
U.S. Expands Iran Sanctions Regime and Extends Non-U.S. Company Liability

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On July 1, President Obama signed into law new legislation that significantly expands U.S. sanctions against Iran. The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("Act") targets Iran's energy sector, including its refined petroleum industry. The Act has far-reaching impact that creates potential exposure not only for companies that invest in or do business with Iran's oil and refined petroleum industries, but also companies that provide related financial, underwriting and insurance services. Any company seeking U.S. government contracts will also now be required to certify that neither it nor any entity it controls engages in activities covered by the sanctions. The Act, moreover, prohibits U.S. government entities from contracting with companies that export "sensitive" items to Iran.

Apart from its broader reach and extended impact on U.S. companies, the new legislation tightens existing U.S. sanctions against Iran and has significant extraterritorial effect for non-U.S. companies. The new legislation also covers a broader range of transactions than in the past and subjects violators to an expanded array of possible sanctions, including restricted access to the U.S. financial services market. The Act provides for certain waivers, exceptions and safe harbors, but these provisions are both complex and still need to be defined in implementing regulations. Companies should monitor ongoing implementation of the new legislation, review its potential impact, and establish effective due diligence and compliance programs that address their conduct in the United States and abroad.

Covered Transactions

U.S. or non-U.S. parties that enter into the following transactions are now subject to sanctions under the Act:

- *Investment in Iran's petroleum production:* Any person who makes an investment of \$20 million or more (including by increments of at least \$5 million within twelve months) that "directly and significantly contributes to the enhancement of Iran's ability to develop petroleum resources";

- *Expansion of Iran's refined petroleum industry:* Any person who "sells, leases or provides to Iran goods, services, technology, information or support that could ... facilitate the maintenance or expansion" of Iran's domestic production of refined petroleum products, including any assistance with respect to its refineries. The restrictions apply to any individual transaction of at least \$1 million or a total of \$5 million over twelve months;
- *Export of refined petroleum products to Iran, or assistance to Iran's ability to import such products:* Any person who "sells or provides to Iran refined petroleum products," or who "sells, leases, or provides to Iran goods, services, technology, information, or support" that could enhance Iran's ability to import refined products, worth at least \$1 million in a single transaction, or \$5 million or more during a twelve-month period.

The Act subjects firms to sanctions that "knowingly" engage in these transactions. Liability extends to firms that have "actual knowledge" of the conduct at issue, as well as those which "should have known" about such transactions. It refers to responsibility between parent companies and their subsidiaries for acts subject to the sanctions, and in some circumstances may also extend liability to U.S. subsidiaries of foreign companies for conduct that has taken place abroad. The exact scope and likely implementation of these provisions, however, remains unclear and should be monitored closely.

Expansion of Sanctions Available to the President Under the Iran Sanctions Act

The Iran Sanctions Act of 1996 contained six sanctions that the President could impose on parties engaged in prohibited transactions: 1) prohibition on receiving Export-Import Bank credits; 2) prohibition on receiving licenses under various export control regimes; 3) prohibition of receiving large loans from U.S. financial institutions; 4) for financial institutions, restrictions on their ability to deal in U.S. government bonds and serve as a repository for government funds; 5) a prohibition on government procurement from the violating entity; 6) additional sanctions to restrict imports from that party, in accordance with the International Emergency Economic Powers Act.

The new legislation provides for three additional sanctions, and the President must now impose three or more of the nine sanctions authorized under the Act. The additional sanctions are:

- Prohibit "transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has *any interest*";
- Prohibit transfers of credit or payments that involve "*any interest of the sanctioned person*" through U.S. financial institutions;
- Prohibit any person from participating in any property transaction "with respect to which the sanctioned person has any interest."

Any company seeking U.S. government contracts will also now be required to certify that neither it nor any entity it controls engages in activities covered by the sanctions. The Act, furthermore,

prohibits U.S. government agencies from contracting with entities that export sensitive items to Iran, including non-U.S. entities that do so, while pursuant to the Act's broader coverage of U.S. sub-federal agencies, U.S. state and local entities may also henceforth decline to do so.

Waiver Authority

The President may waive sanctions with respect to an entity whose government of primary jurisdiction is closely cooperating with the United States in multilateral efforts to prevent Iran from acquiring weapons of mass destruction or advanced conventional weapons. This waiver authority is especially relevant for firms whose governments are involved in efforts to prevent Iran from developing nuclear weapons.

The President must certify that each waiver "is vital to the national security interests of the United States" and inform Congress in writing, identifying the individual entity with respect to whom the waiver is granted. Congress has taken the position that "this waiver would not be available as a preemptive waiver," but only after the President affirmatively investigates and verifies that the required conditions are met. The significance of this waiver authority will depend upon how it is used over the coming months.

Investigations

The Act requires the President to immediately initiate an investigation of an entity upon receipt of "credible information" that it is engaged in sanctionable activity. The investigation may be waived if the President certifies in writing to Congress (a) that the entity is no longer engaging in the relevant activities, and (b) that the President has received "reliable assurances" that the entity will not engage in such activities in the future. Congress included this language in the legislation in response to criticism that the government often declined to investigate activities covered by the Iran Sanctions Act of 1996.

Insurance Providers & Underwriters

The Act includes an exception for insurance providers or underwriters who exercise due diligence to ensure that they do not underwrite or provide insurance or reinsurance for activities related to Iran's petroleum or refined petroleum products industries. Firms in the insurance industry should implement effective internal compliance and due diligence procedures to ensure that they are eligible to utilize this safe harbor.

Additional Provisions

The Act further tightens the existing Iran sanctions by:

- Requiring new Treasury Department regulations prohibiting financial transactions affiliated with the Government of Iran or the Revolutionary Guard Corps;¹

- Requiring new Treasury Department regulations requiring U.S. financial institutions to audit, monitor, and report to the Treasury on accounts they maintain for foreign institutions that may be engaged in such transactions;
- Encouraging and authorizing state and local governments to divest from companies with significant investments in Iran's energy sector;
- Providing a safe harbor from civil or criminal liability for investment or retirement plan managers who divest from companies that invest in Iran's energy sector;
- Tightening export controls for countries identified by the President as "Destination[s] of ... Concern" for the diversion of exports of sensitive technologies to Iran.

For more information about the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 or any other U.S., EU or UN sanctions or export control matters, please contact [Ronald Meltzer](#), [Robert Kimmitt](#), [Barry Hurewitz](#) (Washington DC), [Naboth van den Broek](#) (Washington DC/Brussels) or [Stefan Ohlhoff](#) (Berlin).

For more information about WilmerHale's Export Control and Sanctions Practice and the emerging transatlantic export control and sanctions landscape, please click [here](#) or see our recent alert on new U.S., EU and UN sanctions with respect to Iran [here](#).

¹ The Secretary of the Treasury has already implemented these prohibitions. On June 16, 2010, the Department of the Treasury's Office of Foreign Assets Control (OFAC) added numerous individuals and entities to its Specially Designated Nationals and Blocked Persons List (SDN List), thereby prohibiting U.S. persons from engaging in commercial or financial transactions with these parties.

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