New Law Expands Iranian Sanctions to Include Acts by Foreign Subsidiaries of U.S. Companies

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On August 10, 2012, President Obama signed the "Iran Threat Reduction and Syria Human Rights Act of 2012" ("Act") into law. Section 218 expands the extraterritorial reach of the Iran Sanctions once again:

> Not later than 60 days after the date of enactment of this Act, the President shall prohibit an entity owned or controlled by a United States person and established or maintained outside the United States from knowingly engaging in any transaction directly or indirectly with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would be prohibited by an order or regulation issued pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) if the transaction were engaged in by a United States person or in the United States.

In other words, the U.S. will now enforce all of its Iranian Sanctions against foreign subsidiaries of U.S. companies. In the past, the Iranian Sanctions, in most cases, applied to United States persons (U.S. citizens, resident aliens, and entities organized in the United States). For example, Section 204 of the Iranian Transactions Regulations prohibits United States persons from providing any goods, technology or services to a person in a third country knowing that the goods are intended to be provided to Iran, and Section 206 prohibits United States persons from engaging in any transaction related to: 1) goods or services of Iranian origin; or 2) goods, technology, or services being exported, reexported, sold, or supplied, directly or indirectly, to Iran or the government of Iran.

Beginning on October 9, these sections will apply to any majority owned or controlled foreign subsidiary of a U.S. company. Where the Iranian Sanctions currently say United States person, after October 9, they should be read to say, "United States person or any of its majority owned or controlled foreign subsidiaries. The Act defines "own or control" to mean: 1) controlling more than 50 percent of equity interest in an entity; 2) holding a majority of the board seats; or 3) otherwise controlling the actions, policies, or personnel decisions of the entity."

Section 218(c) of the Act allows the government to impose civil penalties on both the foreign subsidiary and its U.S. parent company for the acts of the foreign subsidiary. So if a foreign subsidiary of a U.S. company sells even a foreign-made product that it knows or should have known is intended for Iran, the U.S. parent can be subject to civil penalties equal to the greater of $250,000 or 2 times the value of the transaction.

How can the U.S. parent avoid liability? Section 218(d) provides that the penalties will not apply if the U.S. parent divests or terminates its business with its subsidiary on or before December 8, 2012, (180

days after the enactment of the Act). Alternatively, the U.S. parent could require its foreign subsidiaries to terminate all transactions with Iran before October 9, 2012.

The new law also imposes new SEC reporting requirements on U.S. issuers regarding certain Iranian transactions by the issuer or any affiliate of the issuer beginning 180 days after enactment (i.e., February 6, 2013) and requires the SEC to notify the President, various congressional committees and to post the information on the Internet for public consumption. The Act requires the President to initiate an investigation to determine if the reported transactions violate the sanctions.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

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