



## New Law Extends Iran Sanctions to Foreign Subsidiaries

10.16.2012

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On October 9, 2012, the President signed an Executive Order<sup>[1]</sup> to Implement the Iran Threat Reduction and Syria Human Rights Act of 2012.<sup>[2]</sup> Section 4 of the Order prohibits entities that are owned or controlled by U.S. persons from “knowingly engag[ing] in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran” if U.S persons would be prohibited from engaging in the transaction under the Iran sanctions regulations<sup>[3]</sup> administered by the Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department.

Transactions prohibited under the Iran sanctions regulations include:

- Sales or exports of goods, technology, or services to Iranian entities.
- Sales or exports to persons in a third country with reason to know that the goods, technology, or services are intended specifically for resale or reexport to Iranian entities.
- Sales or exports to persons in a third country with reason to know that the goods, technology, or services are intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology, or services to be sold or exported exclusively or predominantly to Iranian entities.
- Any transaction or dealing in, or related to, either goods or services of Iranian origin or owned or controlled by the Government of Iran; or goods, technology, or services for sale or export to Iranian entities. (“Dealing in” includes purchasing, selling, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing.)
- Investing in Iran or in property (including entities) owned or controlled by the Government of Iran.
- Approving, financing, facilitating, or guaranteeing any transaction described above<sup>[4]</sup>

As such, virtually all transactions with Iranian entities are prohibited.

Certain transactions are exempt, and other transactions are eligible for either general or specific

licenses. For example, export or reexport of certain medicines and medical devices to Iranian entities may be approved pursuant to a specific one-year license issued by OFAC.<sup>[5]</sup> There also is a general license authorizing, with respect to such licensed shipments, the making of shipping arrangements, cargo inspections, obtaining of insurance, and arrangement of financing.<sup>[6]</sup>

OFAC has issued a series of FAQs regarding the extension of the Iran sanctions regulations to foreign subsidiaries. Therein OFAC confirms that foreign subsidiaries can use any general license available in the regulations “provided that it satisfies all the conditions and requirements of the exemption or general license,” and can apply for specific licenses “if the transaction is one for which a U.S. person might apply for a specific license.”<sup>[7]</sup>

Civil penalties may be assessed against a U.S. parent company for a foreign subsidiary's violation to the same extent that they would apply if the U.S. parent company had engaged in the conduct itself.<sup>[8]</sup> The U.S. parent company can avoid liability for the violations only if it divests or terminates its business with the entity not later than February 6, 2013.<sup>[9]</sup>

*If you have any questions concerning this topic, please feel free to contact Jahna M. Hartwig, at 202.293.8145 or [jhartwig@williamsmullen.com](mailto:jhartwig@williamsmullen.com) or any member of Williams Mullen's International Section.*

<sup>[1]</sup> See Executive Order from the President regarding Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions with respect to Iran (available at <http://www.whitehouse.gov/the-press-office/2012/10/09/executive-order-president-regarding-authorizing-implementation-certain-s>).

<sup>[2]</sup> Pub. L. 112-158 (Aug. 10, 2012).

<sup>[3]</sup> See 31 C.F.R. Part 560.

<sup>[4]</sup> See *id.* §§ 560.204-560.209.

<sup>[5]</sup> 31 C.F.R § 560.530(a). The medicines and medical devices that are eligible for a license include “drugs” and “devices” as defined in

section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), but does not include any item listed on the Commerce Control List in the Export Administration Regulations *Id.* § 560.530(e). Only items classified as EAR99 are eligible.

[6] *Id.* § 560.530(b).

[7] See [http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques\\_index.aspx#itrshra\\_eo](http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx#itrshra_eo).

[8] See Executive Order, *supra* note 1, § 4(b).

[9] See *id.*, § 4(c).

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