

To: Our Clients and Friends

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OFAC Issues New Sanctions on Weapons of Mass Destruction Proliferators; Adopts Controversial Guidance on Piercing the Corporate Veil

OFAC has issued a new set of regulations freezing property belonging to entities and individuals identified as having engaged or attempted to engage in transactions or activities that have “materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery.” The property affected is any property or interests in property that are in the United States or the possession or control of U.S. persons, including their foreign branches. The persons whose property is affected appear on OFAC’s Specially Designated Nationals List.

Three aspects of the new regulations are especially noteworthy:

- The regulations cover persons designated as merely under investigation for being proliferators (they don’t have to have been found guilty);
- The freeze order is interpreted as prohibiting U.S. persons from providing funds, goods or services to “or for the benefit” of or receiving funds, goods or services from a designated proliferator or suspected proliferator; and
- The regulations adopt an interpretation previously appearing in OFAC guidance that a person whose property or interests in property are blocked “has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest.” Says OFAC, the property and interests of such an entity are blocked even if the entity is not listed on the Specially Designated Nationals List. For a commentary on this troublesome guilt-by-association interpretation, see International Regulatory Bulletin No. 431.

In these and possibly other ways, OFAC continues to advance an increasingly aggressive posture on the scope and reach of its regulations. Uncertainties are bound to ensue.

The regulations will appear in the Federal Register for April 13th and become effective immediately.

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