

Iran Threat Reduction and Syria Human Rights Act of 2012

President Obama signed into law on August 10, 2012 the Iran Threat Reduction and Syria Human Rights Act of 2012 (the Act).¹ The Act, like the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), broadens the sanctions programs put forth by the Iran Sanctions Act of 1996 (ISA) and otherwise significantly expands the extraterritorial impact of U.S. sanctions.

Key provisions of the Act include:

- ***Liability of U.S. Firms for Activities of their Non-U.S. Subsidiaries:*** The Act requires the imposition of civil penalties on U.S. parent firms for the activities of their non-U.S. subsidiaries which, if undertaken in the United States or by a U.S. person, would violate U.S. sanctions law.
- ***Expansion of Sanctionable Conduct:*** The Act applies sanctions to any person involved in joint ventures with Iran related to the development of petroleum resources and the mining, production and distribution of uranium, as well as any person transporting or concealing the transport of crude oil from Iran.
- ***Expansion of Available Sanctions:*** The Act expands the menu of sanctions available to the President of the United States (President) and the requisite number of sanctions that the President must apply to any person engaging in sanctionable conduct.

- ***Mandatory Disclosure of Iran-related Activity to the Securities and Exchange Commission (SEC):*** The Act requires issuers whose stock is traded on U.S. exchanges to disclose whether they or their affiliates have engaged in activities which may be subject to sanctions under U.S. law.

This *DechertOnPoint* provides an overview of the expansion of sanctions under the Act and the potential impact on both U.S. and non-U.S. firms.

Significance of the Act

Because the Act imposes liability on U.S. issuers for the involvement of their non-U.S. subsidiaries in sanctionable activity relating to Iran, U.S. firms should carefully consider the activities of their non-U.S. subsidiaries. Likewise, non-U.S. subsidiaries should carefully consider their activities and should seek legal advice as to ensuring compliance with U.S. sanctions provisions. Furthermore, any U.S.-listed issuer should consider the new disclosure requirements.

Liability of Parent Companies for Violations of Sanctions by Non-U.S. Subsidiaries

The Act directs the President to prohibit an entity owned or controlled by a U.S. person, and established or maintained outside of the United States, from knowingly engaging in any transaction directly or indirectly with the Government of Iran (or with any person subject to the jurisdiction of the Government of Iran), if

¹ Pub. L. No 112-158, 126 Stat. 1214 (2012).

such transaction would be prohibited by an order or regulation issued pursuant to the International Emergency Economic Powers Act if engaged in by a U.S. person or a person in the United States. An entity “owns or controls” another entity if the first entity: (i) holds more than 50 percent of the equity interest by vote or value in the other entity; (ii) holds a majority of seats on the board of directors of the other entity; or (iii) otherwise controls the actions, policies or personnel decisions of the other entity.

The Act also provides that civil penalties may be assessed against a U.S. person if an entity owned or controlled by that person, and established or maintained outside of the United States, violates, attempts to violate, conspires to violate or causes a violation of the prohibitions contained in the Act.

Expansion of Activities Subject to Sanctions

The Act strengthens ISA and CISADA by expanding the scope of transactions that trigger sanctions. Under the Act, the President must impose sanctions against parties engaged in the following activities:

- ***Joint Ventures Relating to and Support for the Development of Petroleum Resources:*** The President must impose sanctions against any person who knowingly participates in a joint venture, established on or after January 1, 2002, if either the Government of Iran is a “substantial partner or investor” in the joint venture or Iran could receive technological knowledge or equipment not previously available to Iran that could directly or significantly contribute to its ability to develop petroleum resources in Iran.
- ***Support for the Development of Petroleum Resources and Refined Petroleum Products in Iran:*** The President must impose sanctions against any person who knowingly sells, leases, or provides to Iran goods, services, technology, or support that could directly and significantly contribute to the maintenance or enhancement of Iran’s ability to develop petroleum resources in Iran or its domestic production of refined petroleum resources. Sanctions apply when the aggregate fair market value of these goods, services, technology or support has a value of \$1 million or more at a given time, or \$5 million or more over a 12-month period.
- ***Development and Purchase of Petrochemical Products from Iran:*** The President must impose sanctions against any person who knowingly sells, leases, or provides to Iran goods, services, technology, or support that could directly and significantly contribute to the maintenance or expansion of Iran’s domestic production of petrochemicals. Sanctions apply when the aggregate fair market value of these goods, services, technology or support has a fair market value of \$250,000 or more at a given time, or \$1 million or more over a 12-month period.
- ***Transportation of Crude Oil From Iran:*** The President must impose sanctions against any person who is a controlling beneficial owner of a vessel used to transport crude oil from Iran to another country and who had actual knowledge that the vessel was used to transport crude oil from Iran to another country, or any person who otherwise owns, operates, controls or insures a vessel used to transport crude oil from Iran to another country and who knew or should have known the vessel was so used. The President may not impose sanctions with respect to a person who provides underwriting, insurance or reinsurance services, if that person exercised due diligence in establishing and enforcing official policies, procedures and controls to ensure that the person does not provide such services for the transportation of crude oil or refined petroleum products from Iran.
- ***Concealment of Iranian Origin of Crude Oil and Refined Petroleum Products:*** The President must impose sanctions against any person who is a controlling beneficial owner of a vessel and had actual knowledge that the vessel was used in a manner that conceals the Iranian origin of crude oil or refined petroleum products transported on the vessel, or any person who otherwise owns, operates or controls a vessel that conceals the Iranian origin of crude oil or refined petroleum products transported on it and knew or should have known that the vessel was so used. The President may not impose sanctions with respect to a person who provides underwriting, insurance or reinsurance services, if that person exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not provide such

services for the transportation of crude oil or refined petroleum products from Iran.

- ***Exports, Transfers and Transshipments:*** The President must impose sanctions against any person who permits or otherwise facilitates the transshipment of any goods, services, technology or other items to any other person and who knew or should have known that: (i) the export, transfer or transshipment would likely result in another person exporting, transferring, transshipping or otherwise providing the goods, services, technology or other items to Iran; and (ii) the export, transfer, transshipment or provision would contribute materially to the ability of Iran to acquire chemical, biological or nuclear weapons or related technologies, or to acquire or develop destabilizing numbers and types of advanced chemical weapons.
- ***Joint Ventures Relating to the Mining, Production or Transportation of Uranium:*** The President must impose sanctions against any person who knowingly participates in a joint venture established on or after February 1, 2012, if that joint venture involves any activity relating to the mining, production or transportation of uranium with the Government of Iran or an entity incorporated in Iran or subject to the jurisdiction of the Government of Iran. Sanctions also apply to any person who acts on behalf of or at the direction of, or is owned or controlled by one of the aforementioned entities, and through which: (i) uranium is transferred directly or indirectly to Iran; (ii) the Government of Iran receives significant revenue; or (iii) Iran could receive technological knowledge or equipment not previously available to it that could contribute materially to its ability to develop nuclear weapons or related technologies. Sanctions also apply to persons who knowingly participated in a similar joint venture established before February 2, 2012 with the Government of Iran.
- ***Provision of Underwriting Services, Insurance or Reinsurance for the National Iranian Oil Company:*** The President must impose sanctions against any person who knowingly provides underwriting, insurance or reinsurance services for the National Iranian Oil Company, the National Iranian Tanker Company or a successor entity to either.

- ***Purchase, Subscription or Facilitation of the Issuance of Debt:*** The President must impose sanctions against any person who knowingly purchases, subscribes to or facilitates the issuance of sovereign debt of the Government of Iran or debt of any entity owned or controlled by the Government of Iran.

Expansion of Available Sanctions

The Act amends ISA and CISADA to add three new — and more significant — potential sanctions available to the President. Under ISA and CISADA, the President must impose at least three of following nine possible sanctions against any person who is deemed to have engaged in sanctionable activities:

- denial of any guarantee, insurance or extension of credit to the person from the U.S. Export-Import Bank;
- denial of licenses for the export of military or militarily-useful technology to the person;
- denial of U.S. bank loans exceeding \$10 million in one year to the person;
- if the person is a financial institution, prohibition of the person from serving as a primary dealer in U.S. government bonds and/or as a repository for U.S. government funds;
- prohibition of U.S. government procurement with the person;
- restriction on U.S. imports from the person;
- prohibition of any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the person has any interest;
- prohibition of any transfers of credit or payments between, by, through or to, any financial institution, to the extent such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the person; and
- restriction on property transactions in which the person has any interest.

The Act adds the following sanctions to the current list of sanctions available to the President:

- prohibition of any U.S. person from investing in or purchasing significant amounts of equity or debt instruments of the person;
- direction to the Secretary of the U.S. Department of State (State) to deny a visa to, and to the Secretary of the U.S. Department of Homeland Security (Homeland Security) to exclude from the United States, any corporate officer or principal of, or shareholder with a controlling interest in, the person; and
- imposition of sanctions on the principal executive officer of the person, or on any other persons performing similar functions and with similar authority.

Additionally, the Act requires the President to impose five or more sanctions authorized under the Act (rather than three or more sanctions, as required by ISA and CISADA) against parties who engage in activities subject to sanctions.

Section 13 Reporting Requirement

The Act requires issuers required to file reports under Section 13 of the Securities Exchange Act of 1934 (Exchange Act) to disclose in those reports if the issuer knowingly engaged in certain activities in violation of ISA or CISADA. The Act also requires issuers to disclose if the issuer knowingly conducted any transaction or dealing with a person whose property and interests in property are blocked pursuant to Executive Order No. 13224 (relating to the blocking of property of, and prohibiting transactions with, persons who commit, threaten to commit or support terrorism), Executive Order No. 13382 (relating to blocking property of weapons of mass destruction (WMD) proliferators and their supporters) or U.S. Department of the Treasury (Treasury) regulations relating to Iran. Because U.S. firms already are prohibited from dealing with Iran, these provisions apply only to non-U.S. firms that are required to file reports with the SEC.

If an issuer or an affiliate of the issuer engages in any of these activities, the issuer must provide a detailed description of each activity, including the nature and extent of the activity, the associated gross revenues and net profits, and whether the issuer or its affiliate intends to continue the activity. The issuer must also separately file with the SEC a notice that the disclosure has been included in a

report filed under Section 13 of the Exchange Act. Upon receipt of this notice, the SEC must make a report to the President, who must initiate an investigation into the possible imposition of sanctions under ISA and CISADA.

Further Restrictions on Correspondent and Payable-Through Accounts

Under Section 104(c) of CISADA, the Secretary of the Treasury is required to prescribe regulations prohibiting, or imposing strict conditions on, the opening or maintaining of a correspondent or payable-through account in the United States by a non-U.S. financial institution, if the non-U.S. financial institution knowingly: (i) facilitates the Government of Iran's efforts or launders money to aid in WMD programs, to support international terrorism or to deal with Iranian firms sanctioned by the U.N. Security Council; or (ii) deals with Iran's Revolutionary Guard Corps (RGC), its front companies or its affiliates, or other key Iranian financial institutions currently blacklisted by the Treasury.

The Act amends Section 104 of CISADA to:

- expand the prohibition on non-U.S. financial institutions that facilitate activities of persons subject to those U.N. Security Council resolutions that impose sanctions on Iran, to non-U.S. financial institutions that facilitate the activities of anyone acting on behalf of, at the direction of, or under the ownership or control of, such persons;
- expand the prohibition on a non-U.S. financial institution that facilitates the activity of a financial institution, to any person whose property or interests in property are blocked by the Treasury for activities related to the proliferation of WMD; and
- expand the application of Section 104 to include non-U.S. financial institutions that knowingly facilitate, participate or assist in the activities set forth in the Section, including by: (i) acting on behalf of, at the direction of, or as an intermediary for, or otherwise assisting another person; (ii) attempting or conspiring to facilitate or participate in such activity; or (iii) being owned or controlled by a non-U.S. financial institution engaging in such activity.

Additional Sanctions

The Act permits the President to block and prohibit all transactions in property and interests in property of any person who knowingly sells, leases or provides a vessel or provides insurance, reinsurance or shipping services 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 property and interests in property of such a person will be blocked if such property and interests in property are in the United States, come within the United States or are or come within the possession or control of a U.S. person.

The Act requires the Secretary of State to deny a visa to, and the Secretary of Homeland Security to exclude from the United States, any senior official of the Government of Iran that is involved in: (i) illicit nuclear activities or proliferation of WMD or delivery systems of WMD; (ii) support for international terrorism; or (iii) the commission of serious human rights abuses against citizens of Iran or their family members.

The Act imposes further sanctions on the RGC, including an expansion of the procurement prohibition to non-U.S. persons that engage in certain transactions with the RGC. The Act imposes sanctions on certain persons responsible for or complicit in human rights abuses committed against citizens of Iran or against their family members after the June 12, 2009 Iranian election and on persons who engage in censorship or other related activities against the citizens of Iran.

The Act also imposes sanctions on certain persons responsible for or complicit in human rights abuses committed against citizens of Syria or against their family members and on persons who engage in censorship or other related activities against the citizens of Syria.

Sanctions against Iran and Syria continue to evolve and may change rapidly. Dechert will continue to monitor developments in this area and will issue future *DechertOnPoints* as developments warrant.

How Can Dechert Help You?

Dechert's Trade and EU Government Affairs Practice regularly works with corporate and financial institutions on the application of international sanctions measures. We provide an experienced

partner able to offer sound commercially focused advice in relation to specific transactions or wider compliance programming, including:

- Knowledge of the development, implementation, interpretation and legal and practical implications of economic sanctions and trade embargoes applied by the United Nations European Union, United States and Individual EU Member States.
- Designing compliance programmes tailored to individual needs, to minimise compliance risks, as well as reviewing existing company procedures, conducting internal audits and establishing improved compliance plans.
- Advising on jurisdictional issues associated with the administration of economic sanctions, including potential extraterritorial aspects of export, re-export, investment and transactional controls.
- Preparing and negotiating sanctions compliance provisions in contracts, purchase orders, distributor agreements, subcontracts, and supply arrangements and related representations and warranties in connection with mergers, acquisitions and joint ventures.
- Assisting with licence applications and obtaining authorisations in relation to regulatory exemptions and the interpretation of limitations in sanctions provisions.
- Investigating potential violations, responding to enforcement inquiries and representing clients before European and U.S. regulatory and enforcement agencies in connection with voluntary disclosures, enforcement and criminal and civil (administrative) investigations.
- Advising persons and entities which have been targeted under EU and U.S. lists of "designated" entities with regards to their legal rights and obligations and wider public relations considerations.
- Conducting trade embargo and economic sanctions due diligence in connection with exports and reexports, distributor/supply agreements, mergers, acquisitions and joint ventures.

- Counseling clients with respect to their exposure for sanctions violations committed by third parties and potential courses of action to protect their business interests.

(+1 202 261 3360; thomas.bogle@dechert.com), Jeanette Wingler (+1 202 261 3363; jeanette.wingler@dechert.com) and Kaitlin Bottock (+1 202 261 3379; kaitlin.bottock@dechert.com).



This update was authored by Miriam Gonzalez (+44 20 7184 7892; miriam.gonzalez@dechert.com), Thomas C. Bogle

Practice group contacts

For more information, please contact the authors, the attorney listed below or any Dechert attorney with whom you regularly work. Visit us at www.dechert.com/trade.

Miriam Gonzalez

London
+44 20 7184 7892
miriam.gonzalez@dechert.com

Sign up to receive our other [DechertOnPoints](#).

Dechert internationally is a combination of limited liability partnerships and other entities registered in different jurisdictions. Dechert has more than 800 qualified lawyers and 700 staff members in its offices in Belgium, China, France, Germany, Georgia, Hong Kong, Ireland, Kazakhstan, Luxembourg, Russia, the United Arab Emirates, the UK and the US.

Dechert LLP in the US ("Dechert LLP US") is a Pennsylvania limited liability partnership which has branch and representative offices in Beijing, Brussels, Dubai, Frankfurt and Munich.

Dechert LLP in the UK is a limited liability partnership registered in England & Wales (Registered No. OC306029) and is authorised and regulated by the Solicitors Regulation Authority of England and Wales. The registered address is 160 Queen Victoria Street, London EC4V 4QQ, UK.

A list of names of the members of Dechert LLP (who are referred to as "partners") is available for inspection at the above address. The partners are solicitors or registered foreign lawyers. The use of the term "partners" should not be construed as indicating that the members of Dechert LLP are carrying on business in partnership for the purpose of the Partnership Act 1890.

Dechert (Paris) LLP is a limited liability partnership registered in England and Wales (Registered No. OC332363), authorised and regulated by the Solicitors Regulation Authority of England and Wales, and registered with the French Bar pursuant to Directive 98/5/CE. A list of the names of the members of Dechert (Paris) LLP (who are solicitors or registered foreign lawyers) is available for inspection at our Paris office at 32 rue de Monceau, 75008 Paris, France, and at our registered office at 160 Queen Victoria Street, London, EC4V 4QQ, UK.

Dechert Georgia LLC, a limited liability company registered in Georgia (Identification number 404423147), is a wholly owned subsidiary of Dechert LLP US.

Dechert in Hong Kong is a Hong Kong partnership regulated by the Law Society of Hong Kong.

Dechert Kazakhstan Limited, a private limited company registered in England & Wales (Registered No. 07978170), is a wholly owned subsidiary of Dechert LLP US, and is authorised and regulated by the Solicitors Regulation Authority of England and Wales. Legal services in Kazakhstan are provided by the Almaty branch of Dechert Kazakhstan Limited. A list of the names of the directors of Dechert Kazakhstan Limited is available for inspection at its registered office: 160 Queen Victoria Street, London EC4V 4QQ, England.

Dechert in Ireland is an Irish partnership regulated by the Law Society of Ireland.

Dechert Luxembourg is a multi-national partnership regulated in Luxembourg by the Luxembourg Bar and authorised and regulated in the UK by the Solicitors Regulation Authority of England and Wales.

Dechert Russia LLC, a wholly owned subsidiary of Dechert LLP US, is a Delaware Limited Liability Company with a registered branch in Moscow.

This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking action. This publication, provided by Dechert LLP as a general informational service, may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2012 Dechert LLP. Reproduction of items from this document is permitted provided you clearly acknowledge Dechert LLP as the source.

Almaty • Austin • Beijing • Boston • Brussels • Charlotte • Chicago • Dubai • Dublin • Frankfurt • Hartford
Hong Kong • London • Los Angeles • Luxembourg • Moscow • Munich • New York • Orange County • Paris
Philadelphia • Princeton • San Francisco • Silicon Valley • Tbilisi • Washington, D.C.