

President Signs Iran Threat Reduction and Syria Human Rights Act of 2012

August 16, 2012

On August 10, 2012, President Obama signed the Iran Threat Reduction and Syria Human Rights Act of 2012 (the Act) that significantly tightens sanctions against Iran and companies that help Iran develop its energy resources or advance its nuclear program. The Act significantly increases the risks for companies conducting business in the Middle East, especially shippers, financial institutions, insurers and reinsurers.

The Act generally expands and strengthens prior Iranian sanctions, while closing several loopholes in the Iran Sanctions Act (ISA) and the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA). Most notably, starting October 9, 2012, the Act imposes liability on parent companies for violations of sanctions by its foreign subsidiaries that engage in transactions with the Government of Iran or any person with whom transactions are prohibited under any of the Executive Orders related to Iran. This law further sanctions persons who:

- provide special financial messaging services to the Central Bank of Iran or designated Iranian banks;
- knowingly participate in a joint venture established on or after January 1, 2002, with the Government of Iran for the development of petroleum resources;
- sell, lease or provide to Iran goods, services, technology or support that contribute to Iran's ability to develop petroleum resources or domestic production of refined petroleum products, which includes construction of infrastructure to support the delivery of refined petroleum products;

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Practice Areas

International Trade

- engage in any activity relating to the mining, production or transportation of uranium with the Government of Iran or a person controlled by the Iranian government;
- engage in significant transactions with or knowingly facilitating or providing financial services to the National Iranian Oil Company (NIOC) or the National Iranian Tanker Company (NITC) for the purchase of petroleum or petroleum products;
- knowingly own, operate, control or insure a vessel that is used to transport crude oil from Iran to another country;
- knowingly own, operate or control a vessel in a manner that conceals the Iranian origin of crude oil or refined petroleum products transported on the vessel, such as suspending the satellite-tracking device on the vessel to avoid detection;
- knowingly sell, lease, provide a vessel, provide insurance or reinsurance, or any other shipping service for the transportation to or from Iran of goods that could materially contribute to Iran's acquisition of weapons of mass destruction or to international terrorism;
- purchase, subscribe to or facilitate the issuance of sovereign debt of the Government of Iran or any entity controlled by the Iranian government, including bonds; and
- knowingly transfer or facilitate the transfer of goods, services, or technologies to commit serious human rights abuses against the people of Iran.

Although this law substantially increases the risk of potential violations, the Act provides several exceptions for certain categories of persons conducting business in the Middle East. For example, the Act provides an exception for financial institutions that operate in countries in which that country has significantly reduced its crude oil purchases from Iran under the National Defense Authorization Act of Fiscal Year 2012 (NDAA). At present, such waivers have been provided under the NDAA to China, India, Japan, Singapore, South Africa, South Korea and Turkey. Additionally, the Act provides several exceptions for underwriters, insurers and reinsurers, which include the provision of services for exports of food, medicine and humanitarian assistance. In addition, insurers that provide adequate assurances that they will terminate the provision of services to the NIOC and NITC by December 8, 2012 are not subject to sanctions. Furthermore, underwriters, insurers and reinsurers that provide services that facilitate the transportation of crude oil or refined petroleum products from Iran may avoid sanctions if the President finds that the underwriter, insurer or reinsurer exercised due diligence in establishing and enforcing official policies, procedures and controls to prevent this behavior. While some exceptions exist, it is clear that the Act significantly increases the potential liability of companies conducting business in the Middle East.

In addition to the expansion of enumerated prohibited activity, the Act also expands the potential sanctions that may be imposed under ISA and requires the President to impose five or more sanctions on a person who engages in sanctionable activity. Prior to the Act, ISA compelled the President to impose three or more sanctions on a person engaging in sanctionable conduct. The potential sanctions under ISA include, among others, restricting export licenses, restricting loans from U.S. financial institutions, prohibiting export-import bank assistance for exports and procurement sanctions. The Act further expands the available sanctions to permit the President to prohibit the vessel used for a sanctioned activity from landing at any port in the United

States for up to two years from the date the sanctions are imposed. The President may also ban investment in equity or debt of sanctioned persons, direct the Secretary of State to deny visas to corporate officers or controlling shareholders of sanctioned persons and impose sanctions on principal executive officers or similar officials of sanctioned persons.

Finally, the Act also requires the Secretary of Treasury (Treasury) to submit several reports to Congress which could raise reputational concerns for companies named in such reports. Treasury must determine whether the NIOC and NITC are agents of Iran's Revolutionary Guard Corps (IRGC) and submit an official report with its findings to Congress by September 24, 2012. Treasury could well conclude that these entities are agents of the IRGC since Congress indicates in the Act that it believes not only that NIOC and NITC are controlled by the Iranian Government, but that they also provide significant support to the IRGC. The Act also requires Treasury to submit a report every 90 days to Congress that identifies operators of vessels, financial institutions, insurers and other persons that conduct or facilitate significant transactions with person that manage ports in Iran that have been sanctioned. Regulations to implement the Act's provisions must be issued on or before November 8, 2012.

We would be pleased to answer any questions you may have concerning the potential effect of the new legislation on your company's business and financial interests.