

New Iran Sanctions Will Impose New Duties on U.S. Banks, Broker-Dealers, Investment Companies, and Insurance Companies with respect to Certain Accounts Held by Foreign Financial Institutions

On July 1, 2010, while much of the banking and securities industry was singularly focused on financial regulatory reform legislation, the president signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Sub-sections 104(c) and (e) of the act require the Secretary of the Treasury to adopt regulations imposing new requirements on banks, broker-dealers, investment companies, and insurance companies serving foreign financial institutions.

Specifically, Section 104(c) requires the Secretary of the Treasury in 90 days to prescribe regulations prohibiting or imposing strict conditions on the opening and maintaining of a correspondent account or payable-through account by a foreign financial institution that the secretary finds knowingly engages in any of five (5) activities helping Iran:

1. Facilitating efforts of Iran's government to acquire weapons of mass destruction (or delivery systems for such weapons) or to provide support for foreign terrorist organizations;
2. Facilitating the activities of a person subject to U.N. Security Council resolutions sanctioning Iran;
3. Engaging in money laundering to carry out either activity;
4. Facilitating efforts by Iran's Central Bank or other Iranian financial institution to carry out either activity; or
5. Facilitating a significant transaction or providing significant financial services for Iran's Revolutionary Guard Corps or a financial institution whose property is blocked in connection with either activity.

Thus, shortly, by September 28, a U.S. bank, broker-dealer, investment company, and insurance company may have to close the accounts of certain foreign financial institutions that the secretary finds have been helping Iran's government's nuclear weapons program or efforts at international terrorism. That will be true irrespective of whether the account is used for those purposes.¹

Of more general applicability and burden is Subsection 104(e) which requires the secretary to prescribe, not subject to any time deadline, regulations to require a domestic financial institution maintaining a correspondent or payable-through account in the U.S. for a foreign financial institution to do one or more of four (4) things:

1. Perform an audit of the above-listed activities that may be carried out by such foreign financial institution;
2. Report to Treasury with respect to financial services provided with respect to any such activity;

¹ Section 104(d) requires the secretary to prescribe regulation in 90 days to prohibit any person controlled by a domestic financial institution from knowingly engaging in a transaction with or benefitting Iran's Revolutionary Guard Corps (or its agents or affiliates whose property is blocked).

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3. Certify, to the best of its knowledge, that the foreign financial institution customer is not engaged in any such activity; and/or
4. Establish enhanced due diligence policies, procedures, and controls reasonably designed to detect whether the secretary has found the financial institution to knowingly engage in any such activity.

Of course, it is difficult to envision every bank, broker-dealer, investment company, and insurance company that has foreign financial institution clients each conducting separate audits of such clients to detect whether each foreign financial institution has assisted the Iranian government; however, it may not be that far-fetched to expect foreign banks to have independent audits for such activities and then to provide reports of such audits to U.S. financial institutions.

Complicating this area is the fact that it is not inconceivable that the secretary could find that a foreign bank has engaged in the activities listed above, but that such finding could be based on classified information or even possibly be classified information itself.

At this time, there is not much a U.S. bank, broker-dealer, investment company, or insurance company can do in this area other than to await patiently the issuance of treasury regulations on or about September 28. Of course, there is nothing to discourage such a firm contacting Treasury before that date to express any particularly strong views it may have on the matter.

The Financial Services Practice Group of Winston & Strawn represents a broad range of financial institutions on all aspects of their businesses, including regulatory matters, legislative developments, and proposals affecting the financial industry. If you have questions regarding the new rules, if you need advice with respect to how those rules may affect you, or if you need advice or assistance in preparing policies and procedures to address the new rules, please contact any of the Winston & Strawn attorneys listed below or your usual Winston & Strawn contact:

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