

New Sanctions Against Iran: President Obama Signs the Iran Threat Reduction and Syria Human Rights Act of 2012

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On August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905 (the Act). The Act is the U.S. government's latest response to Iran's illegal nuclear program and the situation in Syria, and it reflects an intensified effort to counter perceived efforts by non-U.S. companies to help Iran in particular evade existing U.S. economic sanctions. The Act focuses primarily on Iran, with few new requirements pertaining to Syria. The Act further expands the scope of the Iran Sanctions Act (ISA), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), by expanding the sanctions imposed by the ISA and by imposing new sanctions, including sanctions targeting persons that (1) issue or purchase Iranian sovereign debt; (2) enter into joint ventures with the Government of Iran to develop petroleum resources outside of Iran; (3) construct infrastructure that can be used to transport Iran's energy products; (4) support Iran's production of petrochemical products; and (5) own, operate or insure vessels used to transport crude oil out of Iran.¹ In addition, the Act (1) expands the scope of sanctions set forth in CISADA; (2) amends the scope of sanctions against financial institutions set forth in Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA); (3) expands the liability of U.S. companies for violations of sanctions by its non-U.S. subsidiaries; and (4) imposes new Securities and Exchange Commission (SEC) disclosure requirements.

The Act caps off a season of expanding U.S. economic sanctions against non-U.S. companies that continue to do business with Iran. President Obama also signed two new Executive Orders, in May and July, authorizing sanctions (1) against non-U.S. persons that have violated U.S. economic sanctions against Iran or Syria or that have facilitated deceptive transactions for persons who are the targets of those sanctions (e.g., an Iranian bank or Syrian government agency), and (2) against persons — presumably mainly non-U.S. persons — that do certain business with the National Iranian Oil Company or Naftiran Intertrade Company, or certain petroleum or petrochemical business involving Iran. In addition, the U.S. Department of the Treasury made its first use of the financial sanctions authorized by CISADA, almost two years after that statute was enacted, when it imposed sanctions against the Bank of Kunlun in China and the Elaf Islamic Bank in Iraq for knowingly facilitating significant transactions and providing significant financial services to designated Iranian banks. The U.S. government's clear signal to non-U.S. companies is that they face a growing risk of being subjected to U.S. economic sanctions in their own right if they continue to conduct certain business with Iran. In addition, the rapid proliferation of new U.S. economic sanctions involving Iran have the effect, and possibly the purpose, of making it difficult for non-U.S. companies to determine exactly what Iran-related business of theirs risks inviting the unwelcome attention of the U.S. government.

¹ The ISA originally was enacted as the Iran and Libya Sanctions Act (ILSA) in 1996. ILSA's application to Libya terminated in 2004.

Key Provisions of the Act

A. Amends the ISA to Expand Existing Sanctions and to Add New Sanctions Against Companies That Conduct Business With Iran

- **Broadens the Scope of Activities That Will Be Viewed as Supporting Iran’s Ability to Import Refined Petroleum.** Under the existing ISA, the President is required to impose sanctions on any person that knowingly sells, leases or provides goods, services,² technology, information or support valued at \$1 million or more (or \$5 million or more in the aggregate over a 12-month period) that could directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products. The Act expands the types of activities that will be viewed as supporting Iran’s ability to import refined petroleum products to include (1) bartering and insuring or reinsuring of such bartering transactions and (2) purchasing, subscribing to or facilitating the issuance of sovereign debt of Iran after the enactment date of the Act (*i.e.*, August 10, 2012).
- **Imposes Sanctions on Persons That Participate in Joint Ventures With the Government of Iran to Develop Petroleum Resources Outside of Iran.** The Act requires the President to impose sanctions on any person that knowingly participates in a joint venture with respect to the development of petroleum resources outside of Iran if: (1) the joint venture is established on or after January 1, 2002, and (2) the Government of Iran is a substantial partner or investor in the joint venture, or could receive technological knowledge or equipment not previously available to it that could directly and significantly contribute to the enhancement of its ability to develop petroleum resources in Iran. The Act provides an exception for persons that terminate their participation in such joint ventures not later than 180 days after August 10, 2012.
- **Imposes Sanctions on Persons That Support the Development of Petroleum Resources and Refined Petroleum Products in Iran.** The Act amends the ISA by significantly reducing the dollar threshold for supporting Iran’s development of petroleum resources in Iran.³ The Act also amends the ISA by specifying that the provision of goods and services that will be used to build Iran’s refined petroleum products delivery infrastructure will be sanctioned. Specifically, the Act requires the President to impose sanctions on any person that knowingly sells, leases or provides goods, services, technology, information or support valued at \$1 million or more (or \$5 million or more in the aggregate over a 12-month period) that could directly and significantly contribute to the maintenance or enhancement of Iran’s:
 - ability to develop petroleum resources located in Iran; or
 - domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization or repair of petroleum refineries or directly associated infrastructure, including construction of port facilities, railways and roads, the primary use of which is to support the delivery of refined petroleum products.

2 The Act has added a definition for the term “services,” which include “software, hardware, financial, professional consulting, engineering, and specialized energy information services, energy-related technical assistance, and maintenance and repairs.”

3 President Obama, by Executive Order 13622 of July 30, 2012, already had established a lower threshold than the Act does for the imposition of sanctions against persons that knowingly engage in significant transactions for the purchase or acquisition of petroleum, petroleum products or petrochemicals from Iran.

- **Imposes Sanctions on Persons That Support the Development and Purchase of Petrochemical Products From Iran.**⁴ The Act requires the President to impose sanctions on any person that knowingly sells, leases or provides goods, services, technology, information or support valued at \$250,000 or more (or \$1 million or more in the aggregate over a 12-month period) that could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of petrochemical products. The term "petrochemical products" includes "any aromatic, olefin, or synthesis gas, and any derivative of such a gas, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea."
- **Imposes Sanctions on Persons That Own, Operate, Control or Insure Any Vessel That Was Used to Transport Crude Oil From Iran.** The Act requires the President to impose sanctions on any person that owns, operates, controls or insures a vessel that is used to transport crude oil from Iran to another country 90 days after August 10, 2012. The following knowledge standard is applied: (1) in the case of a person that is a controlling beneficial owner of the vessel, the person had actual knowledge that the vessel was so used and (2) in the case of a person that otherwise owns, operates, controls or insures the vessel, the person knew or should have known that the vessel was so used. This sanction is applicable only to the extent the President has made a determination, under the NDAA, that there is sufficient supply of petroleum and petroleum products from countries other than Iran. Furthermore, this sanction is not applicable if the crude oil was transported from Iran to a country that is exempt from NDAA sanctions because it has significantly reduced purchases of Iranian crude oil. Lastly, if there is evidence of efforts to conceal the Iranian origin of crude oil or refined petroleum products transported on the vessel, the President may prohibit such vessel from landing at a U.S. port for up to two years.⁵
- **Imposes Sanctions on Persons That Participate in Joint Ventures With the Government of Iran or an Iranian Entity Related to the Mining, Production or Transportation of Uranium.** The Act requires the President to impose sanctions on any person that knowingly participates in a joint venture with the Government of Iran, an Iranian entity or a person acting on their behalf, with respect to the mining, production or transportation of uranium. The applicability of sanctions depends on the date in which the joint venture was established. The Act provides an exception for persons that terminate their participation in such joint ventures not later than 180 days after August 10, 2012.
- **Adds Three New Types of Sanctions.** The Act adds three new types of sanctions to an existing "menu" of nine sanctions available under the ISA.⁶ These new sanctions would allow the President to:

4 As noted above, President Obama had already had established a lower threshold than the Act does for the imposition of sanctions against persons that knowingly engage in significant transactions for the purchase or acquisition of petrochemicals from Iran. In addition, pursuant to Executive Order 13590 of November 20, 2011, the President previously authorized the imposition of sanctions against persons that knowingly sells, leases or provides goods, services, technology, information or support that could directly and significantly contribute to the maintenance or enhancement of Iran's domestic production of petrochemical products.

5 The Act retains an exception for underwriters and insurance providers that, as determined by the President, practice due diligence in establishing policies, procedures and internal controls to ensure that they do not provide underwriting services, insurance or reinsurance for the transportation of crude oil or refined petroleum products from Iran.

6 Under the existing ISA, unless the President exercises certain waiver powers, he is required to impose at least three of the following nine specified ISA sanctions on non-U.S. persons engaged in sanctionable "investments": (1) denial of Export-Import Bank financing for exports to the ISA sanctioned person; (2) denial of federal agency licensing, if required, for exports of goods and technology to the ISA sanctioned person; (3) denial of access to U.S. financial institutions for loans or credit in an amount of more than \$10 million in any 12-month period; (4) ineligibility to serve as a primary dealer in U.S. government securities or as an agent of the U.S. government or a repository for U.S. government funds (for financial institutions); (5) ineligibility to contract with the U.S. government as a supplier of goods or services; (6) restrictions on imports into the United States; (7) prohibition against any transactions by U.S. parties in foreign exchange with the ISA sanctioned person; (8) denial of any transfers of credit or payment through a U.S. financial institution if any interest of the ISA sanctioned person is involved; and (9) blocking of assets of the ISA sanctioned person that are subject to U.S. jurisdiction.

- prohibit any U.S. persons from investing in or purchasing significant amount of equity or debt instruments of a “person[] against which sanctions are to be imposed,” as that term is defined in Section 5(c) of the ISA, under the ISA (ISA sanctioned person);
- deny a visa to, and exclude from the United States, any non-U.S. person who is a corporate officer or principal of, or a shareholder with a controlling interest in, an ISA sanctioned person; and
- impose any of the available menu of sanctions against the principal executive officer or officers (or persons performing similar functions) of any ISA sanctioned person.

Under the existing ISA, the President was required to impose three of the nine sanctions listed on the “menu” of sanctions. The Act now requires the President to impose five of the twelve sanctions available on the “menu” of sanctions.

- **Revises Presidential Waiver Authority.** The Act preserves the President’s general authority to waive sanctions against non-U.S. persons. However, the Act revises and raises the standard under which the President may exercise the general waiver authority. First, energy-related sanctions can only be waived if the waiver is “essential to the national security interests of the United States.” Second, weapons of mass destruction (WMD)-related sanctions can only be waived if the waiver is “vital to the national security interests of the United States.” Furthermore, the President’s “permanent” waiver authority is removed and replaced with a one-year renewable waiver authority.

B. Expands the Liability of U.S. Companies for Violations of U.S. Economic Sanctions by Non-U.S. Subsidiaries

The Act requires the President to prohibit entities (including entities established or maintained outside the United States) that are owned or controlled by U.S. persons from knowingly engaging in any transaction directly or indirectly with the Government of Iran or persons subject to the jurisdiction of the Government of Iran that would be prohibited if engaged in by a U.S. person under the International Emergency Economic Powers Act (IEEPA). The term “own or control” means, with respect to an entity, (1) to hold more than 50 percent of the equity interest by vote or value in the entity; (2) to hold a majority of seats on the board of directors of the entity; or (3) to otherwise control the actions, policies or personnel decisions of the entity. This is a great expansion of the applicability of U.S. economic sanctions against Iran given that this prohibition will apply to non-U.S. companies if they are U.S. owned or controlled, not just U.S. entities and their non-U.S. branches. The Act provides that, in the event of a violation by the non-U.S. subsidiary, civil penalties may be imposed against both the U.S. parent and the non-U.S. subsidiary. The Act provides an exception for instances where the U.S. person divests or terminates its business interest in the affected entity not later than 180 days after August 10, 2012.

C. Freezes Assets of Persons Involved in Activities That Materially Contribute to Iran’s WMD Program or Its Terrorism-Related Activities

The Act requires the President to freeze the assets of persons who knowingly sell, lease or provide ships, insurance or reinsurance, or other shipping service for the transportation to or from Iran of goods that could materially contribute to the activities of the Government of Iran with respect to the proliferation of WMD or support for acts of international terrorism. The Act provides for the sanctions against parent companies for the sanctionable activities of their subsidiaries if the parent knew or should have known about the activities even if the parent did not participate. In addition, sanctions will be

imposed on a company that “knowingly engaged” in the sanctionable activities of its parent or affiliate. The President is permitted to waive sanctions in cases “vital to the national security interest.”

D. Imposes Sanctions on Persons That Provide Underwriting Services, Insurance or Reinsurance for NIOC and NITC

The Act requires the President to impose five or more ISA sanctions against persons that knowingly provide underwriting services, insurance or reinsurance to the National Iranian Oil Company (NIOC) or the National Iranian Tanker Company (NITC), or a successor entity to either company. The Act provides an exemption for persons providing such services for activities relating to the provision of agricultural commodities, food, medicine or medical devices to Iran, or the provision of humanitarian assistance to the people of Iran.⁷

E. Imposes Sanctions on Persons That Purchase, Subscribe to or Facilitate the Issuance of Iran Sovereign Debt

The Act requires the President to impose five or more ISA sanctions against persons that knowingly purchase, subscribe to or facilitate the issuance of Iranian sovereign debt or debt of an entity owned or controlled by the Government of Iran issued on or after August 10, 2012.

F. Expands Sanctions on Financial Institutions Imposed by CISADA

Under Section 104 of CISADA, “foreign financial institutions” may lose access to, or face strict conditions on, their correspondent or payable through accounts in the United States if they conduct any of the following activities:

- facilitate the Iranian government’s efforts to acquire WMD or to support international terrorism;
- provide support for Iranian persons sanctioned by the U.N. Security Council;
- help launder money to aid Iran’s WMD programs, provide support to international terrorism, or provide support to those sanctioned by the U.N. Security Council;
- facilitate efforts by the Central Bank of Iran or any other Iranian financial institution to aid Iran’s WMD programs, provide support to international terrorism, or provide support to those sanctioned by the U.N. Security Council; or
- facilitate significant transactions for, or provide financial services to, Iran’s Revolutionary Guard Corps (IRGC), its blocked agents or affiliates, or other Iranian financial institutions that are subject to the U.S. Department of the Treasury’s blocking orders in connection with Iran’s WMD program or Iran’s support for international terrorism.

The Act expands CISADA in three ways. First, the Act makes it a sanctionable activity for a foreign financial institution to knowingly facilitate, participate or assist in, or act on behalf of or as an intermediary in connection with, the above-listed activities. Second, the Act amends CISADA by authorizing sanctions against a foreign financial institution that provides support to not only those sanctioned by the U.N. Security Council, but also those persons acting on behalf of, at the direction of, or owned or controlled by, such sanctioned persons. Third, the Act amends CISADA and makes it a sanctionable activity for a foreign financial institution to facilitate significant transactions or provides

⁷ By Executive Order 13622 of July 30, 2012, President Obama already had authorized the imposition of sanctions against a non-U.S. financial institution that knowingly conducted or facilitated *any* significant financial transaction with NIOC, defined by the Executive Order to include its subsidiary NITC, not just insurance-related services.

significant financial services for any persons — not just financial institutions — whose property or interests in property are blocked pursuant to other U.S. economic sanctions in connection with Iran’s WMD program or Iran’s support for international terrorism.

G. Impose Sanctions on Persons That Provide Specialized Financial Messaging Services to the Central Bank of Iran and Other Iranian Financial Institutions

The Act also requires the Secretary of the Treasury to submit a report to Congress on persons identified as providing specialized financial messaging services to, or enabling or facilitating direct or indirect access to such services for, the Central Bank of Iran or other Iranian financial institutions described in Section 104 of CISADA. The Act authorizes the President to impose sanctions on such persons unless the person has terminated its knowing provision of the services in response to the sanctions regime of its governing non-U.S. law.

H. Impose Securities and Exchange Commission Disclosure Requirements

The Act imposes additional SEC disclosure requirements on publicly traded companies in connection with the sanctions on Iran. Companies disclose in their 10-Q and 10-K SEC filings, their involvement in any specified ISA or CISADA sanctionable activities, any transactions with the Government of Iran, and any transactions with persons whose assets are frozen pursuant to executive orders dealing with terrorism or WMD proliferation. The Act requires that a separate notice be attached to the filings highlighting the information. These disclosure and notice requirements go into effect 180 days after August 10, 2012.

I. Expands the Sanctions Set Forth in Section 1245 of the NDAA

Section 1245 of the NDAA, enacted in late 2011, required the President to forbid the opening and prohibit or impose “strict conditions” on the maintenance of U.S. correspondent or payable-through accounts by third-country foreign financial institutions that the President determines have knowingly “conducted or facilitated any significant financial transaction” with the Central Bank of Iran (CBI) or Iranian financial institutions that have been designated for the imposition of sanctions by the U.S. Department of the Treasury. One limitation is that the provision only allows such prohibitions or strict conditions on government-owned or controlled banks, including central banks, if such banks engage in transactions involving the sale or purchase of petroleum or petroleum products to or from Iran. The NDAA creates an exception to the application of these sanctions if the President reports within 90 days of the initial availability determination and every 180 days thereafter that the country with primary jurisdiction over the foreign financial institution has significantly reduced its purchases of Iranian crude oil from the time of the last report.

The Act amends the NDAA’s exemption parameters. Specifically, “foreign financial institutions” located in countries that have been exempted because they are significantly reducing their reliance on Iranian oil may continue to do business with the Central Bank of Iran only for bilateral trade between Iran and those countries meeting certain conditions, or else they risk losing the exemption. In addition, the Act amends the NDAA to eliminate the exemption previously provided to state-owned banks. Under the Act, state-owned banks (other than central banks) now are subject to the NDAA sanctions provisions just like the non-U.S. private banks. Lastly, the President may, in the case of a country that has previously received an exception, determine that a country has significantly reduced its reliance on Iranian oil only if it has reduced its crude oil purchases from Iran to zero.

J. Expands Government Contracting Restrictions

CISADA imposed a requirement that each prospective contractor submitting a bid to the U.S. Government to certify that neither the contractor nor any person owned or controlled by the contractor engages in sanctionable activities under the ISA. The Act expands this requirement such that the contractor must also certify that it has not engaged in significant economic transactions with designated IRGC officials, agents or affiliates. False certifications can result in termination of the contract, debarment or suspension from federal contracting not less than two years.

K. Requires Identification and Sanctions on Non-U.S. Persons That Engage in Significant Transactions With IRGC or Iranian Persons Sanctioned by the U.N. Security Council

The Act requires the President to impose five or more ISA sanctions against non-U.S. persons that knowingly provide material assistance to, or engage in any significant transaction — including barter transactions — with officials of the IRGC, its agents or affiliates. This further expands the applicability of the CISADA sanctions to beyond the entities owned or controlled by domestic financial institutions. The Act also requires the President to impose five or more ISA sanctions against non-U.S. persons that knowingly engage in any significant transaction with a person subject to U.N. Security Council sanctions, including persons acting on behalf of or at the direction of, or owned or controlled by such persons.

L. Imposes Sanctions Targeting Human Rights Abuses in Iran

The Act requires the President to impose sanctions provided for in CISADA — *i.e.*, ineligibility for a visa to enter the United States and sanctions pursuant to the IEEPA, including blocking of property and restrictions or prohibitions on financial transactions and the exportation and importation of property — on persons that supply Iran with equipment and technologies that are likely to be used by Iranian officials to commit human rights abuses. The Act further requires that similar CISADA sanctions be imposed against persons that have engaged in censorship or curtailment of the rights of freedom of expression or assembly of Iran's citizens. The Act specifically discusses Congress's sense that satellite service providers and other entities that have directly provided satellite services to the Iranian government or its entities should cease to provide such services unless certain conditions are met.