

ClientAlert

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US Strengthens Iran Sanctions Regime With Enactment of Iran Threat Reduction and Syria Human Rights Act of 2012

On August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "Act"). The passage of the Act, which reflects the strengthening of a comprehensive US Government approach to intensify sanctions against Iran, follows the recent issuance of several Executive Orders that broaden the extraterritorial application of US sanctions against foreign financial institutions ("FFIs") and non-US entities generally, principally in connection with Iran's energy and banking sectors, as well as parties designated under the Weapons of Mass Destruction or Terrorism sanctions programs. The Act further expands the scope and coverage of these types of measures. In addition, the Act imposes new disclosure obligations on public companies that knowingly engage in activities that violate US sanctions. Highlights of the new Act include:

- Expanding the scope of energy-related sanctionable activity by non-US entities as well as available sanctions measures under the Iran Sanctions Act of 1996 ("ISA"), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA").
- Expanding sanctions against FFIs under both CISADA and the National Defense Authorization Act of 2012 ("NDAA") in connection with facilitation of significant transactions or providing of significant services to designated financial institutions and persons whose property or interests in property are blocked, as well as financing of petroleum-related transactions.
- Expanding the application of US sanctions and penalties under the International Emergency Economic Powers Act ("IEEPA") to include foreign entities that are owned or controlled by US persons.
- Creating new Securities and Exchange Commission ("SEC") disclosure requirements whereby issuers must disclose publicly in their annual or quarterly reports whether they or their affiliates have knowingly engaged in sanctionable activity during the period covered by those reports.
- Establishing new sanctions on persons who facilitate transfers of goods and technologies to Iran or Syria that may be used to commit human rights abuses.

Expansion of ISA, as Amended by CISADA

The Act adds to sanctions with respect to Iran's energy sector by expanding the scope of ISA's energy sanctions and creating new types of conduct constituting sanctionable activity, including construction of transportation infrastructure that supports delivery of domestically refined petroleum in Iran, certain barter transactions that support importation into Iran of refined petroleum products, and purchases of Iranian debt issued after the date of the Act's



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enactment that contribute to Iran's ability to import refined petroleum products. The Act extends ISA sanctions to persons who knowingly participate in petroleum resources joint ventures, anywhere in the world, established on or after January 1, 2002, in which the Government of Iran is a substantial partner or investor, although the Act provides an exception for ventures terminated within 180 days of the Act's date of enactment. Persons who provide certain goods and services that support Iran's ability to develop its petroleum resources or domestically produce petrochemical products and that were previously the subject of Executive Orders are now also subject to ISA sanctions. Likewise, persons who within 90 days after the date of enactment of the Act own or operate a vessel that is used to transport crude oil from Iran to another country, or who own or operate a vessel that conceals the Iranian origin of crude oil or refined petroleum products transported on the vessel, are subject to sanctions. Vessels involved in such activities may be barred from US ports for up to two years. The new law further specifies that underwriting services, insurance or reinsurance to the National Iranian Tanker Company ("NITC"), National Iranian Oil Company ("NIOC"), or any successor entity to either company constitute sanctionable activity. The President may not, however, impose sanctions if the provision of such services is related to the provision of food, medicine and medical devices or humanitarian assistance to Iran.

The Act expands the menu of possible ISA sanctions from nine to twelve, and increases the number of sanctions measures that must be imposed against violators from at least three to at least five. Specifically, the three new available ISA sanctions are: (1) a prohibition on any US person from investing in or purchasing significant amounts of equity or debt instruments of a person sanctioned under ISA; (2) an exclusion from the United States of aliens who are corporate officers, principals or controlling shareholders in a sanctioned person; and (3) application of ISA sanctions to principal executive officers of a sanctioned entity, which could include a freezing of their US assets.

The Act expands the scope of ISA sanctions with respect to Iran's development of weapons of mass destruction ("WMD"). The Act requires the imposition of ISA sanctions on persons who export, transfer or otherwise facilitate the transshipment of goods, services, technology or other items, and who knew or should have known such action would materially contribute to Iran's ability to develop WMD. Additionally, ISA sanctions must be imposed on persons who knowingly participate in joint ventures, anywhere in the world, relating to mining, production or transportation of uranium with the Government of Iran, Iranian firms or persons acting for or on behalf of the Government of Iran, although the Act provides an exemption for persons who withdraw from such joint ventures within 180 days of the Act's date of enactment.

The Act also modifies the Presidential waiver provided for under ISA. The President may only waive energy-related sanctions if a waiver is "essential to the national security interests of the United States." The waiver standard for WMD-related sanctions is "vital to the national security interests of the United States."

CISADA Amendments

The Act amends CISADA to impose sanctions on FFIs that facilitate a significant transaction or provide significant services not only to certain designated financial institutions but also to designated non-financial entities whose property or interests in property are blocked based on their connection to Iran's proliferation of WMD or support of terrorism. The Act also clarifies that the sanctions on FFIs for dealings with designated financial institutions extend to indirect dealings, e.g., as intermediary, not only direct.

The Act also expands CISADA reporting requirements regarding Iran's crude oil and refined petroleum products to require the President to report on a variety of additional factors. These factors include, among other things, the volume of crude oil and refined petroleum products imported to and exported from Iran, the persons selling and transporting crude oil and refined petroleum products to and from Iran, the countries with primary jurisdiction over persons engaging in such activities, the countries in which such products were refined, the sources of financing for such imports of refined petroleum products and crude oil, and the involvement of foreign persons in efforts to assist Iran in developing its oil and gas production capacity.

The Act also requires the Secretary of the Treasury to report to Congress a list of providers of specialized financial messaging services that directly provide such services to, or enable or facilitate direct or indirect access to such services for, the CBI or other Iranian financial institutions sanctioned pursuant to CISADA. The Act authorizes the imposition of sanctions on such providers of specialized financial messaging services, including on intermediary financial institutions that enable or facilitate direct or indirect access to these financial messaging services, for the CBI or other sanctioned financial institutions. The Act contains an exception for persons subject to foreign sanctions regimes that require such providers to cut off services to a substantially similar group of Iranian institutions.

Strengthening of NDAA Sanctions

The Act amends the NDAA with respect to the treatment of state-owned banks other than Central Banks. Previously state-owned banks could be sanctioned under the NDAA only with respect to petroleum related financial transactions. Under the Act, state-owned banks are treated like the state-owned FFIs,

i.e., subject to sanctions for non-petroleum transactions also. Further, under the Act, countries that have previously been exempted from NDAA sanctions as a result of significantly reducing petroleum purchases from Iran are subjected to more stringent reduction requirements to maintain the exception.

Application of US Sanctions Penalties to Foreign Entities Owned or Controlled by US Persons

The Act expands the application of IEEPA prohibitions to foreign entities that are “owned or controlled” by US persons, and prohibits US-owned or US-controlled entities from engaging in any transaction, directly or indirectly, with the Government of Iran or any person subject to Iranian jurisdiction, where such transaction would be prohibited by the IEEPA if the transaction were engaged in by a US person or in the United States. The Act defines “own or control” to mean, with respect to an entity, that the US person holds more than a 50 percent equity interest by vote or value in the entity; holds a majority of seats on the entity’s Board of Directors; or otherwise controls the actions, policies or personnel decisions of the entity. US persons may face IEEPA civil penalties if foreign entities that they own or control violate, attempt to violate, conspire to violate or cause a violation of this prohibition. Penalties will not apply with respect to a transaction if the US person divests or terminates its business with the entity within 180 days of the Act’s enactment. Previously, non-US entities owned or controlled by US entities were not subject to these prohibitions in most circumstances where there was no other US nexus.

New SEC Reporting Requirements

The Act outlines new SEC disclosure requirements, which provide that issuers that are required to file annual or quarterly reports under the Securities and Exchange Act of 1934 must disclose publicly in those reports whether they or their affiliates have knowingly engaged in sanctionable activity during the period covered by the report. This requirement is effective for quarterly and annual reports filed after February 6, 2013 (e.g., for calendar year issuers, it will first apply to their Form 10-K for the year ended December 31, 2012). It should be noted that under the Exchange Act “affiliate” means a person that controls, or is controlled by, or is under common control with, another person. In particular, the Act amends the Exchange Act to require disclosure of any knowing engagement in activities described in ISA relating to Iran’s energy sector or described in CISADA relating to FFIs that facilitate WMD proliferation, terrorism, money laundering or IRGC activity. Issuers must also disclose any knowing engagement in activities involving persons whose property is blocked or who are part of

the Government of Iran, as well as relating to transfers of weapons and other technologies to Iran likely to be used to facilitate human rights abuses. In each case, the required disclosure must be detailed as to the activity, including its nature and extent, the gross revenues and net profits attributable to such activity and whether the issuer or its affiliate intends to continue the activity. The Act also requires the President to conduct an investigation into the possible imposition of sanctions on such companies under the relevant Iran sanctions laws.

The potential impact on public companies of these new disclosure requirements should not be underestimated. Currently, the SEC sends comment letters to issuers that have disclosed activities with certain countries subject to US sanctions or that the SEC perceives may have engaged in such activities by virtue of other disclosures made by the issuer. Such comment letters originate from the Office of Global Security Risk within the SEC’s Division of Corporation Finance. As a result, if a public company has made an initial voluntary self-disclosure to a US sanctions enforcement agency, it may delay public disclosure of the matter on the basis that it is not material to its security holders, even if the company deemed such voluntary self-disclosure necessary. The new law will result in all such activity—irrespective of materiality—needing to be disclosed in the annual or quarterly report for the relevant period. Such disclosures will need to be accurate and complete in all respects and will likely drive a more extensive range of SEC comments that will, themselves, require companies to invest significant resources to respond appropriately and may also directly impact the disclosures that companies make to US sanctions enforcement agencies. In sum, the requirement of public disclosure is a significant additional tool for regulators.

Sanctions on Transfers of Goods and Technology

The Act strengthens the US Government’s efforts to impose sanctions on persons who facilitate transfers of goods and technologies to Iran that may be used to commit human rights abuses. Specifically, the Act extends CISADA sanctions, including a US visa ban and the blocking of assets, on persons and companies that supply Iran with equipment and technologies that may be used to commit human rights abuses. The Act also imposes sanctions pursuant to CISADA against persons found to have engaged in censorship or curtailment of the rights of freedom of expression or assembly of Iran’s citizens by providing satellite service to the Government of Iran or its entities, and requires satellite service providers and other entities to cease providing such services.

Similarly, the Act provides for sanctions against persons determined to have engaged in the transfer of technologies that are likely to be used by Syrian officials to commit human rights abuses or restrict the free flow of information in Syria, subject to certain exceptions. The President must also identify and report to Congress within 90 days of the date of the Act's enactment those persons and firms companies found to have engaged in censorship or repression of Syria's citizens, and must impose sanctions pursuant to IEEPA on such persons.

Finally, the Act also codifies the information technology sanctions promulgated under Executive Order 13606, entitled "Blocking the Property and Suspending Entry into the United States of Certain Persons with Respect to Grave Human Rights Abuses by the Governments of Iran and Syria Via Information Technology" ("GHRIVITY EO"). The GHRIVITY EO permits the US Government to designate as a "Specially Designated National" and block the property of persons in Syria and Iran that the United States has determined to have operated, or directed the operation of, information and communications technology that facilitates computer or network disruption, monitoring or tracking that could enable human rights abuses by or on behalf of the Governments of Syria or Iran.

Conclusion

The rapidly developing and expanding scope of Iran sanctions reflect the US Government's resolve to isolate Iran and to do so by expanding the reach of US sanctions to cover even greater categories of activity by non-US entities. These comprehensive measures reinforce the need for extreme caution, heightened due diligence and effective internal compliance measures to prevent violations of US sanctions laws.

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