

## Broadening US Sanctions Against Iran And Syria

*Law360, New York (September 04, 2012, 4:16 PM ET)* -- President Obama signed into law on Aug. 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 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 U.S. Securities and Exchange Commission*

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 article 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 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: (1) holds more than 50 percent of the equity interest by vote or value in the other entity; (2) holds a majority of seats on the board of directors of the other entity; or (3) 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 the 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 Jan. 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: (1) 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 (2) 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 Feb. 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: (1) uranium is transferred directly or indirectly to Iran; (2) the government of Iran receives significant revenue; or (3) 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 Feb. 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 the ISA and CISADA to add three new — and more significant — potential sanctions available to the president. Under the 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 to deny a visa to, and to the secretary of the U.S. Department of 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 the 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 to disclose in those reports if the issuer knowingly engaged in certain activities in violation of the 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 proliferators and their supporters) or U.S. Department of the 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 the 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: (1) 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 (2) 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: (1) acting on behalf of, at the direction of, or as an intermediary for, or otherwise assisting another person; (2) attempting or conspiring to facilitate or participate in such activity; or (3) 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: (1) illicit nuclear activities or proliferation of WMD or delivery systems of WMD; (2) support for international terrorism; or (3) 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.

--By Thomas C. Bogle, Miriam Gonzalez, Jeanette Wingler and Kaitlin Bottock, Dechert LLP

*Thomas Bogle is a partner in Dechert's Washington, D.C., office. Miriam Gonzalez is a partner in the firm's London office and head of the firm's EU trade and EU government affairs practice. Jeanette Wingler and Kaitlin Bottock are associates in the firm's Washington office.*

*The opinions expressed are those of the authors and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

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

All Content © 2003-2012, Portfolio Media, Inc.