

Update

US Executive Order 13622 and the Iran Threat Reduction and Syria Human Rights Act of 2012

The US government recently put into effect important new sanctions measures concerning Iran. On 30 July 2012 President Obama signed Executive Order 13622 expanding extraterritorial sanctions on Iran's petroleum sales. Eleven days later, the President signed into law the Iran Threat Reduction and Syrian Human Rights Act, which contains sweeping new and expanded sanctions largely (but not exclusively) targeting Iran's energy sector. These new sanctions have applicability to both US and non-US persons (individuals, companies and other entities), and significantly broaden the landscape of US sanctions on Iran.

Executive Order 13622: "Authorizing Additional Sanctions With Respect to Iran" (EO 13622)

Section 1 of EO 13622 authorizes the US Secretary of the Treasury to impose sanctions against "foreign financial institutions" (including foreign banks) that "knowingly" conducted or facilitated a "significant financial transaction" either (1) with the National Iranian Oil Company or Naftiran Intertrade Company (subject to a limited exception), or (2) "for the purchase or acquisition" of petroleum, petroleum products, or petrochemical products from Iran. Upon finding a violation of Section 1,

the foreign financial institution may be prohibited from opening, or have strict conditions imposed upon its opening or maintaining, correspondent or payable-through accounts in the US, effectively preventing the foreign financial institution from processing USD payments.

Section 2 of EO 13622 authorizes the US Secretary of State to impose sanctions against any foreign person (not just a financial institution) who has "knowingly" engaged "in a significant transaction for the purchase or acquisition" of petroleum, petroleum products, or petrochemical products from Iran. Violators may be prohibited from obtaining certain

loans from US banks, prohibited from foreign exchange transactions in the US, prohibited from engaging in transfers of credit or payment through US banks, have their US assets blocked (i.e., frozen), and have restrictions imposed upon or be prohibited from having their goods imported into the US. Notably, sanctions will not be imposed under Section 2, however, unless both:

- (1) The President has determined that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of such purchases from Iran. The President has made such determinations on 30 March 2012 and on 11 June 11 2012
- (2) An exemption has not been granted under the National Defense Authorization Act of 2011 to the country with primary jurisdiction over the person purchasing the Iranian petroleum or petroleum products. To date, exemptions have been granted to Belgium, the Czech Republic, France, Germany, Greece, Italy, the Netherlands, Poland, Spain, the United Kingdom, Japan, India, South Africa, Malaysia, South Korea, Sri Lanka, Taiwan, Turkey, Singapore and China

Section 5 of EO 13622 provides for sanctions against any person who materially assists, sponsors or provides financial, material, or technological support, or goods or services to, the National Iranian Oil Company, Naftiran Intertrade Company or the Central Bank of Iran. Section 5 provides that the property and interests in property in the US of a person determined to have breached its provisions are blocked.

As in most US sanctions, the term ‘knowingly’ under EO 13622 means, “with respect to conduct, a circumstance or a result that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.” There are no specific dollar thresholds for triggering the EO 13622 sanctions, but the US Treasury Department expects to consider the following factors to determine whether a transaction is “significant”: the size, number, and frequency; type, complexity, and commercial purpose; the level of awareness or involvement by management; whether the activity or payment illustrates a pattern or practice or an isolated event; the ultimate economic benefit conferred upon the sanctions target; and whether the transactions involved the use of deceptive financial practices to obscure the identities of the parties involved.

The Iran Threat Reduction and Syria Human Rights Act of 2012 (“ITRA”)

ITRA is the third significant sanctions law passed by the US Congress over the past two years, building upon the Comprehensive Iran Sanctions, Accountability, and Divestment Act in September 2010 (CISADA) and the National Defense Authorization Act in December 2011 (NDAA). Unlike the relatively narrow focus of CISADA and the NDAA, however, ITRA’s measures are wide-ranging.

Important provisions of ITRA include the following:

- Section 201 contains new sanctions against persons who (1) invest in construction of Iran’s transportation infrastructure if its primary purpose is to support the delivery of refined petroleum products, (2) participate in petroleum joint ventures in which the Iranian government is a substantial partner or investor, or (3) provide support for Iran’s development of petrochemical products
- Section 202 contains new sanctions in respect of the shipping of Iranian petroleum. Sanctions are provided against persons who are controlling beneficial owners of, or otherwise own, operate, control or insure a vessel that, 90 days after the enactment of ITRA, was used to transport crude oil from Iran to another country (subject to certain knowledge standards), unless the destination of such crude oil is a country that has been granted an exception under the NDAA. Sanctions are also provided against such persons if they permit the operator of a vessel to conceal that it is transporting Iranian crude or refined petroleum by suspending the vessel’s satellite tracking device or concealing or obscuring ownership, operation or control of the vessel by the Iranian government, the National Iranian Tanker Company, the Islamic Republic of Iran Shipping Lines, or any other entity determined to be owned or controlled by these entities. Vessels subject to these sanctions may be refused entry to US ports for a period of two years. These sanctions will not be imposed upon persons who provide underwriting services, insurance or reinsurance if they are determined to have “exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure” against engaging in the conduct sanctioned in Section 202
- Section 204 expands from three to five the number of sanctions to be imposed upon sanctioned persons under the Iran Sanctions Act, and adds three new sanctions to the “menu” of twelve. These new sanctions provide for: (1) a prohibition against US persons’ investing in the debt or equity of the sanctioned person, (2) denial of entry into the US for corporate officers of the sanctioned person, and (3) the blocking of assets of principal executive officers of the sanctioned person
- Section 211 authorizes sanctions against a person who knowingly sells or otherwise provides a vessel or insurance, reinsurance or other shipping services “for the transportation to or from Iran of goods that could materially contribute to” Iran’s proliferation of weapons of mass destruction or support for terrorism. Upon breach of this provision, the sanctioned person is subject to asset blocking and prohibition of transactions with US persons or in the US. Persons subject to sanction under Section 211 include not only the person who engaged in the conduct, but also such person’s parent company if it had actual knowledge or should have known of the subsidiary’s conduct, as well as the person’s subsidiaries who knowingly engaged in the conduct

Further information

If you would like further information on any issue raised in this update please contact:

Douglas Maag

E: douglas.maag@clydeco.us

Mia Finsness

E: mia.finsness@clydeco.us

Clyde & Co LLP
The Chrysler Building
405 Lexington Avenue
New York 10174
United States

T: +1 212 710 3900
F: +1 212 710 3950

Clyde & Co LLP
The St Botolph Building
138 Houndsditch
London EC3A 7AR

T: +44 (0)20 7876 5000
F: +44 (0)20 7876 5111

Further advice should be taken before relying on the contents of this summary.

Clyde & Co LLP accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary.

No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co LLP.

Clyde & Co LLP is a limited liability partnership registered in England and Wales. Authorised and regulated by the Solicitors Regulation Authority.

© Clyde & Co LLP 2012

- Section 212 provides a menu of new sanctions applicable to insurers and reinsurers. Specifically, Section 212 provides for sanction against persons who knowingly provide “underwriting services or insurance or reinsurance for the National Iranian Oil Company or the National Iranian Tanker Company” (or their successors). The President is required to impose 5 of the 12 sanctions on the “menu” upon determining that a person provided such underwriting services, insurance or reinsurance. There are three important exceptions provided for in Section 212:
 - First, the President is authorized not to impose the sanctions upon a person providing such underwriting services, insurance or reinsurance if the person is determined to have “exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure” against engaging in the sanctioned conduct
 - Second, sanctions will not be imposed for the provision of underwriting services, insurance or reinsurance related to provision of agricultural commodities, food, medicine or medical devices to Iran, or for the provision of humanitarian assistance to the Iranian people
 - Third, the President is authorized not to impose the sanctions if the President “receives reliable assurances that the person will terminate the provision of underwriting services or insurance or reinsurance” for the National Iranian Oil Company or the National Iranian Tanker Company (and their successors) within 120 days of enactment of ITRA (i.e., by 8 December 2012)
- Section 213 imposes sanctions against persons who purchase, subscribe to or facilitate issuance of sovereign debt by the Iranian government, or of any entity owned or controlled by the Iranian government
- Section 216 requires that regulations implementing CISADA sanctions that apply to foreign financial institutions be revised to encompass a broader range of institutions
- Section 217 codifies into law various sanctions imposed by Presidential Executive Orders
- Section 218 provides that new sanctions shall be imposed upon US companies for conduct by their “owned or controlled” foreign subsidiaries and other foreign entities if such conduct would be prohibited if engaged in by the US company. This provision contains a safe harbor if the US company divests or terminates its business with the foreign entity within 180 days of enactment of ITRA
- Section 219 requires companies listed on US stock exchanges to make disclosures of sanctions violations in their public reports
- Section 302 calls for imposition of sanctions against persons who knowingly materially assist, sponsor or provide financial, material or technological support to Iran’s Revolutionary Guard Corps or its officials, agents or affiliates whose property and interests in property are blocked in the US
- Section 504 requires a finding that a country granted an NDAA exception reduce its Iranian crude imports to zero in order to receive a further exemption
- Titles IV and VII of ITRA provide for additional sanctions in respect of human rights abuses in Iran and Syria

Regulatory action will follow in due course to implement and clarify provisions of ITRA.