

U.S. Sanctions on Iran Extended: U.S. Companies Now Liable if Foreign Affiliates Have Business Dealings with Iran

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The recently enacted Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHRA) holds U.S. companies liable if foreign affiliates they own or control conduct business with Iran. Section 218 of ITRSHRA effectively eliminates a loophole in the previous OFAC Iran Sanctions. ITRSHRA now prohibits a foreign affiliate (owned/controlled by a U.S. person) from directly or indirectly engaging in any transaction without an authorizing license from OFAC that would be prohibited by the OFAC Iran Sanctions if a U.S. person engaged in the same act.

Section 218(a)(2) of ITRSHRA defines “owning” or “controlling” as:

- (a) holding more than 50% of the foreign affiliate’s equity (whether by vote or value)
- (b) holding a majority of seats on the foreign affiliate’s board of directors; or
- (c) otherwise controlling the actions, policies, or personnel decisions of the foreign affiliate.

On October 9, 2012, U.S. President Obama issued Executive Order 13628 (EO 13628) implementing Section 218 of ITRSHRA. Section 4 of EO 13628 is essentially identical to that of Section 218.

Technically, in order to avoid liability under ITRSHRA and EO 13628, U.S. companies and other U.S. persons owning or controlling foreign affiliates directly or indirectly doing business with Iran must divest (i.e., transfer ownership and control of) those affiliates by February 6, 2013. Under certain circumstances, it may be possible to have the foreign affiliates discontinue (and thereafter refrain from) any further dealings with Iran. It must be stressed that the prohibitions of ITRSHRA Section 218 and EO 13628 Section 4 are effective immediately and thus the foreign affiliates should (in any event) immediately cease at this time any unlicensed business activities with Iran, including the receipt of any unlicensed funds transfers from Iran.

OFAC has advised that it will consider applications for specific licenses under a wind down plan to wind down and complete ongoing foreign affiliate transactions with Iran presumably by the February 6, 2013, deadline.

U.S. companies and other U.S. persons with foreign affiliates that do business with Iran should review their activities and seek legal advice on ITRSHRA and EO 13628 to assess their situation and take action to ensure that they are in compliance with U.S. law. For example, it is a good idea to memorialize a record by obtaining written confirmation of acknowledgement and agreement by the foreign affiliate to ceasing operations and divestment of control. Other measures could also be undertaken, depending on specific circumstances, but they need to be undertaken immediately.

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Joseph D. Gustavus
+1.248.267.3317