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Get Ready to Get Out of Iran

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Congress and the White House, along with the European Union, have been very active lately making it increasingly difficult – if not entirely unfeasible – for U.S. firms to do business in Iran. In the near term, proposed new and expansive restrictions on Iranian activity may soon target U.S. multinational companies by extending to foreign subsidiaries – entities that have so far had more flexibility there. The latest financial sanctions have made it very difficult to get money in or out of the country, even for dealings that are, at least for now, permitted for non-U.S. persons. The trend is clear, and this may be the right time to reevaluate existing business ties to Iran. Any withdrawal decision, however, should be taken in close consultation with counsel, as the decision process and process steps can lead unwary companies into facilitation violations of the applicable laws.

New Law and House-Passed Legislation

At the end of 2011, the House took the lead on more stringent Iran sanctions. Section 1245 of the FY2012 National Defense Authorization Act, signed into law by the President on December 31, 2011, designates Iran's entire financial sector, including the Central Bank of Iran, as a "primary money laundering concern," requires the President to block the property and interests of all Iranian financial institutions, and prohibits or severely limits correspondent accounts in the United States of foreign financial institutions that facilitate significant transactions with Iranian banks.

Two additional House-passed bills place further burdens on companies – domestic and foreign – attempting to do business in Iran. H.R. 1905 would restrict activities in Iran's petroleum sector and sanction the Islamic Revolutionary Guard Corps. The bill would also amend the Securities and Exchange Act to require any issuer to make certain statements in its annual or quarterly SEC reports as to whether they have engaged in certain transactions in Iran. Note that the SEC reporting requirement would affect not only U.S. companies, but foreign companies issuing securities subject to U.S. law. The underlying rationale is that activities involving Iran are qualitatively material to investors, if not quantitatively material in terms of volume or value. H.R. 2105 would permit sanctions against any foreign person identified as having engaged in certain activities in support of the nuclear, biological, missile, or chemical weapons programs in Iran, North Korea, or Syria.

Proposed Senate Legislation

The Senate has also been busy on this front, with the Senate Committee on Banking, Housing, and Urban Affairs approving a bill to expand existing Iran sanctions earlier this month. Like the House bills, the Senate legislation builds upon the Iran sanctions laws already in effect by further limiting the petroleum- and uranium-related production or transportation activities of any person – again, U.S. or foreign. The bill would allow for penalties against the corporate officers of violating entities, and would also establish SEC reporting requirements for Iran-related activities similar to those set forth in H.R. 1905. Most importantly, the bill would permit civil penalties to be assessed against the

U.S. parent company of a foreign subsidiary that engages in any transaction with the Government of Iran or any other sanctioned Iranian person if that transaction would be unlawful if committed by a U.S. person, including conduct prohibited under the current U.S. economic sanctions on Iran. The implementation of U.S. parent company liability for the acts of its foreign subsidiaries would elevate the current Iran sanctions regime to a breadth comparable to the current sanctions against Cuba under the Trading With the Enemy Act.

Most Recent Financial Sanctions

Most recently, on February 6th, President Obama issued a new Executive Order implementing the blocking provision of Section 1245 of the Defense Authorization Act. The Executive Order blocks the property and interests in property of the Government of Iran, including the Central Bank of Iran, and any Iranian financial institution, thus prohibiting U.S. persons from dealing with or doing anything to benefit these entities. The primary effect is that U.S. financial institutions are now required to freeze, rather than reject, such transactions. Unblocking such funds regularly takes years, or the funds may be lost entirely. Moreover, a new EU regulation issued late last month similarly freezes the assets of the Central Bank of Iran and other named Iranian banks, thus presenting additional hurdles for foreign subsidiaries based in Europe.

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