

Client Alert

International Trade & Litigation Practice Group

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United States Adopts Additional Expansive Sanctions Against Iran

Earlier this month, the United States implemented additional economic sanctions against Iran in an attempt to further isolate the Iranian regime and deprive it of the benefits of international commerce. These new sanctions are the latest in a series of restrictive measures adopted in response to concerns about Iran's attempts to process fission material and increasingly hostile rhetoric towards its neighbors in the region. The new sanctions expand already restrictive existing measures by, among other things, expanding the extraterritorial reach of U.S. sanctions.

The United States has sought to tighten the economic noose around the Iranian regime over the course of the past three years by enacting the following:

- On August 10, 2012, the President signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITR Act), which, as explained in more detail below, expands sanctions against Iran's financial, energy, and transportation sectors.
- On December 31, 2011, the President signed into law the FY 2012 National Defense Authorization Act (FY 2012 NDAA), which contains provisions imposing sanctions on foreign financial institutions for engaging in transactions related to Iranian oil with the Central Bank of Iran and other Iranian financial institutions.
- On July 1, 2010, the President signed the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA), that expands the Iran Sanctions Act of 1996 (ISA) by limiting Iran's ability to import and produce refined petroleum products and strengthens the U.S. President's authority to impose sanctions on companies that provide refined petroleum products to Iran or assist Iran in expanding its refining capacity.

Also, in the past few months, the President signed four new executive orders that restrict transactions involving Iran as follows:

- Executive Order 13622 of July 31, 2012 expands sanctions imposed by the FY 2012 NDAA;
- Executive Order 13608 of May 1, 2012 imposes sanctions against those who engage in activities intended to evade U.S. sanctions;

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- [Executive Order 13606](#) of April 22, 2012 imposes sanctions on persons who facilitate human rights abuses through the use of information technology; and
- [Executive Order 13599](#) of February 5, 2012 strengthens the U.S. trade embargo against Iran by applying additional sanctions on Iran's petrochemical sector and expands the existing energy sanctions.

In addition to the Executive Orders, the U.S. Treasury Department recently took action under the existing Iranian Financial Sanctions Regulations (IFSR) to restrict transactions with third-country banks that continue to conduct business with Iran. Specifically, Treasury added the Bank of Kunlun, a Chinese bank, and Elaf Islamic Bank, an Iraqi bank, to [The List of Foreign Financial Institutions Subject to Part 561](#) (Part 561 List) for knowingly facilitating significant transactions or providing significant financial services to sanctioned Iranian banks. The Part 561 List contains a listing of foreign financial institutions that engage in activities prohibited under the IFSR. United States financial institutions may be prohibited from opening or maintaining a correspondent or payable-through account for foreign financial institutions designated on the Part 561 List or may be permitted to operate such accounts only under significant restrictions.

Activities Subject to Sanctions Under the ITR Act

The ITR Act arguably imposes the most comprehensive sanctions on transactions involving Iran to date, expanding existing sanctions under the ISA, CISADA, and the FY 2012 NDAA, as well as codifying sanctions imposed by presidential executive orders. The reach of the ITR Act extends to the finance (including insurance), transportation, and energy sectors in the United States and overseas, as well as to persons engaged in human rights abuses.

Most notably, the ITR Act seeks to close "loopholes" present under the current U.S. embargo, including by prohibiting entities incorporated outside the United States, but owned or controlled by U.S. persons, from engaging in virtually all transactions with Iran. For example, under the ITR Act, the U.S. prohibitions on doing business with Iran extend to U.S. owned or controlled foreign subsidiaries, joint ventures, and other entities, when those entities knowingly engage in transactions, directly or indirectly, with Iran or the Government of Iran that would be prohibited under U.S. law if performed by a U.S. person. Importantly, both the non-U.S. entity and its U.S. parent may be subject to penalties under the International Emergency Economic Powers Act ("IEEPA") as a result of violations of the prohibitions on engaging in transactions with Iran. Penalties would not be imposed, however, if the U.S. parent divests or terminates its business interest in the non-U.S. entity that engaged in conduct prohibited under the ITR Act within 180 days of the enactment of the ITR Act.

Other activities prohibited under the ITR Act include the following:

- Knowingly supporting the development of the oil, natural gas, and petrochemical sectors in Iran by providing goods, services, or technology to Iran, including providing directly associated infrastructure such as construction of port facilities, railways, and roads, the primary use of which is to support the delivery of refined petroleum products.
- Engaging in joint ventures with Iran related to the development of petroleum resources of Iran as well as joint ventures involving any activity relating to mining, production, or transportation of uranium, where the benefit of such activities is received by Iran.

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- Owning, operating, or controlling a vessel used to transport crude oil or petroleum products from Iran to another country. Sanctions will also apply if attempts are made to conceal the Iranian origin of the products or Iranian ownership of the vessels used in the transport.
- Knowingly providing underwriting services, insurance, or reinsurance for the National Iranian Oil Company (NIOC) or the National Iranian Tanker Company (NITC), except in instances where the person has exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that such financial services are not provided to the NIOC, NITC, or their successor entities.
- Purchasing, subscribing to, or facilitating the issuance of significant amounts of equity or debt instruments of the Government of Iran or of a person sanctioned under the ISA.
- Providing financial services to foreign financial institution and entities they own or control, including Iranian banks not listed on the SDN list, which knowingly facilitate, participate, or assist in sanctionable activities described in Section 104 of CISADA.
- Knowingly and directly providing, or knowingly enabling or facilitating direct or indirect access to, specialized financial messaging services for the Central Bank of Iran or another designated Iranian financial institution.
- Transferring or facilitating the transfer of goods or technology likely to be used to commit human rights abuses against the people of Iran to the Government of Iran, or providing services with respect to such goods or technology.
- Engaging in censorship that prohibits, limits, or penalizes the exercise of freedom of expression or assembly by citizens of Iran.

Penalties Available Under the ITR Act

Penalties for engaging in activities sanctionable under the ITR Act are, by and large, dependent on the penalties available under the existing legislation that the ITR Act expands. Specifically, violators may be subject to civil penalties under IIEPA or those listed in Section 6(a) of the ISA, including denials of export licenses, rejection of loans from U.S. financial institutions, and prohibitions on acquiring or holding property subject to U.S. jurisdiction. Other significant actions include the following:

- Denying entry visas into the United States to any alien that is a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person.
- Imposing sanctions on the principal executive officers of any sanctioned company.

Importantly, under the ITR Act, companies subject to the jurisdiction of the U.S. Securities and Exchange Commission (SEC) are required to disclose to the SEC their knowing engagement in certain sanctionable activities involving Iran. Specifically, the issuers must file annual or quarterly disclosures with detailed descriptions of such activities involving Iran, including those engaged in by the issuer's affiliates. Such required reports must describe the nature and extent of the activity, the gross revenues and net profits attributable to the activity, and whether the company intends to continue the activity.

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Furthermore, any prospective contractor with the United States Government must certify that it does not “knowingly engage in a significant transaction or transactions” with Iran’s Revolutionary Guard Corps or any of its officials, agents, or affiliates. This requirement will apply to all contracts for which solicitations are issued on or after December 10, 2012.

For more information regarding other recent measures adopted by the United States against Iran, please see the December 2, 2011 King & Spalding Client Alert entitled “United States Imposes Additional Sanctions On Iran.”

If you have any questions regarding the new sanctions on Iran, please contact Christine Savage at +1 202 626 5541, Jane Cohen at +1 202 661 7842, or Shannon Doyle at +1 202 626 5607.

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