law

(1) U.S. companies that divest or terminate their ownership or control of subsidiaries engaged in Iran-related activities during this 180 day period will not be held liable for Iran-related activities of their foreign subsidiaries.

(2) U.S. companies should review the operations of their non-U.S. subsidiaries that may be dealing with Iran (directly or indirectly). Depending upon the nature of the dealings, the foreign subsidiary may be required to cease or restrict dealings with Iran in order to comply with U.S. sanctions.

- After 180 days after the President signs the Act into law

(1) The U.S. Government may begin to enforce the Iran sanctions against U.S. companies whose non-U.S. subsidiaries remain involved in prohibited Iran-related activities.

New Iran Sanctions

The Act also imposes a number of specific new Iran sanctions measures, including penalties for the following activities:

- Providing to Iran petroleum-related resources, goods, or services valued in excess of $1 million, or in excess of $5 million over a 12-month period;
- Selling or leasing to Iran petrochemical-related goods, services, or technology in excess of $250,000, or in excess of $1 million over a 12-month period;
- Participating in uranium-related joint ventures with Iran's government or any associated entities; and
- Owning, controlling, insuring, or reinsuring any vessel deemed to have transported crude oil from Iran to another country.

New Syria Sanctions

With regard to Syria, the Act directs the President to impose sanctions on individuals responsible for violations of human rights in Syria, and on individuals who transfer certain goods and technology to the Syrian government.

We will continue to monitor these important developments and will provide updates if and when the Act is signed into law and implemented.

This *GT Alert* was prepared by Kara Bombach and Cy Brennan. Questions about these regulatory changes, or other export controls or U.S. sanctions matters, can be directed to the GT Export Controls group.

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