

To: Our Clients and Friends

December 21, 2009

State Recommends Sanctions Waiver on Export of Certain Personal Communications Software to Iran

The U.S. State Department issued on December 15, 2009, a letter notifying the Senate Armed Services Committee of its intent to recommend that the Department of Treasury's Office of Foreign Asset Control (OFAC) issue a general license authorizing "downloads of free mass market software necessary for the exchange of personal communications and/or sharing of information over the internet such as instant messaging, chat and email, and social networking." Additionally, the State Department is recommending that OFAC authorize "related services," presumably a reference to communications and social networking services such as Twitter and Youtube which do not require downloaded software.

Section 1606 of the Iran-Iraq Arms Non-Proliferation Act of 1992 allows the President to waive certain requirements to impose the sanction by making a determination that the waiver is "essential to the national interest of the United States." The President has delegated the waiver authority to the Secretary of State, who has in turn delegated the authority to the Under Secretary for Arms Control and International Security. The State Department's letter, in finding that this change was in the national interest, noted "personal Internet-based communications are a vital tool for change in Iran as recent events have demonstrated," a clear reference to the use of YouTube, Facebook, Twitter and other communications services to disseminate information about the events in Iran to the outside world.

It is still unknown how OFAC will implement the waiver. However, the report by the State Department attached to the letter indicates that the license will be along the lines of existing exemptions for the exchange of direct mail and phone calls. Furthermore, the license will specifically exclude the exportation of services or software with knowledge or reasons to know that such services or software are intended for the Government of Iran. One interesting issue is what steps should be taken by the providers of these services and software to assure that these services are not being provided to the Government of Iran. During the events after the Iranian elections, it was widely believed that these services were also being used by the Government of Iran to spread disinformation about current events in the country.

Prepared by: Jackson C. Pai
Direct Dial: (310) 576-2107
jackson.pai@bryancave.com

Bryan Cave's International Regulatory Bulletins are available online at www.bryancave.com

Bryan Cave LLP International Trade Client Service Group

Los Angeles

David Stepp, Partner
Nicole Simonian, Partner
Andrew Klungness, Partner
Michael Zara, Associate
Jackson Pai, Associate
Marwa Hassoun, Associate

Washington

Kevin Wolf, Partner, Deputy CSG Leader
Stanley Marcuss, Partner
Lyle Vander Schaaf, Partner
Daniel Schwartz, Partner
Mark Mansour, Partner
Susan Kovarovics, Counsel
Cliff Burns, Counsel
Jay Reiziss, Counsel
Corey Norton, Associate
Katherine Bugbee Heubert, Associate
Felipe Berer, Special Legal Consultant
Amos Jones, Associate
Megan Gajewski, Associate
Mahmoud Fadlallah, Associate

Chicago

Nicola Fiordalisi, Partner
Patricia Hanson, Counsel

St. Louis

Fred Bartelsmeyer, Partner

San Francisco

Charlotte Ito, Counsel

Phoenix

Jeronimo Gomez del Campo, Consultant
(admitted in Mexico)
Juan Moreno, Counsel (admitted in US and Mexico)

New York

Judith Rinearson, Partner
Hassan Albakri, Associate

Atlanta

Joel Williams, Partner

Shanghai

Evan Yee-Fan Chuck, Partner
Fabiola Suwanto, Principal
Zhongdong Zhang, Principal
Chen Zhengguang, Director China Customs Affairs*
Tony Kerr, Regional Director*
Yi Huang, Associate
Barry Fang, Associate
Estelle Lee, Senior Manager, China Affairs*
Min Lan, Director of Economic Analysis*
Rainny Xiaoran Wang, PRC Consultant*
Lan Zhang, PRC Consultant*

Hong Kong

Mao Tong, Partner
Peter Chow, Partner
Donald Lan, Counsel
Michelle Cheuk, Associate
Tim Ma, Associate

Singapore

Ignatius Hwang, Partner
Cecil Leong, Managing Director BCIT*
Alfred Chia, Senior Associate
Chian Voen Wong, Regional Manager*
Melissa Kwek, Associate
Stephanie Wong, Senior Manager*

Bangkok

Malika Bhumivarn, Regional Director*
Kittipong Jangkamolkulchai, Regional Manager*

Tokyo

Tatsuya Kanemitsu, Senior Manager*

London

Anita Esslinger, Partner

Hamburg

Dr. Michael Leue, Partner
Dr. Staffan Wegdell, Counsel

Paris

Joseph Smallhoover, Partner
Jilali Maazooz, Partner

*Non-legal professionals

Note: This Bulletin is intended solely for general informational purposes and should not be construed as, or used as a substitute for, legal advice with respect to specific transactions. Such advice requires a detailed analysis of applicable requirements and an evaluation of precise factual information. We do not undertake to keep recipients advised as to all relevant legal developments. This Bulletin may be construed as an advertisement or solicitation. ©2009 Bryan Cave LLP. All rights reserved.