

## United States Enacts New Round of Iran Sanctions

On August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012,<sup>1</sup> which imposes additional sanctions on Iran and Syria.

The new law for the first time extends to foreign subsidiaries of US companies the preexisting sanctions against Iran administered by the Office of Foreign Assets Control of the US Department of the Treasury (OFAC). It imposes new reporting requirements on firms with securities traded on US stock exchanges. It expands the scope of the Iran Sanctions Act (ISA), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), to target additional activities and impose new sanctions with respect to conduct of non-US companies.

The principal provisions of the new law are as follows:

- Current OFAC sanctions against Iran do not extend to the foreign subsidiaries of US companies, although any US entity, US citizen, or US resident (collectively, US Person) that facilitates the Iranian business in which the foreign subsidiary engages may be penalized. The new law directs the President to prohibit an entity owned or controlled by a US Person and established or maintained outside the United States from knowingly engaging in any transaction directly or indirectly with the government of Iran or persons subject to the jurisdiction of Iran if such transaction would violate US sanctions laws if a US Person engaged in it. A US company would be subject to civil penalties for the activities of its foreign subsidiaries under this new provision unless it divests or terminates the business with the foreign subsidiary within 180 days of enactment. (Section 218)
- The new law requires any company whose stock is traded on US exchanges to make disclosures in public filings with the SEC if it, or any affiliate, has knowingly engaged in certain activities prohibited by CISADA or by OFAC sanctions. The President must initiate an investigation to determine whether penalties should be imposed as a result of the reported activities. (Section 219)
- The new law expands the list of sanctionable activities under the ISA, as amended by CISADA, to include the following activities (whether engaged in with actual or constructive knowledge) and to increase from three to five the number of mandatory sanctions that the President must impose:
  - Bartering to exchange goods for goods (including the insurance and reinsurance of such exchanges), and purchasing, subscribing to, or facilitating the issuance of sovereign debt of Iran (including government bonds) in support of Iran's ability to import refined petroleum. (Section 201)
  - Participating, after the date of enactment of the new law, in a joint venture (JV) with respect to the development of petroleum resources outside of Iran if the JV was

established on or after January 1, 2002, and the government of Iran is a substantial partner or investor in the JV, or Iran could receive technology or equipment to support its domestic development of petroleum resources through a direct operational role in the JV (unless the person participating in the JV terminates its involvement within 180 days of enactment). (Section 201)

- Participating with the government of Iran or an entity in Iran in a JV established on or after February 2, 2012, that involves any activity relating to the mining, production, or transportation of uranium. With respect to such JVs established before February 2, 2012, sanctions may be imposed if the JV is used to transfer uranium directly or indirectly to Iran through a third country, if the government of Iran receives significant revenue from the JV, or if Iran could receive technology or equipment to support its ability to develop nuclear weapons (unless the person participating in either of these types of JVs terminates its involvement within 180 days of enactment). (Section 203)
- Providing to Iran goods, services, technology, or support that contributes directly and significantly to Iran's ability to develop either petroleum resources located in Iran or domestic production of refined petroleum products; this includes providing assistance with respect to constructing any port facilities, railways, or roads, the primary purpose of which are to support the delivery of refined petroleum products with a value of \$1 million or an aggregate value of \$5 million over a 12- month period. (Section 201)
- Providing to Iran goods, services, technology, or support that contributes directly and significantly to the maintenance or expansion of Iran's domestic production of petrochemical products with a value of \$250,000 or an aggregate value of

\$1 million over a 12-month period. This provision codifies an Executive Order issued on November 21, 2011. (Section 201)

- Owning, operating, controlling, or insuring a vessel that was used (i) by the controlling beneficial owner (with actual knowledge) or (ii) by a person that otherwise owns, operates, controls, or insures the vessel (with actual or constructive knowledge) to transport crude oil from Iran to another country. This provision does not apply unless at the time of the transportation of the crude oil a presidential determination is in effect that there is a sufficient supply of petroleum produced in other countries to permit purchasers from Iran to reduce significantly their purchases from Iran. This provision also does not apply with respect to the transport of crude oil from Iran to a country that the President has found is significantly reducing its oil purchases from Iran. Underwriters, insurers, and reinsurers exercising due diligence are exempt from this provision. (Section 202)
- Transporting crude oil or refined petroleum products from Iran in a manner that conceals the origin of the products; sanctioned vessels could be banned from landing at any US port for up to two years. (Section 202)
- Exporting, transferring, or facilitating the transshipment of goods, services, or technology with knowledge that such items would contribute materially to the ability of Iran to acquire or develop weapons of mass destruction (WMD) or conventional weapons. (Section 203)
- Providing underwriting services, insurance, or reinsurance for the National Iranian Oil Company (NIOC) or the National Iranian Tanker Company (NITC) (except if related to the provision of agricultural commodities, food, medicine, medical devices, and humanitarian assistance to Iran). Underwriters, insurers, and reinsurers

exercising due diligence are exempt from this provision, as are those who provide reasonable assurances that they will cease providing services to NIOC and NITC not later than 120 days after enactment of the new law. (Section 212)

- Purchasing, subscribing to, or facilitating issuance of Iranian sovereign debt or the debt of any entity owned or controlled by the government of Iran issued on or after the date of enactment of the new law. (Section 213)
- In a further expansion of the ISA, as amended by CISADA, there is a new and expansive definition of “services,” which now includes software, hardware, financial, professional consulting, engineering, and specialized energy information services, energy-related technical assistance, and maintenance and repairs. (Section 207)
- The new law expands the list of sanctions that the President may impose under the ISA, as amended by CISADA. Specifically, the President may (i) prohibit US persons from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person; (ii) deny entry into the United States to any corporate officer or principal of, or any shareholder with a controlling interest in, a sanctioned person. In addition, any of the ISA sanctions may now be imposed on the principal executive officers (and any persons performing similar functions) of any sanctioned person. This could include freezing all of their assets in the United States. (Section 204)
- The new law expands the scope of Section 104 of the ISA, as amended by CISADA, which authorizes the US Department of the Treasury to prohibit or impose conditions on the opening or maintenance of correspondent and payable-through accounts in the United States by foreign financial institutions found to have knowingly engaged in certain proscribed activities. First, foreign financial institutions

may be sanctioned if they facilitate anyone acting on behalf of, or at the direction of, or under ownership or control of, any person subject to United Nations Security Council resolutions imposing sanctions on Iran. Second, under prior law, foreign financial institutions were subject to sanctions if they facilitated a significant transaction with or provided significant financial services to *financial institutions* whose property and interests in property are blocked for activities related to the proliferation of weapons of mass destruction and the support of terrorism.

Under the new law, foreign financial institutions may be sanctioned for facilitating transactional activity with *any person* whose property is so blocked. Third, the application of Section 104 is extended to foreign financial institutions found to: (i) knowingly facilitate, or participate or assist in, sanctionable activities, including by acting on behalf of, at the direction of, or as an intermediary for, or otherwise assisting another person with respect to the sanctionable activities; (ii) attempt or conspire to facilitate or participate in such activities; or (iii) be owned or controlled by a foreign financial institution that is found to be knowingly engaged in such activities. (Sections 214, 215, 216)

- The new law authorizes the President to block the property of any person who knowingly sells, leases, or provides a vessel, or provides insurance or reinsurance or any other shipping service for the transportation to or from Iran of goods that could materially contribute to the activities of Iran with respect to WMD proliferation or its support of international terrorism. (Section 211)
- The new law would also tighten sanctions against Iran’s Revolutionary Guard Corps, its agents and affiliates, and persons who deal with them (Title III); expand sanctions against persons who supply Iran with items used to commit human rights abuses (Title IV); make it easier for US victims of terrorism

to enforce US judgments for damages against Iran (Section 502); and impose sanctions on persons that enable the Syrian government to commit human rights abuses (Title VII).

The US sanctions program against Iran now consists of a complicated patchwork of legislation, Executive Orders, and regulations, implemented partially by OFAC and partially by the US Department of State, making it more difficult for both US and non-US companies to understand their obligations under US law. Companies in many fields — banking, insurance, investment banking, shipping, leasing, energy, infrastructure, engineering, consulting, information technology, and others — may be affected. Extreme care must be taken to assess whether potential activities, particularly touching on Iran, are compliant with the wide-ranging US sanctions that now apply to both US and non-US enterprises.

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**Endnotes**

<sup>1</sup> Available at [http://www.mayerbrown.com/files/uploads/Documents/BILLS-112hr1905enr\\_1\\_.pdf](http://www.mayerbrown.com/files/uploads/Documents/BILLS-112hr1905enr_1_.pdf).

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