

ECONOMIC SANCTIONS UPDATE

Additional U.S. Sanctions with Respect to Iran Signed Into Law on January 2, 2013

January 7, 2013

Introduction

On January 2, 2013, President Obama signed into law the Iran Freedom and Counter-Proliferation Act of 2012 (the "Act"), as part of the National Defense Authorization Act for 2013, expanding the category of activities by non-US persons involving Iran that could result in the imposition of sanctions against such non-US persons, and providing for the blocking of the property of additional Iran sanctions targets.

The Act is mainly designed to restrict the ability of Iran's energy, shipping, shipbuilding and port sectors to generate revenues to support nuclear proliferation activities. The Act also seeks to curtail Iran's access to certain materials and restricts Iran's ability to use its oil revenues.

The sanctions (punitive measures) that can be imposed under the Act are those which are enumerated in section 6 of the Iran Sanctions Act, as amended, and can range from the mild sanctions of denial of US Exim bank credits to the harshest sanctions of the blocking of property and a prohibition on all transactions. This latter sanction means the freezing of assets within US jurisdiction and a cut-off from all dealings with the United States and US persons.

Below is an outline/summary of the sections of the Act providing for the imposition of sanctions, the blocking of property, and the imposition of restrictions on Iran's use of its oil and gas revenues.

The sanctions mentioned in the Act will be applicable 180 days after the enactment of the Act, *i.e.*, on July 2, 2013.

Section 1244: Imposition of sanctions with respect to the energy, shipping, and shipbuilding sectors of Iran.

Section 1244:

- requires the blocking of the property of persons (entities and Individuals) determined to:
 - o be a part of the energy, shipping or shipbuilding sectors of Iran;

- be a port operator in Iran;
 - have knowingly provided significant financial, material, technological or other support to any of the foregoing persons, or to an Iranian person listed on the US Treasury Department Office of Foreign Assets Control (“OFAC”)’s List of Specially Designated National and Blocked Persons (other than an Iranian financial institution that has not been designated for the imposition of sanctions for nuclear proliferation reasons, international terrorism, or abuse of human rights reasons).
- requires the imposition of sanctions against or with respect to persons that sell, supply or transfer significant goods and services used in connection with the energy, shipping, or shipbuilding sectors of Iran, including the National Iranian Oil Company, the National Iranian Tanker Company, and the Islamic Republic of Iran Shipping Lines.

A foreign financial institution will also face US sanctions if it facilitates a significant financial transaction for the sale, supply, or transfer to or from Iran of the goods and services described immediately above. The sanctions in this regard will be either a prohibition or restriction on the operation of the foreign financial institution’s correspondent or payable-through accounts in the United States.

Sanctions will not be imposed in connection with transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran. A similar exception applies for transactions and activities related to Afghanistan reconstruction.

Applicability with respect to Petroleum and Petroleum Product Purchases from Iran

Sanctions apply with respect to the purchase of petroleum or petroleum products from Iran only if at the time of purchase the US government determines that price and supply conditions permit the country of the purchaser to significantly reduce petroleum and petroleum products from Iran.

Sanctions will not apply with respect to countries that have been granted waivers by the United States under the National Defense Authorization Act of 2012 with respect to their purchases of petroleum and petroleum products from Iran (the “Country Waiver”) and such waiver applies at the time of the purchase in question.

Sanctions will not apply with respect to a financial transaction if at the time of the transaction, the Country Waiver applies to the country with primary jurisdiction over the foreign financial institution, and the financial transaction is:

- only for trade in goods and services,
- not otherwise subject to sanctions under the law of the United States, and

- between the country with primary jurisdiction over the foreign financial institution and Iran, and any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

Applicability with respect to Natural Gas

Section 1244 only requires sanctions if a foreign financial institution conducts or facilitates a financial transaction for to the sale, supply, or transfer to or from Iran of natural gas. However, sanctions will not be imposed if the financial transaction:

- is only for trade in goods or services,
- not otherwise subject to sanctions under the law of the United States, and
- between the country with primary jurisdiction over the foreign financial institution and Iran, and any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

Section 1245: Imposition of sanctions with respect to the sale, supply, or transfer of certain materials to or from Iran.

Section 1245 of the Act requires the imposition of sanctions if the US administration determines that a person knowingly sells, supplies, or transfers directly or indirectly to or from Iran:

- a precious metal,
- graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes (the “Materials”) for the purpose of:
 - o using the Materials as a medium for barter, swap, or any other exchange transaction, the listing of any of the Materials as assets of the Government of Iran, or using the Materials in connection with the nuclear, military, or ballistic missile programs of Iran; or
 - o using the Materials in connection with the energy, shipping or shipbuilding sectors of Iran or any sector of the economy of Iran determined to be controlled directly or indirectly by Iran’s Revolutionary Guard Corps; or
 - o transferring the Materials to any Iranian person appearing on OFAC’s List of Specially Designated Nationals and Blocked Persons (other than certain Iranian financial institutions), for use in connection with the nuclear, military or ballistic missile programs of Iran, or to certain other persons prohibited persons.

Section 1245 also requires the imposition of sanctions with respect to foreign financial institutions that knowingly conducts or facilitates a significant financial transaction in connection with sanctionable trade activity.

Sanctions will not be imposed against persons that have exercised due diligence and established and enforce official policies, procedures and controls designed to prevent transactions which could lead to the imposition of sanctions under section 1245.

Section 1246: Imposition of sanctions with respect to the provision of underwriting services or insurance or reinsurance for activities or persons with respect to which sanctions have been imposed.

Section 1246 requires the imposition of sanctions against a person (entity or individual) who knowingly provides underwriting services or insurance:

- for any activity with respect to Iran for which sanctions have been imposed under the various Iran sanctions laws of the United States;
- to or for any person –
 - o for the benefit of any activity in the energy, shipping, or shipbuilding sectors of Iran for which sanctions are imposed under the Act;
 - o for the sale, supply or transfer to or from Iran of the Materials (described in section 1245);
 - o appearing on OFAC’s List of Specially Designated National and Blocked Persons (other than certain Iranian financial institutions, *i.e.*, those that have not been designated for the imposition of sanctions on the basis of their involvement in nuclear proliferation, support for international terrorism, abuse of human rights).

Sanctions will not be imposed in connection with the provision of underwriting services or insurance or reinsurance for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran.

Sanctions will also not be imposed with respect to a person that provides underwriting services or insurance or reinsurance if such a person has exercised due diligence and established and enforced official policies, procedures and controls to ensure the person does not underwrite or enter into a contract to provide insurance or reinsurance for any activity which could lead to the imposition of sanctions under section 1246.

Section 1247: Imposition of Sanctions with respect to Foreign Financial Institutions that Facilitate Financial Transactions on behalf of Specially Designated Nationals (“SDNs”).

Section 1247 requires the imposition of sanctions (consisting of a prohibition or a restriction on the maintenance and operation of a correspondent or payable-through account in the United States) on a foreign financial institution, upon a determination that the foreign financial institution has knowingly facilitated a significant financial transaction on behalf of any Iranian person included on OFAC's List of Specially Designated Nationals and Blocked Persons (other than certain Iranian financial institutions, *i.e.*, those that have not been designated for the imposition of sanctions on the basis of their involvement in nuclear proliferation, support for international terrorism, abuse of human rights).

Like in other provisions of the Act, sanctions under section 1247 will not be imposed in connection with the provision of underwriting services or insurance or reinsurance for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran.

Insofar as it relates to petroleum and petroleum products and transactions with SDNs, sanctions will be imposed against a foreign financial institution only if at the time of purchase the US government determines that price and supply conditions permit the country of the purchaser to significantly reduce petroleum and petroleum products from Iran.

Sanctions will not apply to countries that have been granted waivers by the United States under the National Defense Authorization Act of 2012 with respect to their purchases of petroleum and petroleum products from Iran (the "Country Waiver") and the Country Waiver applies at the time of the purchase in question.

Sanctions will not apply to foreign financial institutions if at the time of the transaction, the Country Waiver applies to the country with primary jurisdiction over the foreign financial institution, and the financial transaction is:

- only for trade in goods and services,
- not otherwise subject to sanctions under the law of the United States, and
- between the country with primary jurisdiction over the foreign financial institution and Iran, and any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

Section 1247 applies to a foreign financial institution that conducts or facilitates a financial transaction for the sale, supply or transfer to or from Iran of natural gas unless the financial transaction:

- is only for trade in goods or services,
- not otherwise subject to sanctions under the law of the United States, and

- between the country with primary jurisdiction over the foreign financial institution and Iran, and any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

Presidential Waiver for Sanctions under Sections 1244, 1245, 1246, 1247 of the Act

Sanctions under sections 1244, 1245, 1246, and 1247 may be waived for a period of not more than 180 days, and additional periods of 180 days, if the President determines that a waiver is vital to the national security of the United States, and he submits a related report to the US Congress.

Section 1248: Imposition of sanctions with respect to the Islamic Republic of Iran Broadcasting.

Section 1248 of the Act requires the immediate imposition of sanctions against The Islamic Republic of Iran and its President, and the inclusion of the foregoing on OFAC's List of Specially Designated National and Blocked Persons.

Section 1249: Imposition of sanctions with respect to persons engaged in the diversion of goods intended for the people of Iran.

Section 1249 amends prior Iran sanctions law (by adding section 105C to CISADA) and provides expanded authority for the imposition of sanctions against persons engaged in corruption or other activities relating to –

- the diversion of goods, including agricultural commodities, food, medicine, and medical devices intended for the people of Iran; or
- the misappropriation of proceeds from the sale or resale of such goods.

Section 1250: Waiver requirement related to exceptional circumstances preventing significant reductions in crude oil purchases.

Section 1250 of the Act amends the conditions under which Country Waivers may be granted by the United States in connection with oil purchases from Iran, and provides for the consideration of “exceptional circumstances” that the country having primary jurisdiction over the foreign financial institution otherwise subject to sanctions faced, which prevented the country from being able to reduce significantly its purchases of petroleum and petroleum products from Iran.

Section 1251: Statute of limitations for civil actions regarding terrorist acts.

Section 1251 amends existing law to extend the statute of limitations period, from 4 years to 10 years, for civil actions regarding terrorist acts.

Section 1252: Report on use of certain Iranian seaports by foreign vessels and use of foreign airports by sanctioned Iranian air carriers.

Section 1252, 180 days after the enactment of the Act and annually thereafter through 2016, requires the US administration to submit to Congress reports to the US Congress that contains –

- a list of large or otherwise significant vessels that have entered seaports in Iran controlled by Tidewater Middle East Company and information regarding the owners and operators of such vessels; and
- a list of all airports at which aircraft owned or controlled by an Iranian carrier on which sanctions have been imposed by the United States have landed.

Section 1253: Implementation; penalties.

Section 1253 provides that the President may exercise authorities under the International Emergency Economic Powers Act (IEEPA) to implement the Act, and provides for the penalties set forth in IEEPA to apply to violators of the Act or regulations issued pursuant to the Act.

Section 1254: Applicability of the Act to certain natural gas projects.

The Act makes clear that nothing in the Act applies to any activity relating to a project:

- (i) for the development of natural gas and the construction and operation of a pipeline to transport natural gas from Azerbaijan to Turkey and Europe;
- (ii) that provides to Turkey and countries in Europe energy security and energy independence from the Government of the Russian Federation and other governments with jurisdiction over persons subject to sanctions imposed under the Act or amendments made by the Act; and
- (iii) that was initiated before the date of the enactment of this Act pursuant to a production-sharing agreement, or an ancillary agreement necessary to further a production-sharing agreement, entered into with, or a license granted by, the government of a country other than Iran before such date of enactment.

Section 1255: Rule of construction.

Section 1255 of the Act provides that nothing in the Act or the amendments made pursuant to the Act shall be construed to limit sanctions imposed with respect to Iran under any other provision of US law or to limit the authority of the President to impose additional sanctions with respect to Iran.

Implementation and Compliance



Given the present number and complexity of U.S. laws governing U.S. sanctions against Iran which are cumulative and provide for comprehensive prohibitions and the imposition of sanctions against a wide range of non-U.S. persons trading with Iran (for transactions wholly outside of the United States), and the constantly evolving rules, the U.S laws governing sanctions against Iran are very broad and detailed. Thus, the risk that a transaction or activity involving Iran or an Iranian entity will implicate U.S. prohibitions or trigger the imposition of U.S. sanctions under the Act and previous similar laws such as the Iran Sanctions Act, CISADA, relevant Presidential Executive Orders, the Iran Threat Reduction and Syria Human Rights Act of 2012, or the Act at any given time is relatively high. Ambiguities in the law make this risk higher.

Legal determinations as to whether a transaction is permitted or whether it constitutes prohibited or sanctionable activity are very fact-sensitive. Readers are therefore urged to exercise a high degree of caution and due diligence and to obtain expert guidance related to their activities involving Iran in order to avoid the imposition of sanctions as well as violations of the law. Judgments as to whether, and if so, how sanctions may apply to or impact a certain transaction or activity should be made on case-by-case basis.

Questions and Guidance

The Eren Law Firm will continue to very closely monitor the Act's interpretation and implementation by the designated agencies of the U.S. government. The Eren Law Firm will continue to interface with the policy-making as well as the enforcement offices of the U.S. government to address questions and issues with respect to the Act, and advise clients on compliance with the Act, and on how to permissibly avoid the imposition of sanctions.

For more information or questions regarding the subjects covered in this *Economic Sanctions Update*, please contact:

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The Eren Law Firm is an economic sanctions boutique. Its other core areas of concentration and practice include corporate transactions, and international dispute resolution, anti-money laundering, and international trade regulation. The Firm's clients from around the world include banks and financial institutions; insurance, reinsurance and other financial services companies; natural resource extraction companies, industrial companies, marine and air transportation companies, shipowners; sovereign governments; foreign state enterprises; and individuals.

Mr. Eren and Mr. Pinter of the Firm served at the U.S. Treasury's Office of Foreign Assets Control (OFAC), the U.S. government agency that administers and enforces U.S. economic sanctions, for a combined 25 years prior to entering private law practice, respectively 11 and 10 years ago, and have devoted and continue to devote most of their time in private practice to economic sanctions issues and matters. Ms. Barbara Maucher of the firm advises on EU sanctions issues and matters.

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