HUNTON& WILLIAMS

Client Alert

January 2013

U.S. to Block Transactions with Any Person Dealing with Iranian Energy, Shipping, Other Sectors

The Iran Freedom and Counter-Proliferation Act of 2012 (IFCPA), enacted this week by Congress as part of the National Defense Authorization Act for Fiscal Year 2013, further ratchets up U.S. economic sanctions against Iran. U.S. persons or entities (hereafter “persons”), including their foreign subsidiaries, or persons in the U.S., are already prohibited from virtually all transactions involving Iran. Under IFCPA, U.S. sanctions would be extended to prohibitions on dealing with third parties, foreign or domestic, engaging in a range of specified kinds of transactions involving Iran.

Under IFCPA, the president is required to prohibit transactions with any person that the president determines (i) is part of the energy, shipping, shipbuilding or port operation sectors in Iran; or (ii) knowingly provides significant financial, material, technological or other support to, or goods or services to, the foregoing, or to any Iranian on the Specially Designated Nationals list (SDN). The SDN is a list, frequently revised, of more than 6,000 individuals and businesses with which U.S. persons are prohibited from engaging in transactions anywhere in the world. Such presidential determinations would generally be carried out by making further additions to the SDN.

The president is also directed to impose sanctions directly on the designated persons, with such sanctions potentially including prohibitions on loans from U.S. financial institutions and prohibitions on foreign exchange transactions that come within U.S. jurisdiction. In addition, the president is required to prohibit or restrict correspondent or payable-through accounts by foreign financial institutions involved in financing any of the foregoing types of transactions.

IFCPA imposes similar sanctions on persons who knowingly sell, supply or transfer to or from Iran any precious metals, as well as certain materials. The covered materials are ones used in energy, shipping or shipbuilding, or in any sector controlled by Iran’s Revolutionary Guard Corps, or in a transaction with any Iranian on the SDN, or used in connection with the Iranian nuclear, ballistic missile or military programs. “Materials” means graphite; raw or semifinished metals such as aluminum and steel; coal; and software for integrating industrial processes. The sanctions further include prohibitions or restrictions on correspondent or payable-through accounts by foreign financial institutions knowingly involved in significant financial transactions relating to the foregoing.

Direct sanctions would also be applicable to persons providing underwriting services, insurance or reinsurance for any sanctioned activity, including those described above. IFCPA also specifies prohibitions or restrictions on correspondent or payable-through accounts with foreign financial institutions knowingly engaging in significant transactions with Iranians on the SDN.

In sum, IFCPA represents a further effort to expand trade sanctions against Iran significantly beyond U.S. transactions directly with Iran. Compliance may require ceasing transactions with persons or entities that may not appear to have any connection with Iran, if those persons are designated for sanctions by the president. The presidential designations, however, are to occur 180 days after enactment of IFCPA. Thus, if it is evident that customers or suppliers are involved in problematic transactions, there is in effect a grace period to unwind relations with those entities.

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