ReedSmith

Client Alert

Global Regulatory Enforcement

If you have questions or would like additional information on the material covered in this Alert, please contact the authors:

Leigh T. Hansson
Partner, Washington D.C.
+1 202 414 9394
lhansson@reedsmith.com

Matthew J. Thomas
Partner, Washington D.C.
+1 202 414 9257
mthomas@reedsmith.com

Jeffrey Orenstein
Associate, Washington D.C.
+1 202 414 9217
jorenstein@reedsmith.com

Michael A. Grant
Associate, Washington D.C.
+1 202 414 9238
mgrant@reedsmith.com

…or the Reed Smith lawyer with whom you regularly work.

Senate Approves Revisions to the Iran Sanctions

On May 21, 2012, the U.S. Senate, by a unanimous voice vote, passed a sanctions bill that is the Senate counterpart to the House's "Iran Threat Reduction Act of 2011" (H.R. 1905). The Senate bill and the House bill, which passed in December, will have to be reconciled before reaching President Obama's desk for final passage. The Senate's action came just ahead of this week's meeting in Baghdad between Tehran and other nations concerning Iran's controversial nuclear program.

The Senate bill, which is similar to the Iran sanctions bill reported out of the Senate Banking Committee earlier this year,[1] is a continuation of Washington's focus on curtailing the efforts of Tehran to develop nuclear technology and isolating Iran from world markets. In 2010, the United States, in concert with many of its allies, imposed significant economic sanctions on Iran, including the Comprehensive Iran Sanctions Accountability and Divestment Act ("CISADA"), setting unprecedented extraterritorial sanctions on Iran's refined petroleum and banking sectors. As a result of CISADA and Executive Order 13590 (extending sanctions to upstream petroleum and petrochemical sectors), many players in the international energy sector ceased conducting business with Iran, while others that were alleged to have continued to engage in activities related to the petroleum industry in Iran have fallen subject to U.S. sanction.

For many corporations, the increased sanctions approved by the House and Senate may have little impact; U.S. persons have long been prohibited from engaging in unlicensed transactions with Iran. As a result, interactions with Iran have become the domain of foreign companies and the foreign subsidiaries of U.S. companies that fell outside the jurisdictional reach of the Iran Transactions Regulations.[2] However, the new Senate bill changes how sanctions are imposed, imposing liability upon U.S. parent companies for the transactions between their non-U.S., foreign-incorporated subsidiaries and Iran.

There are two primary reasons that U.S. companies should take time now to learn precisely what transactions their subsidiaries are engaged in concerning Iran. First, the legislation adopts a broad definition of "subsidiary" so that those foreign entities that are either owned or controlled will be subject to the legislation. Second, the legislation calls for an amnesty period. Following the passing of the enactment of the legislation, U.S. parent companies will be able to avoid liability for their subsidiary's actions by divesting or otherwise terminating business with the offending subsidiary.

Additional prohibitions contained in the Senate bill include:

- *Foreign Subsidiaries:* Would require civil penalties under the International Emergency Economic Powers Act (IEEPA) of up to twice the amount of the relevant transaction on U.S. parent companies for any activities of their foreign subsidiaries which, if it had been undertaken by a U.S. person or in the United States, would violate U.S. sanctions law. Sec. 213.
- *Shipping WMD:* Would block assets of, and imposes other sanctions on, persons who knowingly provide ships, insurance or reinsurance, or other shipping services, for transportation of goods that materially contribute to Iran's WMD program or its terrorism-related activities. These sanctions would apply to parent companies if they knew or should have known of sanctionable activity of their subsidiaries/affiliates.
- *Goods/Services to Iran's Energy Sector:* Iran Sanctions Act ("ISA") sanctions would be imposed on persons who knowingly sell, lease, or provide to Iran, goods, services, technology or support, or infrastructure used for the transportation of refined petroleum products, that could directly and significantly contribute to its petroleum resources development or refining programs, in single transactions of $1 million or more, or multiple transactions aggregating to $5 million or more in any 12-month period. Sec. 202. This section codifies portions of Executive Order 13590.
- *Energy Joint Ventures:* ISA would be extended to persons knowingly participating in petroleum resources development joint ventures established on or after January 1, 2002, where Iran's government is a substantial partner or investor, or through which Iran could otherwise receive energy sector technology or know-how not previously available to its government. Sec. 201.
- *ISA Expansion:* Would expand the current menu of sanctions, available to the president under the ISA, to authorize exclusion from the United States of aliens who are corporate officers, principals or controlling shareholders in a sanctioned firm, and permits applicable ISA sanctions to be applied to the CEO or other principal executive officers (or persons performing similar functions) of a sanctioned firm, which could include a freeze of their U.S. assets. Sec. 204.

- *Subsidiaries and Agents of UN-Sanctioned Persons:* Would amend CISADA to ensure that U.S. financial sanctions imposed on UN-designated entities reach those persons acting on behalf of, at the direction of, or owned or controlled by, the designated entities. Sec. 212

- *SEC Disclosures:* Would amend the Securities and Exchange Act of 1934 to require issuers whose stock is traded on U.S. exchanges to disclose whether they or their affiliates have knowingly engaged in various prohibited activities. It would require the president to initiate an investigation into the possible imposition of sanctions as specified, and to make a sanctions determination within six months. Sec. 214.

- *Interests in Financial Assets of Iran:* Would block assets of Iran seized or frozen in the United States, and property interests of Iran in the United States, to include property held in book entry and related indirect forms, property held by securities clearing agencies and other intermediaries, and inchoate interests in funds transfers in the payment process through intermediary banks, regardless of federal or state law that might otherwise apply, if that property is an interest held for the benefit of Iran, or if any intermediary holds the interest for the benefit of Iran and the status of the property is relevant to any attachment or proceedings in aid of execution, whenever issued, on judgments against Iran for damages for personal injury or death caused by torture, extrajudicial killing, aircraft sabotage, or hostage taking, or material support for such an act. Defines various terms used for purposes of the section, including “blocked asset,” “clearing corporation,” “financial asset,” “security,” and “securities intermediary.” Sec. 503.

U.S. companies with international footprints should assess the activities of their foreign subsidiaries as they relate to Iran. Non-U.S. companies need to be mindful of the broadening of sanctionable activities under the ISA, and – if issuing securities in the U.S. – the expansion of SEC disclosure rules. Reed Smith will continue to monitor this legislation as well as other sanction activities. Please contact Michael Grant, Jeff Orenstein, Matt Thomas, Leigh Hansson or your usual Reed Smith contact with any questions.

---

1. S.2101: Iran Sanctions, Accountability, and Human Rights Act of 2012.

2. The Iran Transactions Regulations currently restrict transactions between Iran or the Government of Iran and U.S. Persons. A U.S. Person is “any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.” 31 C.F.R. § 560.314. Noticeably absent from this definition are the subsidiaries of U.S. companies, those foreign entities that are owned or controlled by a U.S. parent. In fact, of the comprehensive sanctions programs (Iran, Sudan, Syria, North Korea, Cuba), only the Cuban Assets Control Regulations (“CACR”) impose restrictions on foreign corporations. This second-tier of restrictions has led to the near-total cessation of business between the United States and Cuba.