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International Trade Alert

New Iran Sanctions Legislation Extends to Foreign Affiliates of U.S. Companies and Foreign Issuers of Securities in the United States

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On August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "Act"). This new round of U.S. sanctions legislation follows months of escalating U.S. regulations, designations and executive orders intended to pressure Iran's leadership into shutting down the country's growing nuclear program.

The Act introduces direct U.S. parent company liability for Iran-related activities of foreign owned or controlled affiliates, and requires issuers of securities in the United States to meet new Securities and Exchange Commission (SEC) disclosure requirements if that issuer or its affiliates engage in certain Iran-related activities. Moreover, in addition to codifying recent regulations and executive orders expanding the U.S. sanctions regime, the bill seeks to expand existing sanctions against Iran with respect to the energy and shipping sectors, as well as inhibit further the activities of Iran's Revolutionary Guard Corps (IRGC) and other human rights abusers in Iran. The legislation also addresses ongoing concerns in Syria.

Key Provisions

- Imposes direct liability on U.S. companies for Iran-related activities of foreign subsidiaries, under which U.S. companies can be penalized for activities of foreign-owned or -controlled affiliates that would be prohibited for U.S. persons under established Office of Foreign Asset Controls (OFAC) sanctions

- Creates new SEC disclosure requirements for issuers and affiliates of issuers who engage in Iran-related activities

- Establishes new energy sector prohibitions to further restrict Iran's access to investment, goods, services, technology or know-how supporting Iran's crude oil and petroleum sector

- Restricts transportation of Iranian crude oil and petroleum products by imposing sanctions against persons that own, operate, control or insure vessels used to transport or conceal the identity of Iranian crude oil or petroleum products

- Increases U.S. extraterritorial penalties under the Iran Sanctions Act that could be imposed against non-U.S. companies determined by the U.S. State Department to have violated the Iran Sanctions Act of 1996 (ISA) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) or related measures

- Codifies sanctions against the Central Bank of Iran

- Freezes assets of human rights abusers, including assets of individuals and companies that enable Syria to repress its citizens through the use of technology

Specifically, the Act requires that U.S. sanctions against Iran be strengthened as follows:

Increases U.S. Parent Liability for Activities of Foreign Subsidiaries. The Act directs the President to prohibit U.S.-owned foreign subsidiaries or other affiliates owned or controlled by U.S. entities from knowingly engaging in transactions directly or indirectly with the government of Iran or persons subject to Iranian jurisdiction in activities that would be prohibited by an order or regulation issued pursuant to the International Emergency Economic Powers Act (IEEPA), if engaged in by a U.S. person or in the United States. Civil penalties described in the IEEPA shall apply to the U.S. parent company if an entity owned or controlled by that person violates the relevant sanctions provisions.

Mandates Disclosures to the SEC of Certain Iran-Related Activities. The Act requests that issuers filing annual or quarterly reports to the SEC indicate whether the issuer or any of its affiliates have knowingly engaged in activities described in certain provisions of the ISA, CISADA, Executive Order 13224 (Sept. 23, 2001), Executive Order 13382 (June 29, 2005) or the Iran Transaction Regulations, 31 C.F.R. 560, *et seq*. These reports should include the nature and extent of the activity, the gross revenues and net profits attributable to the activity, and whether the issuer or affiliate intends to continue the activity.

Expands Energy-sector Sanctions. The Act amends the ISA by providing for the imposition of punitive sanctions against persons who:

- Participate in petroleum-related joint ventures outside Iran. This includes persons who knowingly participate in a joint venture outside of Iran related to petroleum production with the government of Iran, or who could provide Iran with technological knowledge or equipment that would contribute to the development of petroleum resources in Iran.

- Support Iranian domestic petroleum production. This includes persons who engage knowingly in the sale, lease or provision of goods, services, technology, information or support valued at $1 million (or $5 million during a one-year period) that contribute to Iran's (i) ability to develop petroleum resources or (ii) domestic production of refined petroleum products, including with respect to modernization or construction of refinery or transportation infrastructure.

- Support Iranian domestic petrochemical production. This includes persons who engage knowingly in the sale, lease or provision of goods, services, technology, information or support valued at $250,000 (or $1 million during a one-year period) that contribute to the maintenance or expansion of Iran's domestic production of petrochemicals.

- Participate in uranium-related joint ventures. This includes persons who knowingly participate in a joint venture relating to the mining, production or transportation of uranium with the government of Iran, an entity incorporated in Iran or subject to Iranian jurisdiction, or a person acting on behalf of, or at the direction of, the government of Iran.

Expands Transportation-related Prohibitions in the Energy Sector. The Act amends the ISA by providing for the imposition of punitive sanctions against persons who:

- Transport crude oil from Iran. This includes persons who own, operate, control or insure vessels used to transport crude oil from Iran to another country, or who own, operate or control vessels used to conceal the Iranian origin of crude oil or refined petroleum products by permitting the vessel's operator to disable the vessel's satellite tracking device, or obscure or conceal the vessel's ownership or operation. Persons found to be in violation may be denied the ability to land at a port in the United States for a period of two or more years.

- Insure, reinsure or underwrite certain shipping companies. This includes persons who knowingly provide underwriting services, insurance or reinsurance for the National Iranian Oil Company (NIOC) or the National Iranian Tanker Company and their successors—except if (i) providers have exercised due diligence or (ii) the services, insurance or reinsurance is for any activity relating to food, medicine or humanitarian assistance.

Strengthens Penalties for Violation of Energy-sector Prohibitions. The Act expands the sanctions that may be applied to entities found in violation of the amended ISA or CISADA. The Act increases the number of penalties to be applied from three to five, and expands the menu of potential penalties to include:

- prohibiting U.S. persons from investing in, or purchasing significant amounts of, equity or debt instruments of the sanctioned persons

- denial of visas to the corporate officers of sanctioned persons

- applying any of the ISA sanctions as amended to the principal executive officers of sanctioned persons.

Bolsters Financial-sector Sanctions. The Act also modifies ISA and CISADA requirements for U.S. and foreign financial institutions. Specifically, the Act:

- Strengthens CISADA provisions on foreign financial institutions. The Act expands the activities for which foreign financial institutions may be barred from opening or maintaining correspondent or payable through accounts.

- Blocks the Central Bank of Iran. The Act reaffirms the applicability of Executive Order 13599 (Feb. 6, 2012), which blocks the property of the government of Iran and the Central Bank of Iran, and Executive Order 13608 (May 1, 2012), which provides for sanctions against sanctions evaders.

Increases Sanctions Relating to Syria. Title VII of the Act, which may be cited as the "Syria Human Rights Accountability Act of 2012," directs the President to impose sanctions, including blocking of property on persons who:

- Commit acts of human rights abuse. Specifically, those persons who are responsible for, or complicit in, the commission of serious human rights abuses, or who are engaged in censorship activities, are subject to sanctions.

- Transfer certain goods or technologies to Syria. The transfer of goods or technologies to Syria that are likely to be used to commit human rights abuses is prohibited.

- Engage in censorship and repression in Syria. Persons who violate the rights of freedom of expression or assembly of Syria's citizens will be subject to the increased sanctions.

Conclusion

The Act continues to expand the extraterritorial reach of established U.S. sanctions against Iran. In addition to substantially enlarging U.S. measures targeting Iran's energy sector, the Act squarely targets the activities of foreign subsidiaries of U.S. companies who knowingly engage in activities in which their parent companies would be prohibited from participating. This brings the U.S. Iran sanctions regime more in line with the provisions maintained against Cuba.

The various provisions of this legislation leave open considerable latitude for interpretation, and it remains to be seen how specific provisions of the new law will ultimately be implemented, interpreted and enforced in practice. However, with no sign of any easing of U.S. public opinion—and a general consensus in Washington supporting a tough approach to Iran in the midst of a U.S. election year—members of Congress can be expected to press for aggressive enforcement of these new measures when they return to Washington in the fall.

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