Implementation of US Sanctions Against Iran Marks Significant Extraterritorial Expansion

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In our August 13, 2012 alert, "Iran Threat Reduction and Syria Human Rights Act of 2012," we highlighted a crucial provision of the latest Iran sanctions: Previously US firms were not liable with respect to Iran-related transactions of their foreign subsidiaries if no US person was involved in the transaction. But Section 218 of the new law provides that US persons (including US firms) will face penalties if foreign entities that they own or control knowingly engage in any transaction with the Government of Iran, or persons subject to its jurisdiction, that would be prohibited if engaged in by a US person or in the United States.

On October 9, President Obama signed an Executive Order that implements various provisions of the new law, including Section 218, and delegates authority for the implementation of Section 218 to the Department of the Treasury's Office of Foreign Assets Control (OFAC). Concurrent with the President's action, OFAC issued a set of FAQs that provides additional guidance on its implementation of Section 218 and the Executive Order.

Section 218 and this Executive Order represent a response to longstanding Congressional critiques of the "loopholes" in US sanctions against Iran. This significant, extraterritorial expansion of the sanctions extends their reach as broadly as those sanctions imposed against Cuba.

For US firms owning or controlling foreign entities (partnerships, associations, trusts, joint ventures, corporations, or other organizations), it is important to note the following:

- OFAC will assess penalties for violations against the US person that owns or controls the foreign entity that engaged in the prohibited transaction.
- Under Section 218, a US person "owns or controls" a foreign entity if it holds more than 50 percent of the equity interest in the entity (by vote or value), holds a majority of seats on the entity's board of directors, or otherwise controls the entity's actions, policies, or personnel decisions.
- Penalties apply if the foreign entity "knowingly" engaged in the prohibited activity; there is no requirement that the US person itself be involved in or know about the activity. Under the Executive Order, "knowingly" means that a person has "actual knowledge, or should have

known, of the conduct, the circumstance, or the result".

- Section 218 and the Executive Order contain a wind-down/safe harbor provision that precludes the imposition of civil penalties on a US person that divests or terminates its business with the foreign entity by February 6, 2013.
- If a transaction is exempt from the general prohibitions against dealings with Iran, or is authorized by a general license from OFAC with respect to US persons, then there is no prohibition on a foreign entity engaging in the transaction, provided that it satisfies all the conditions and requirements of the exemption or general license.
- While a foreign entity or its US parent may apply for a specific license to engage in generally prohibited activities with respect to Iran, OFAC's FAQs caution that the applicability of a US parent's specific license to transactions by the foreign entity will depend on the precise terms of the license and the scope of activities that it authorizes. Accordingly, we advise that firms applying for OFAC licenses be as specific as possible with respect to the potential activities of any foreign entities involved in the prospective transaction and ensure that the activities fall within the scope of the authorization.

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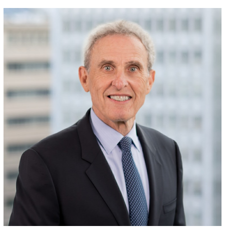

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