

# United States Enacts Further Sanctions on Iran and Syria: the Iran Threat Reduction and Syria Human Rights Act of 2012

September 12, 2012

## Introduction

The recently enacted [Iran Threat Reduction and Syria Human Rights Act of 2012](#)<sup>1</sup> (the “**Act**”) strengthens existing sanctions on Iran, especially those aimed at third-country nationals engaging in business with Iran, and includes measures relating to human rights abuses in Iran and Syria. The Act, signed into law on August 10, 2012, is primarily intended to compel Iran to abandon its pursuit of nuclear weapons and support for terrorism and terrorist regimes.

## Executive Summary: Highlights of the Act

The Act amends the Iran Sanctions Act of 1996 (“ISA”)<sup>2</sup> to:

- expand the list of Iran-related activities that expose a person to sanctions, including participation in certain petroleum-related joint ventures outside of Iran, the supply to Iran of goods or other support for the development of domestic Iranian petroleum or petrochemical production, transportation of crude oil from Iran, transactions related to Iran’s acquisition or development of weapons of mass destruction (“**WMD**”) or other military capabilities, and participation in joint ventures with the Government of Iran (the “**GOI**”) relating to uranium;
- add new sanctions that the President may choose to impose on persons that engage in targeted activities, including a ban on investment in equity or debt of a sanctioned person, the exclusion from the United States of officers or controlling shareholders of a sanctioned person, and the imposition of sanctions on the principal executive officers of a sanctioned person;
- tighten the presidential waiver provisions of Section 9(c) of the ISA; and
- expand the certifications required by the ISA of persons seeking to contract with the U.S. Government to cover transactions with persons associated with the Iranian Revolutionary Guard Corps (the “**IRGC**”).

In addition, the Act:

- amends Section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012 (the “**NDAA**”),<sup>3</sup> which restricts access to U.S. correspondent or payable-through accounts by foreign financial institutions (“**FFIs**”) that engage in certain transactions with Iran. The presidential sanctions waivers for countries that have reduced their Iranian petroleum purchases apply only to financial transactions that are solely for trade in goods and services between the

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<sup>1</sup> Pub. L. 112-158.

<sup>2</sup> 50 U.S.C. § 1701 note.

<sup>3</sup> Pub. L. 112-81.

relevant country and Iran, and require that any funds owed to Iran are credited to an account in such country;

- makes U.S. parent companies liable for their foreign subsidiaries' transactions with the GOI or persons subject to the GOI's jurisdiction that would be prohibited under the International Emergency Economic Powers Act ("**IEEPA**")<sup>4</sup> if performed by a U.S. person;
- requires issuers of securities to report to the Securities and Exchange Commission ("**SEC**") a wide range of activities involving Iran, not only by the issuer but by its affiliates. Disclosures, including information about certain lawful activities, are to be posted to the SEC's website;
- amends Section 104(c) of the Comprehensive Iran Sanctions Accountability and Divestment Act of 2010 ("**CISADA**")<sup>5</sup> to require the President to consider whether the National Iranian Oil Company ("**NIOC**") or the National Iranian Tanker Company ("**NITC**") is an agent or affiliate of the IRGC and, if so, to impose sanctions on FFIs engaging in certain transactions with NIOC or NITC;
- expands the criteria for the designation and freezing of assets of persons associated with the IRGC, exposes foreign persons supporting the IRGC to ISA sanctions, and expands the existing certification requirements for prospective U.S. contractors to cover significant economic transactions with designated officials, agents, or affiliates of the IRGC;
- expands sanctions with respect to the transfer of goods or technologies to Iran that are likely to be used in human rights abuses and persons who engage in censorship against Iranian citizens;
- requires licensing determinations by the Treasury Department's Office of Foreign Assets Control ("**OFAC**") with respect to certain U.S. Government-funded activities involving Iran to be made within 90 days; and
- expands sanctions with respect to human rights abuses in Syria and persons who engage in censorship against Syrian citizens.

## Discussion of Key Provisions of the Act

### Title I – Expansion of Multilateral Sanctions Regime with Respect to Iran

Title I of the Act recommends robust enforcement and expansion of a multilateral sanctions regime against Iran. It urges the President to intensify diplomatic efforts to expand the United Nations Security Council ("**UNSC**") sanctions regime to include additional measures against Iran; to expand the range of sanctions imposed with respect to Iran by U.S. allies; and to take additional steps relating to Iran's development of petroleum resources, its exportation of refined petroleum products and its sale of petrochemical products to other countries. Title I requires that not later than February 6, 2013, and every 180 days thereafter, the President submit to the appropriate congressional committees a report on the extent to which the diplomatic efforts described above have been successful.

### Title II – Expansion of Sanctions Relating to the Energy Sector of Iran and Proliferation of WMD by Iran

The Act's new sanctions against Iran are concentrated in Title II, which is divided into Subtitles A and B.

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<sup>4</sup> 50 U.S.C. §§ 1701-1707.

<sup>5</sup> 22 U.S.C. § 8501 *et seq.*

## Subtitle A. Expansion of the ISA

Subtitle A expands the range of Iran-related activities that expose third parties to ISA sanctions. It also adds three additional sanctions that the President may choose to impose on persons that engage in ISA-targeted activities.<sup>6</sup>

### 1. Additional Sanctionable Activities Under Section 5 of the ISA

Section 5(a) of the ISA, as amended by the Act, generally requires the President to impose five or more (formerly three or more) of the sanctions described in Section 6(a) of the ISA with respect to a person if the President determines that the person knowingly engages in any of the activities specified in Section 5.<sup>7</sup> The Act adds the following sanctionable activities under Section 5 of the ISA:

- Knowing participation, on or after August 10, 2012, in a joint venture with respect to the development of petroleum resources<sup>8</sup> outside of Iran if the joint venture is established on or after January 1, 2002 and either the GOI is a substantial partner or investor in the joint venture, or Iran could receive technological knowledge or equipment not previously available to it that could directly and significantly contribute to the enhancement of Iran's ability to develop its petroleum resources. Sanctions will not apply if the person participating in the joint venture terminates such participation not later than February 6, 2013. (Section 201)
- Knowingly selling, leasing or providing to Iran, on or after August 10, 2012, goods, services,<sup>9</sup> technology or support that could directly and significantly contribute to the maintenance or enhancement of Iran's:
  - ability to develop its domestic petroleum resources;
  - domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries or directly associated infrastructure, including construction of port facilities, railroads or roads, the primary use of which is to support the delivery of refined petroleum products;<sup>10</sup> or

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<sup>6</sup> The full list of potential sanctions under Section 6(a) of the ISA now includes: (1) restrictions on Export-Import Bank assistance; (2) denial of U.S. export licenses; (3) limits on loans from U.S. financial institutions; (4) sanctions on financial institutions, including prohibitions on designation as a primary dealer and service as a repository of government funds; (5) U.S. Government procurement sanctions; (6) restrictions on foreign exchange transactions; (7) restrictions on U.S. banking transactions; (8) freezing property within U.S. jurisdiction; (9) bans on investment in equity or debt of sanctioned persons; (10) exclusion of corporate officials from obtaining a U.S. visa; (11) sanctions on principal executive officers; and (12) additional sanctions as the President deems appropriate.

<sup>7</sup> Pursuant to other sections of the Act, the President must also impose five or more of the sanctions listed in Section 6(a) of the ISA on persons that engage in certain other Iran-related activities. For example, see the discussion below of Subtitle B of Title II of the Act. Paragraphs 2 and 3 of that section of this memorandum discuss Section 212 of the Act, regarding the imposition of sanctions on persons who provide underwriting services or insurance or reinsurance for NIOC or NITC, and who purchase sovereign debt of the GOI. See also the discussion below of Subtitle A of Title III of the Act. Paragraph 2 of that section of this memorandum discusses the imposition of sanctions on persons supporting the IRGC, pursuant to Section 302 of the Act.

<sup>8</sup> "Petroleum resources" is defined in the ISA to include petroleum, refined petroleum products, oil or liquefied natural gas, natural gas resources, oil or liquefied natural gas tankers, and products used to construct or maintain pipelines used to transport oil or liquefied natural gas.

<sup>9</sup> The Act adds the following definition to the ISA: "the term 'services' includes software, hardware, financial professional consulting, engineering, and specialized energy information services, energy-related technical assistance, and maintenance and repair."

<sup>10</sup> This provision, included in new Section 5(a)(5) of the ISA, largely duplicates an existing provision in Section 5(a)(2) of the ISA. Section 5(a)(2) provides for the imposition of sanctions with respect to a person that the President determines knowingly sells, leases, or provides to Iran "goods, services, technology, *information* or support [above certain thresholds] that could directly and significantly *facilitate* the maintenance or *expansion* of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries or directly associated (cont.)

- domestic production of petrochemical products.<sup>11</sup> (Section 201)

The provisions relating to the development of Iran's domestic petroleum resources and to petrochemical products codify portions of E.O. 13590.<sup>12</sup> For activities involving petroleum resources and refined petroleum products, sanctions shall be imposed if any goods, services, technology or support have a fair market value of \$1 million or more, or if they have an aggregate fair market value of \$5 million or more over a twelve-month period. For petrochemical products, the corresponding thresholds are \$250,000 and \$1 million.<sup>13</sup>

- Owning, operating, controlling or insuring a vessel that, on or after November 8, 2012, was used to transport crude oil from Iran to another country, if (i) in the case of a person that is a controlling beneficial owner of the vessel, the person had "actual knowledge" the vessel was so used, or (ii) in the case of a person that otherwise owns, operates, or controls, or insures the vessel, the person knew or should have known the vessel was so used. (Section 202)

Sanctions for the transportation of crude oil from Iran may be imposed only if the President has determined under Section 1245(d)(4)(B) of the NDAA that there is a sufficient supply of petroleum and petroleum products produced in countries other than Iran to permit purchasers of Iranian petroleum and petroleum products to reduce significantly such purchases from Iran.

Further, these sanctions, will not apply with respect to the transportation of crude oil from Iran to a country to which an exception under Section 1245(d)(4)(D)<sup>14</sup> applies at the time of the transportation of the crude oil.<sup>15</sup>

- Concealing the Iranian origin of crude oil or refined petroleum products transported on a vessel on or after November 8, 2012. Liability attaches to a controlling beneficial owner with actual knowledge, or to a person who otherwise owns, operates or controls, a vessel and knew or

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(cont.)

infrastructure, including construction of port facilities, railways, and roads, the primary use of which is to support the delivery of refined petroleum products. (Emphasis added to show slight differences in wording from new provision added by the Act.) It is unclear why the new provision was added; part of the provision tracks lead-in language in E.O. 13590 (see below), but E.O. 13590 does not include a section relating to refined petroleum products.

<sup>11</sup> "Petrochemical product" is defined to include any aromatic, olefin, or synthesis gas, and any derivative of such a gas, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea.

<sup>12</sup> See Executive Order ("E.O.") 13590 (Authorizing the Imposition of Certain Sanctions with Respect to the Provision of Goods, Services, Technology, or Support for Iran's Energy and Petrochemical Sectors, 76 Fed. Reg. 72609 (Nov. 23, 2011)). [State Department Guidance](#) issued on November 25, 2011 with respect to E.O. 13590 provided, "The completion of existing contracts is not sanctionable under E.O. 13590. However, any contracts that are expanded, renewed, or amended after E.O. 13590's effective date could trigger sanctions." There is no similar grandfathering provision in the Act for existing contracts.

<sup>13</sup> In addition, Section 5(a)(3) of the ISA provides for the imposition of sanctions on persons determined to knowingly sell or provide to Iran refined petroleum, or sell, lease or provide to Iran goods, services, technology, information, or support (that have a fair market value of \$1 million or more or that, during a twelve-month period, have an aggregate fair market value of \$5 million or more) that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products. Section 201 of the Act adds the following services to the list of activities that constitute "goods, services, technology, information or support" targeted by Section 5(a)(3) of the ISA: "bartering or contracting by which goods are exchanged for goods, including the insurance or reinsurance of such exchanges," and "purchasing, subscribing to, or facilitating the issuance of sovereign debt of the [GOI], including governmental bonds, issued on or after [August 10, 2012]."

<sup>14</sup> As discussed in greater detail below, the Act amends the NDAA's provisions regarding exemptions from sanctions for countries determined to have substantially reduced their imports of Iranian crude oil. See *infra* the discussion of Title V of the Act.

<sup>15</sup> Currently, the following countries are covered by such an exception: Belgium, China, the Czech Republic, France, Germany, Greece, Italy, Japan, the Netherlands, Poland, Spain, the United Kingdom, India, Malaysia, Republic of Korea, Singapore, South Africa, Sri Lanka, Turkey and Taiwan. However, the current exceptions are set to expire on September 16, 2012 with respect to Belgium, the Czech Republic, France, Germany, Greece, Italy, Japan, the Netherlands, Poland, Spain and the United Kingdom.

should have known, of the Iranian origin of the transported products.<sup>16</sup> Concealment includes (i) permitting the operator of the vessel to suspend the operation of the vessel's satellite tracking device; or (ii) obscuring or concealing the ownership, operation or control of the vessel by the GOI, NITC or the Islamic Republic of Iran Shipping Lines (“**IRISL**”), or any other entity determined by the President to be owned or controlled by the GOI, NITC or IRISL. The President is also authorized to prohibit a vessel that has been used for targeted activities described above from landing at a port in the U.S. for a period of up to two years.

The Act includes a due diligence safe harbor for underwriters, insurers and reinsurers: the President may not impose sanctions on a person that provides underwriting services or insurance or reinsurance for vessels transporting Iranian petroleum products if the President determines that the person has exercised due diligence in establishing and enforcing official policies, procedures and controls to ensure that the person does not provide such services. By November 8, 2012, the President must publish regulations or guidelines to implement the provisions regarding transportation sanctions and the new due diligence safe harbor. (Section 202)

- Exporting or transferring, permitting or otherwise facilitating the transshipment of, any goods, services, technology or other items after August 10, 2012, with knowledge or reason to know that (i) such actions would likely result in another person exporting, transferring, transshipping, or otherwise providing the goods, services, technology or other items to Iran; and (ii) the provision of such goods or services to Iran would contribute materially to Iran's ability to acquire or develop chemical, biological or nuclear weapons or related technologies or destabilizing numbers and types of advanced conventional weapons. (Section 203)
- Knowingly participating, on or after August 10, 2012, in a joint venture established on or after February 2, 2012, related to the mining, production or transportation of uranium with (i) the GOI; (ii) an entity incorporated in Iran or subject to the jurisdiction of the GOI; or (iii) a person acting on behalf of, or at the direction of, or owned or controlled by an entity described in clause (i) or (ii).<sup>17</sup> (Section 203)
- Knowingly participating, on or after August 10, 2012, in a joint venture established before February 2, 2012, with any person described in the immediately preceding bullet through which (a) uranium is transferred directly to Iran or indirectly to Iran through a third country; (b) the GOI receives significant revenue; or (c) Iran could receive technological knowledge or equipment not previously available to Iran that could contribute materially to its ability to develop nuclear weapons or related technologies.<sup>18</sup> (Section 203)

## 2. Three New Sanctions Added to Menu of Sanctions Under Section 6(a) of the ISA

Section 204 of the Act amends Section 6(a) of the ISA by adding the following three sanctions to the menu of penalties that the President may choose to impose on a person that engages in activities targeted by Section 5 of ISA:

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<sup>16</sup> “Iranian origin” means (i) with respect to crude oil, that the crude oil was extracted in Iran; and (ii) with respect to a refined petroleum product, that the refined petroleum product was produced or refined in Iran.

<sup>17</sup> Sanctions will not apply with respect to participation, on or after August 10, 2012, in a joint venture established before such date if the non-Iranian person terminates its participation in the joint venture not later than February 6, 2013.

<sup>18</sup> See *supra* footnote 17.

- *Ban on investment in equity or debt of sanctioned person.* The President may prohibit any U.S. person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person.
- *Exclusion of corporate officers.* The President may direct the Secretary of State to deny a visa to, and the Secretary of Homeland Security to exclude from the U.S., any foreign person that the President determines is a corporate officer, principal, or a controlling shareholder of a sanctioned person.
- *Sanctions on principal executive officers.* The President may impose any of the sanctions listed in Section 6(a) of the ISA on the principal executive officers of any sanctioned person.

These additional sanctions may be applied with respect to targeted activities commenced on or after August 10, 2012.

### **3. Modification of Waiver Standard under Section 9(c) of the ISA**

The Act amends the waiver standard in Section 9(c) of the ISA. Section 205 of the Act creates two waiver standards, one for sanctions relating to the energy sector of Iran and the other for sanctions relating to the development of WMD and other military capabilities. The new waiver provisions relating to the energy sector provide that the President may waive, on a case-by-case basis and for a period of not more than one year, the requirement in Section 5(a) of the ISA to impose sanctions, and may waive the continued imposition of sanctions under Section 9(b) of the ISA, 30 days or more after the President determines and reports to the appropriate congressional committees that it is *essential* to the national security interests of the United States to exercise such waiver authority. The former standard was “necessary to the national interest of the United States.” The waivers in Section 9(c) of the ISA can be renewed for successive one-year periods if the President makes the required determination and submits the appropriate reports. Previously, Section 9(c) did not limit the duration of the waiver. The waiver provision with respect to sanctions relating to the development of WMD or other military capabilities is the same as that relating to the energy sector of Iran, except that the standard for exercise of the waiver is *vital* to the national security interests of the United States.

### **4. Presidential Briefing to Congress on Efforts to Implement the ISA**

Section 206 of the Act amends Section 4 of the ISA to require that not later than November 8, 2012, and every 120 days thereafter, the President, acting through the Secretary of State, must provide to the appropriate congressional committee a comprehensive briefing on efforts to implement the ISA.

### **5. Investigations Upon Receipt of Credible Information**

Section 4(e) of the ISA requires that the President initiate an investigation into the possible imposition of sanctions under Section 5(a) of the ISA against a person upon receipt by the United States of “credible information” indicating that such person is engaged in a targeted activity. However, prior to the enactment of the Act, the ISA did not define “credible information.” Section 207 of the Act adds the following definition to the ISA: “the term ‘credible information,’ with respect to a person (A) includes (i) a public announcement by the person that the person has engaged in an activity described in [Section 5(a) or (b)]; and (ii) information set forth in a report to stockholders of the person indicating that the person has engaged in such an activity; and (B) may include, in the discretion of the President, (i) an announcement by the [GOI] that the person has engaged in such an activity; or (ii) information indicating that the person has engaged in such an activity that is set forth in (I) a report of the Government Accountability Office, the Energy Information Administration, or the Congressional Research Service; or (II) a report or publication of a similarly reputable governmental organization or trade or industry organization.”

## Subtitle B. Additional Measures Relating to Sanctions Against Iran

Subtitle B of the Act provides for the imposition of sanctions with respect to persons that provide vessels or shipping services, or insurance or reinsurance, to transport certain goods associated with the proliferation of WMD or terrorism activities related to Iran; persons that provide underwriting services or insurance or reinsurance for NIOC, NITC or their successors, with certain exceptions; and persons who purchase sovereign debt of the GOI. Subtitle B also requires disclosures by issuers to the SEC regarding certain Iran-related activities conducted by the issuers and/or their affiliates. Most significantly, U.S. parent companies will be held liable and subjected to civil penalties for their foreign subsidiaries' transactions with the GOI or persons subject to the jurisdiction of the GOI that would violate IEEPA if performed by a U.S. person. This provision differs from other extraterritorial aspects of the ISA and CISADA because it imposes U.S. legal penalties on a U.S. person for actions by a person organized under foreign law. It differs from extraterritorial penalties under the Trading With the Enemy Act<sup>19</sup> because it penalizes the U.S. parent rather than asserting direct U.S. jurisdiction over the foreign subsidiary.

### 1. Sanctions for Provision of Vessels, Shipping Services, Insurance and Reinsurance for Shipment of Goods to or from Iran Related to WMD or Terrorism

Section 211 of the Act requires the President to block and prohibit all transactions in property and interests in property within U.S. jurisdiction of persons he determines knowingly, on or after August 10, 2012, provide a vessel, insurance or reinsurance, or any other shipping service for the transportation to or from Iran of goods that could materially contribute to the activities of the GOI with respect to the proliferation of WMD or support for acts of international terrorism, as well as certain related persons.<sup>20</sup> Persons who may be sanctioned include (A) any person that sold, leased or provided a vessel, or provided insurance or reinsurance, or another shipping service described above (the “**provider**”); and (B) any person that (i) is a successor to any provider; (ii) owns or controls the provider if such person had actual knowledge or should have known that the provider provided the vessel, insurance or reinsurance or other shipping service; or (iii) is owned or controlled by, or under common ownership or control with, the provider, if such person knowingly engaged in the targeted activities.

The President may waive the requirement to impose sanctions 30 days or more after he determines that such a waiver is vital to the national security interests of the United States and submits to the appropriate congressional committees a report explaining the reasons for that determination. By November 8, 2012, and every 90 days thereafter, the Secretary of the Treasury, in coordination with the Secretary of State, is required to submit to the appropriate congressional committees a report identifying operators of vessels and other persons that conduct or facilitate significant financial transactions with persons that manage ports in Iran that have been sanctioned pursuant to IEEPA.

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<sup>19</sup> 50 U.S.C. App. 5(b).

<sup>20</sup> The authority for the blocking shall be E.O. 13382, E.O. 13224 or IEEPA. E.O. 13382 (Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters, 70 Fed. Reg. 38567 (July 1, 2005)) prohibits U.S. persons' transactions with designated persons that materially contribute (or pose a risk of materially contributing) to the proliferation of WMD, and their designated supporters, and freezes the designees' assets within U.S. jurisdiction. E.O. 13224 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49079 (Sept. 25, 2001)) prohibits U.S. persons' transactions with terrorists and their supporters and freezes their assets within U.S. jurisdiction.

## 2. Sanctions for Provision of Underwriting Services or Insurance or Reinsurance for NIOC or NITC

Section 212 of the Act requires the President, by October 9, 2012, to impose five or more of the sanctions described in Section 6(a) of the ISA with respect to a person if the President determines that the person knowingly, on or after August 10, 2012, provides underwriting services or insurance or reinsurance for NIOC, NITC or a successor to either company.<sup>21</sup> The President is authorized not to impose sanctions with respect to a person if he receives reliable assurances that the person will terminate the sanctionable activities not later than December 8, 2012. The President is not required to impose sanctions with respect to a person determined to have exercised due diligence in establishing and enforcing official policies, procedures and controls to ensure that the person does not provide underwriting or insurance or reinsurance for NIOC, NITC or a successor to either company. The Act also provides an exception with respect to the provision of underwriting services or insurance or reinsurance for any activities relating solely to (A) the provision of agricultural commodities,<sup>22</sup> food, medicine,<sup>23</sup> or medical devices<sup>24</sup> to Iran; or (B) the provision of humanitarian assistance to the people of Iran.

## 3. Sanctions for the Purchase of Sovereign Debt of the GOI

Pursuant to Section 213 of the Act, the President must impose five or more sanctions described in Section 6(a) of the ISA with respect to a person determined to have knowingly, on or after August 10, 2012, purchased, subscribed to, or facilitated the issuance of: (i) sovereign debt of the GOI issued on or after August 10, 2012, including governmental bonds; or (ii) debt of any entity owned or controlled by the GOI issued on or after August 10, 2012.<sup>25</sup>

## 4. Expansion of Section 104 of CISADA (Financial Institution Sanctions)

The Act adds a new Section 104A to CISADA that expands mandatory sanctions with respect to financial institutions that engage in certain activities relating to Iran. Section 216 of the Act requires the Secretary of the Treasury, not later than November 8, 2012, to revise the regulations prescribed under Section 104(c)(1) of CISADA to apply not only to the FFIs previously covered but also to an FFI, including an Iranian financial institution, that the Secretary of the Treasury finds:

- knowingly facilitates, participates or assists in an activity described in Section 104(c)(2) of CISADA,<sup>26</sup> including by acting on behalf of, at the direction, of or as an intermediary for, or otherwise assisting, another person with respect to the activity;

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<sup>21</sup> This section of the Act does not amend the ISA, although it requires the imposition of sanctions listed in the ISA.

<sup>22</sup> "Agricultural commodities" are defined as set forth in Section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

<sup>23</sup> "Medicine" means a "drug" as defined in Section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

<sup>24</sup> "Medical device" means a "device" as defined in Section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

<sup>25</sup> A separate provision of the Act seems to partially duplicate Section 213. Section 201, among other things, amends Section 5(a)(3) of the ISA to provide for the imposition of sanctions on persons who purchase, subscribe to or facilitate the issuance of sovereign debt of the GOI issued after August 10, 2012.

<sup>26</sup> Section 104(c)(2) of CISADA targets FFIs that (i) facilitate the efforts of the GOI to acquire or develop WMD or to provide support for international terrorism; (ii) assist persons subject to UNSC sanctions resolutions relating to Iran; (iii) engage in money laundering related to, or facilitate efforts by the Central Bank of Iran or another Iranian financial institution to carry out, one of the activities described in clauses (i) or (ii); or (iv) facilitate a significant transaction or provide significant financial services for the IRGC or any *person* whose property is blocked pursuant to IEEPA in connection with Iran's WMD proliferation or support for international terrorism. (Section 215 of the Act amends Section 104(c)(2)(E)(ii) of CISADA, which formerly referred to any "financial institution," rather than any "person," whose property is blocked.)

- attempts or conspires to facilitate or participate in such an activity; or
- is owned or controlled by an FFI that the Secretary finds knowingly engaged in such an activity.

Section 104A of CISADA also requires the Secretary of the Treasury to submit to the appropriate congressional committees, not later than February 6, 2013, and every 180 days thereafter, a report that describes:

- the effects of the regulations prescribed under Section 104(c)(1) of CISADA on the financial system and economy of Iran and capital flows to and from Iran; and
- the ways in which funds move into and out of financial institutions whose property and interests in property are blocked in connection with Iran's proliferation of WMD or support for international terrorism, with specific attention to the use of other Iranian financial institutions and other FFIs to receive and transfer funds for such blocked financial institutions.

## **5. Codification and Continuation of Sanctions with respect to the GOI, the Central Bank of Iran and Sanctions Evaders**

Section 217 of the Act provides that U.S. sanctions with respect to Iran provided for in E.O. 13599<sup>27</sup> shall remain in effect until 90 days after the President submits to the appropriate congressional committees a certification regarding the Central Bank of Iran.<sup>28</sup> The President must continue to apply to the Central Bank of Iran sanctions pursuant to IEEPA, including blocking of property and restrictions or prohibitions on financial transactions and the exportation of property, until 90 days after he submits the required certification to the appropriate congressional committees.

In addition, the Act provides that U.S. sanctions with respect to Iran provided for in E.O. 13608,<sup>29</sup> relating to sanctions evaders, shall remain in effect until 30 days after the President submits to the appropriate congressional committees the certification described in Section 401(a) of CISADA with respect to the GOI's cessation of support for international terrorism and weapons proliferation.

## **6. Liability of U.S. Persons for Violations of Iran Sanctions by Foreign Subsidiaries**

Section 218 of the Act requires the President, by October 9, 2012, to prohibit an entity owned or controlled by a U.S. person and established or maintained outside the United States from knowingly

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<sup>27</sup> E.O. 13599 (Blocking Property of the Government of Iran and Iranian Financial Institutions, 77 Fed. Reg. 6659 (Feb. 8, 2012)) blocks all property within U.S. jurisdiction of the GOI, any political subdivision, agency or instrumentality thereof (including the Central Bank of Iran), and any person owned or controlled by or acting for or on behalf of the GOI; all Iranian financial institutions; and all persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted for or on behalf of, directly or indirectly, any person whose property is blocked pursuant to the E.O.

<sup>28</sup> The President must certify that the Central Bank of Iran is not: (A) providing financial services in support of, or otherwise facilitating, the ability of Iran to (i) acquire or develop chemical, biological or nuclear weapons, or related technologies; (ii) construct, equip, operate or maintain nuclear facilities that could aid Iran's efforts to acquire a nuclear capability; or (iii) acquire or develop ballistic missiles, cruise missiles, or destabilizing types and amounts of conventional weapons; or (B) facilitating transactions or providing financial services for (i) the IRGC; or (ii) financial institutions the property of which is blocked pursuant to IEEPA in connection with Iran's proliferation of WMD or support for international terrorism.

<sup>29</sup> E.O. 13608 (Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria, 77 Fed. Reg. 26407, (May 3, 2012)) targets foreign individuals and entities that have violated, attempted or conspired to violate, or caused a violation of U.S. sanctions against Iran or Syria, or that have facilitated deceptive transactions for persons subject to U.S. sanctions concerning Syria or Iran. Upon the Treasury Department's identification and listing of a foreign sanctions evader, U.S. persons will generally be prohibited from providing to, or procuring from, the listed party goods, services, or technology, effectively cutting the evader off from the U.S. marketplace. E.O. 13608 also suspends the entry into the United States of such persons.

engaging in any transaction, directly or indirectly, with the GOI or any person subject to the jurisdiction of the GOI that would be prohibited by an order or regulation issued pursuant to IEEPA if the transaction were engaged in by a U.S. person or in the United States. The Act provides for the imposition of civil penalties under IEEPA<sup>30</sup> on a U.S. person if its foreign subsidiary violates, attempts or conspires to violate, or causes a violation of any order or regulation issued to implement the new prohibition. Thus, penalties for a non-U.S. subsidiary's violation will be imposed not on the subsidiary itself, but on its U.S. parent. The U.S. parent will not be subject to any civil penalties if the U.S. person divests or terminates its business with its non-U.S. subsidiary by February 6, 2013.

Although the Act does not prescribe regulations regarding foreign subsidiaries, we expect OFAC to issue regulations under the Iranian Transactions Regulations, 31 C.F.R. 560 (the "ITR"), to implement the requirements of Section 218 of the Act. It is unclear whether OFAC will issue a general license to include non-U.S. subsidiaries within any existing OFAC licenses currently in effect that cover U.S. persons. Without such a general license, it is likely that many U.S. companies holding OFAC licenses that cover only the U.S. company, its U.S. subsidiaries and their U.S. employees will have to seek amendments to their licenses to cover their non-U.S. subsidiaries that may be involved in transactions prohibited by the Act.

## 7. Requirement that Issuers Disclose Certain Iran-Related Transactions

One of the most significant provisions of the Act imposes new reporting obligations on issuers required to file annual or quarterly reports with the SEC, including both U.S. domestic and foreign private issuers. The SEC-related provisions contained in Section 219 of the Act apply to reports due to be filed on or after February 6, 2013. The Act obliges each SEC-reporting issuer to disclose information regarding certain activities relating to Iran, particularly new investments or new transactions relating to the Iranian petroleum, petrochemical or marine transport sectors. Section 219 of the Act amends Section 13 of the Securities Exchange Act of 1934 (the "**Exchange Act**")<sup>31</sup> to provide that each issuer must include in its quarterly and annual reports to the SEC certain information if, during the period covered by the report, the issuer or any affiliate of the issuer:

- (A) knowingly engaged in an activity described in Section 5(a) or (b) of the ISA, including significant investments in or transactions that could develop the Iranian petroleum or petrochemical sectors or activities that could assist Iran's development of WMD or other military capabilities;.
- (B) knowingly engaged in an activity described in the following sections of CISADA:
  - Section 104(c)(2);<sup>32</sup>
  - 104(d)(1), which prohibits persons owned or controlled by U.S. financial institutions from knowingly engaging in a transaction with the IRGC;
  - 105A(b)(2),<sup>33</sup> which relates to the transfer of goods, technologies or services likely to be used by the GOI to commit serious human rights abuses against the people of Iran,

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<sup>30</sup> IEEPA provides that the maximum penalty per violation is the greater of \$250,000 or twice the value of the violative transaction.

<sup>31</sup> 15 U.S.C. § 78a *et seq.*

<sup>32</sup> See *supra* footnote 26.

<sup>33</sup> See *infra* "Title IV – Measures Relating to Human Rights Abuses in Iran."

including, among other things, firearms or ammunition, surveillance technology or sensitive technology;<sup>34</sup> or

- (C) knowingly conducted any transaction or dealing with (i) any person whose property is blocked pursuant to E.O. 13224 or E.O. 13382 or (ii) any person identified as constituting part of the GOI under Section 560.304 of the ITR<sup>35</sup> “without the specific authorization of a Federal department or agency.”

Compliant disclosures must contain a detailed description of each activity referenced above, including (i) the nature and extent of the activity; (ii) the gross revenues and net profits, if any, attributable to such activity; and (iii) whether the issuer or affiliate of the issuer intends to continue the activity. If an issuer reports that it or an affiliate has knowingly engaged in any activities described above, the issuer is required to separately file with the SEC a notice that the disclosure of that activity has been included in the issuer’s annual or quarterly report. Upon receipt of such a notice, the SEC is required to transmit the report to the President and certain congressional committees, and to post the information provided in the disclosure on the SEC’s website.

Pursuant to amended Section 13 of the Exchange Act, upon receipt of a report that includes disclosure of an activity described in clause (A), (B) or (C) above (except a transaction or dealing with the GOI), the President is required to initiate an investigation into the possible imposition of sanctions. No more than 180 days after initiating an investigation, the President must determine whether sanctions should be imposed with respect to the issuer or the affiliate of the issuer.

The Act requires issuers to disclose any dealings with the GOI, regardless of whether those dealings are otherwise sanctionable, unless the activity is conducted with the specific authorization of a Federal department or agency. The Act does not explain what constitutes “specific authorization” of a Federal department or agency. The use of the word “specific” may indicate that for an issuer that is a U.S. person<sup>36</sup> and perhaps for non-U.S. subsidiaries of a U.S. person,<sup>37</sup> transactions with the GOI will be excepted from the disclosure requirements only if they are conducted pursuant to a specific license, such as a specific OFAC license.

Under a broader reading of the relevant language in Section 219 of the Act, transactions conducted pursuant to an OFAC general license or an exemption under the OFAC regulations might be considered “specifically authorized” and therefore not disclosable. Until this ambiguity is resolved, it will be unclear, for example, whether an issuer that is a U.S. person that renews a patent in Iran (which is permitted by an OFAC general license) must disclose such activity in its filings with the SEC. The Act does not prescribe the issuance of new SEC rules to implement the amended language in Section 13 of the Exchange Act. However, the SEC staff may decide to issue guidance through a Compliance and Disclosure

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<sup>34</sup> “Sensitive technology” is defined in Section 106(c) of CISADA, as amended, to mean, with certain exceptions, “hardware, software, telecommunications equipment, or any other technology, that the President determines is to be used specifically—(A) to restrict the free flow of unbiased information in Iran; or (B) to disrupt, monitor, or otherwise restrict speech of the people of Iran.”

<sup>35</sup> Under Section 560.304 of the ITR, the definition of the GOI includes not only all political subdivisions, agencies and instrumentalities thereof, but also all entities owned or controlled directly or indirectly by the foregoing, as well as persons acting directly or indirectly on behalf of any of the foregoing, and any person or entity specifically designated by the Secretary of the Treasury as being part of the GOI.

<sup>36</sup> For purposes of U.S. sanctions, U.S. persons include entities organized under U.S. law, including their non-U.S. branches, as well as any U.S.-located branch, agency, representative office or other U.S. location of a foreign entity.

<sup>37</sup> As discussed above, under Section 218 of the Act, non-U.S. subsidiaries of U.S. persons will be prohibited from knowingly engaging in any transaction directly or indirectly with the GOI or any person subject to the jurisdiction of the GOI that would be prohibited if the transaction were engaged in by a U.S. person or in the United States. Such non-U.S. persons will therefore need an OFAC license to engage in certain activities involving Iran.

Interpretation or other form of guidance to shed some light on its interpretation of the statute, as they have done with other statutes, such as the Jumpstart Our Business Startups (JOBS) Act.<sup>38</sup> For an issuer that is not a U.S. person or a subsidiary of a U.S. person, it appears that virtually all transactions with the GOI must be disclosed, as there is typically no basis on which a Federal department or agency would authorize such foreign persons' activities with Iran that are not within U.S. jurisdiction. Thus, for example, a non-U.S. issuer would presumably have to disclose its dealings with an Iranian regulator in connection with the shipment of medicine to Iran.

The new disclosure requirements in the Act go beyond the current efforts of the SEC's Office of Global Security Risk ("OGSR"), which examines issuers' disclosure documents with respect to their activities that may relate to one or more countries designated by the State Department as "State Sponsors of Terrorism" (currently Cuba, Iran, Sudan and Syria).<sup>39</sup> The OGSR routinely sends comment letters to issuers asking them to describe any quantitatively or qualitatively material contacts they have with State Sponsors of Terrorism. In certain cases, the OGSR seeks additional information even when a company's filings do not describe any such contacts, if the OGSR has learned of possible contacts through other sources, such as company websites, media reports or online search engines.

The far-reaching nature of the Act's amendments to Section 13 of the Exchange Act (in particular the requirement to disclose almost all dealings with the GOI, which information will be posted on the SEC's website) is reminiscent of a short-lived SEC initiative in 2007 that added a software tool to the SEC's website permitting users to obtain information from company annual reports about a company's business activities involving State Sponsors of Terrorism. The initiative was intended to highlight these companies' activities in countries sponsoring terrorism without regard to whether that involvement was consistent or inconsistent with U.S. foreign and sanctions policy toward the specified country. For example, certain companies' posted reports indicated that their activities were conducted pursuant to U.S. Government licenses; others stated that they had divested the interest for which they were listed. The web tool's multiple shortcomings caused such an outcry that it was suspended within a month of being introduced and has not been reinstated. The newest disclosure and web posting requirements are imposed by the Act; the SEC does not have discretion to eliminate the disclosure requirement or decline to post the information on its website. As noted above, however, the SEC staff could issue guidance or the SEC could conduct rulemaking to further define the contours of these requirements.

## **8. Provision of Financial Messaging Services**

Section 220 of the Act targets the provision of financial messaging services to the Central Bank of Iran and other sanctioned Iranian financial institutions. It requires the Secretary of the Treasury, not later than October 9, 2012, and every 90 days thereafter, to submit to the appropriate congressional committees a report that:

- lists all persons that the Secretary has identified that directly provide specialized financial messaging services to, or enable or facilitate direct or indirect access to such messaging services for, the Central Bank of Iran or a financial institution described in Section 104(c)(2)(E)(ii) of CISADA;<sup>40</sup> and

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<sup>38</sup> Pub. L. 112 -106.

<sup>39</sup> The State Department's designations are issued pursuant to one or more of the following authorities: Section 6(j) of the Export Administration Act (50 U.S.C. App. 2401 *et seq.*), Section 40 of the Arms Export Control Act (22 U.S.C. ch. 39), and Section 620A of the Foreign Assistance Act (22 U.S.C. § 2151 *et seq.*).

<sup>40</sup> These are financial institutions whose property is blocked in connection with Iran's WMD proliferation or support for international terrorism.

- assesses the status of efforts by the Secretary to end the provision of such messaging services to the Central Bank of Iran and such financial institutions.

The Act provides that enabling or facilitating direct or indirect access to specialized financial messaging services includes doing so by serving as an intermediary financial institution with access to such messaging services. If, on or after November 8, 2012, a person continues to engage knowingly in the activities described above, the President may impose sanctions with respect to the person pursuant to Section 104(c)(2)(E)(ii) of CISADA (which restricts access to U.S. correspondent and payable through accounts) or IEEPA. There is an exception if the person is subject to a sanctions regime under its governing foreign law that prohibits similar activities as Section 220 of the Act and the person has, pursuant to that sanctions regime, terminated such activities.<sup>41</sup>

## **9. Identification of, and Immigration Restrictions on, Senior Officials of the GOI and Their Families**

Section 221 of the Act provides that by February 6, 2013, and annually thereafter, the President must publish a list of each individual the President determines is (i) a senior official of the GOI<sup>42</sup> that is involved in Iran's (A) illicit nuclear activities or proliferation of WMD or delivery systems for WMD; (B) support for international terrorism; or (C) the commission of serious human rights abuses against citizens of Iran or their family members; or (ii) a family member of such an official. Such persons will be denied visas and excluded from the United States.<sup>43</sup> The President may waive the requirements of Section 221 if he determines that such a waiver is essential to the national interest of the United States and notifies Congress of the waiver at least seven days in advance, giving the reason therefor.

## **10. Report of the Government Accountability Office**

Section 223 of the Act requires the Comptroller General of the United States, not later than December 10, 2012, to submit to the appropriate congressional committees a report on foreign entities that invest in the energy sector of Iran or export refined petroleum products to Iran. This report, must cover the period beginning on January 1, 2009 and ending on January 7, 2013,<sup>44</sup> and must include (i) entities that exported gasoline and other refined petroleum products to Iran; (ii) entities involved in the provision of refined petroleum products to Iran, including (a) those that provided ships to transport refined petroleum products to Iran and (b) those that provided insurance or reinsurance for shipments of refined petroleum products to Iran; and (iii) entities involved in commercial transactions of any kind, including joint ventures anywhere in the world, with Iranian energy companies. In addition, the report must identify the countries in which gasoline and other refined petroleum products exported to Iran during such period were produced or

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<sup>41</sup> Specifically, (A) the foreign law must require persons to eliminate the knowing provision of such messaging services to, and the knowing enabling and facilitation of direct and indirect access to such messaging services for, the Central Bank of Iran and a group of Iranian financial institutions identified under such governing foreign law for purposes of that sanctions regime and (B) the President must determine that the group is substantially similar to the group of financial institutions described in Section 104(c)(2)(E)(ii) of CISADA and that the differences between those groups of financial institutions do not adversely affect the national interests of the United States.

<sup>42</sup> Senior officials of the GOI include: the Supreme Leader of Iran, the President of Iran, a member of the Cabinet of the GOI, a member of the Assembly of Experts, a senior member of the Intelligence Ministry of Iran, and a senior member of the IRGC, including a senior member of a paramilitary organization such as Ansar-e-Hezbollah or Basij-e Motaz'afin.

<sup>43</sup> There is an exception if admitting an individual to the U.S. is necessary to comply with the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations signed June 26, 1947, and entered into force November 21, 1947, and other international obligations.

<sup>44</sup> Oddly, the period required to be covered by the report extends beyond the date the report must be submitted.

refined. The Comptroller General must submit an updated report within a year of submitting the first report.

### **Title III – Sanctions with Respect to the IRGC**

#### **Subtitle A. Sanctions Against Officials, Agents, Affiliates and Supporters of the IRGC and Other Sanctioned Persons**

##### **1. Sanctions on the IRGC and its Affiliates**

Section 301 of the Act requires the President to investigate, designate pursuant to IEEPA, and block the assets within U.S. jurisdiction of, foreign persons that are officials, agents, or affiliates of the IRGC. Persons so identified are also subject to exclusion from the United States. The list of designated persons must be provided to certain congressional committees not later than November 8, 2012, and periodically thereafter.

The Act specifies that the President's investigation shall give priority to two considerations: (i) foreign persons related to the GOI (as identified pursuant to Section 560.304 of the ITR); and (ii) foreign persons reasonably considered to have conducted or attempted to conduct sensitive transactions. Such transactions include financial transactions with a non-Iranian financial institution valued at more than \$1 million during a one-year period; certain transactions related to Iranian WMD proliferation, the Iranian energy or petrochemical sectors; and transactions relating to the procurement of defined sensitive technologies used to restrict the free flow of information in Iran or otherwise restrict Iranian free speech. The President has the authority to waive sanctions imposed on officials, agents, or affiliates of the IRGC if the President determines that it is "vital to the national security interests of the United States to do so" and notifies certain congressional committees. In addition, the President may waive the identification or designation of a person, upon notification of certain congressional committees, based on a finding that the identification or designation "would cause damage to the national security of the United States."

##### **2. Sanctions on Foreign Persons Supporting the IRGC**

Pursuant to Section 302 of the Act, the President is required to identify, list, and impose at least five ISA sanctions on<sup>45</sup> any foreign persons that knowingly materially assist, sponsor, or provide financial material or technology support for—or goods or services in support of—the IRGC, its officials, agents, or affiliates; or engage in significant transactions, including barter transactions, with the IRGC, its officials, agents, or affiliates, or with persons (or entities owned or controlled by persons) subject to financial sanctions under UNSC resolutions related to Iran.<sup>46</sup> The list must be provided to certain congressional committees not later than November 8, 2012, and periodically thereafter.

The Act provides that the President may terminate sanctions if he determines that the foreign person no longer engages in the targeted activity, and the President has received adequate assurances from the foreign person that it will not engage in such activity in the future. In addition, the President may waive the imposition of sanctions, upon notification of certain congressional committees, if he determines that the foreign person has ceased the targeted activity and taken measures to prevent a recurrence, and finds that a waiver is "essential to the national security interests of the United States." The President may waive the identification of a person, upon similar congressional notice, based on a finding that the identification "would cause damage to the national security of the United States."

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<sup>45</sup> Similar to Section 212 of the Act, Section 302 of the Act does not amend the ISA, although it requires the President to impose five or more of the sanctions listed in Section 6(a) of the ISA.

<sup>46</sup> For purposes of this provision, the Act specifically identifies, but is not limited to, UNSC Resolutions 1737 (2006), 1747 (2007), 1803 (2008), and 1929 (2010).

### **3. Sanctions on Foreign Government Agencies**

Section 303 of the Act requires the President to submit a report to appropriate congressional committees that identifies each agency of the government of a foreign country (other than Iran) that the President determines knowingly and materially assisted, sponsored, or provided support to, or engaged in a significant transaction with, a foreign person that: (i) is an official, agent, or affiliate of the IRGC that is designated pursuant to IEEPA; (ii) is designated and subject to financial sanctions pursuant to UNSC resolutions with respect to Iran;<sup>47</sup> or (iii) the foreign government agency knows is acting on behalf of or at the direction of, or owned or controlled by, an official, agent, or affiliate of the IRGC or a UNSC designee described above. The report must be provided not later than December 10, 2012, and periodically thereafter.

If a foreign agency is identified as having engaged in a targeted transaction with such foreign persons, the President may impose measures to limit the agency's capability to continue such activities or transactions, including: (i) limiting foreign assistance under the Foreign Assistance Act of 1961;<sup>48</sup> (ii) denying certain credit or financial assistance by the U.S. Government; (iii) opposing loans or assistance by international financial institutions in accordance with the International Financial Institutions Act;<sup>49</sup> (iv) prohibiting sales of goods or services under the Arms Export Controls Act,<sup>50</sup> exports under the United States Munitions List, and most exports controlled for national security reasons under the Export Administration Regulations;<sup>51</sup> and (v) imposing other sanctions provided for in IEEPA. Such measures, however, shall not take effect until the later of either September 24, 2012 or 45 days after the designation of the foreign person as an official, agent, or affiliate of the IRGC or other designation of the foreign person as subject to applicable UNSC sanctions relating to Iran.

The Act provides that the President may terminate any measures imposed against foreign government agencies if he determines and notifies the appropriate congressional committees that the foreign person with whom the agency was interacting is no longer designated, the agency has ceased acting for or on behalf of a designee, the agency has ceased its targeted activity and provided assurances that it will not engage in such activity in the future, or the termination is "essential to the national security interests of the United States." The President may waive the measures set forth above if he explains to Congress why such measures were not imposed.

#### **Subtitle B. Additional Measures Related to the IRGC**

##### **1. U.S. Procurement Ban**

Section 311 of the Act amends Section 6(b)(1) of the ISA to require prospective U.S. contractors to certify that neither they nor their subsidiaries have knowingly engaged in significant economic transactions with designated officials, agents, or affiliates of the IRGC. This is in addition to existing ISA provisions that require prospective U.S. contractors to certify that they and persons they own or control do not engage in ISA-targeted activities. The certification requirement must be implemented not later than December 10, 2012. False certification will result in termination of a contract or debarment for a period of not less than two years.

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<sup>47</sup> See *supra* footnote 46.

<sup>48</sup> 22 U.S.C. § 2151.

<sup>49</sup> 22 U.S.C. § 262d.

<sup>50</sup> 22 U.S.C. § 2751.

<sup>51</sup> See 15 C.F.R. Subtitle B, Chapter VII, Subchapter C.

The Act also amends Section 6(b) of the ISA by further restricting the President's authority to waive the certification requirement. Whereas the ISA previously permitted the President to waive the certification requirement on a case-by-case basis upon a determination "that it is in the national interest of the United States to do so," the Act requires that a waiver must be "essential to the national security interests of the United States."

## **2. Sanctions Determinations Relating to NIOC and NITC**

Section 104(c) of CISADA is amended by Section 312 of the Act to require that the Secretary of Treasury determine and report to certain congressional committees not later than September 24, 2012 whether NIOC or NITC is an agent or affiliate of the IRGC. If NIOC or NITC is found to be an agent or affiliate of the IRGC, in the event that an FFI facilitates or provides significant financial services to NIOC or NITC for the purchase of petroleum or petroleum products, CISADA's restrictions on the opening or maintaining of a U.S. correspondent account or payable through account will apply to the FFI if the President affirmatively determines that there is a sufficient supply of petroleum and petroleum products produced in countries other than Iran so that purchasers are able to reduce significantly purchases from Iran. Sanctions will not apply to an FFI if the President determines pursuant to Section 1245(d) of the NDAA that the country with primary jurisdiction over the FFI has significantly reduced its volume of crude oil purchases from Iran.<sup>52</sup>

The sanctions required to be imposed under this section with respect to NIOC were implemented in part pursuant to E.O. 13622,<sup>53</sup> which, among other things, authorizes the Secretary of the Treasury to impose sanctions on FFIs that knowingly conduct or facilitate a significant financial transaction (i) with NIOC or its subsidiary Naftiran Intertrade Company, or (ii) for the purchase of petroleum, petroleum products or petrochemical products from Iran.

## **Title IV – Measures Relating to Human Rights Abuses in Iran**

### **Subtitle A. Expansion of Sanctions Relating to Human Rights Abuses in Iran**

#### **1. Sense of Congress and Report to Congress**

Subtitle A of Title IV strengthens Section 105 of CISADA, which imposes sanctions on persons responsible for human rights abuses committed against Iranians after the June 12, 2009 elections. Section 401 of the Act requires the President to consider the inclusion of numerous Iranian leaders, including the Supreme Leader of Iran, the President of Iran, senior members of the Intelligence Ministry of Iran, senior members of the IRGC, Ansar-e-Hezbollah and Basij-e-Mostaz'afin, and the Ministers of Defense, Interior, Justice and Telecommunications, on the list of human rights abusers sanctioned under Section 105 of CISADA and report to Congress why any of these persons were not included.

#### **2. Imposition of Sanctions with Respect to the Transfer of Goods or Technologies to Iran Likely to be Used to Commit Human Rights Abuses**

Section 402 of the Act adds a new Section 105A to CISADA that requires the President to list and sanction persons who knowingly provide to Iran, the GOI, or for use in Iran, goods or technologies likely to be used by the GOI or on its behalf to commit serious human rights abuses, or provide services with respect to such goods or technology after they are transferred to Iran. Targeted goods and technologies include, but are not limited to, firearms and ammunition, rubber bullets, chemical sprays, electroshock weapons, surveillance technology, and sensitive technology. The list must be provided to certain

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<sup>52</sup> See *infra* the discussion of Section 503 of the Act.

<sup>53</sup> E.O. 13622 (Authorizing Additional Sanctions With Respect to Iran, 77 Fed. Reg. 45897 (Aug. 2, 2012)).

congressional committees not later than November 8, 2012 and periodically thereafter as required by Section 105 of CISADA. Mandatory sanctions include ineligibility for a visa to enter the United States and the imposition of sanctions under IEEPA, subject to regulatory exceptions. Additional sanctions provided for in Section 6(a) of the ISA may be imposed on persons engaged in prohibited transactions with the IRGC. This provision expands and codifies the sanctions imposed by the President in E.O. 13553.<sup>54</sup>

### **3. Imposition of Sanctions with Respect to Persons who Engage in Censorship Against Citizens of Iran**

New Section 105B of CISADA, added by Section 403 of the Act, requires that the President list and sanction persons who have, on or after June 12, 2009, engaged in censorship or related activities that impair freedom of expression or assembly in Iran, or limit access to print or broadcast media, including assisting in activities related to interference by the GOI or a GOI-owned or -controlled entity, with transmission of international signals. The lists must be provided to the same congressional committees on the same schedule as the lists required by Section 105A of CISADA. Mandatory sanctions include ineligibility for a visa to enter the United States and the imposition of sanctions under IEEPA, subject to regulatory exceptions.

#### **Subtitle B. Additional Measures to Promote Human Rights**

Subtitle B of Title IV includes provisions relating to humanitarian and human rights activities in Iran. It requires that OFAC make licensing determinations for U.S. Government-funded human rights, humanitarian, and democratic activities relating to Iran by November 8, 2012, except for requests involving the exportation or reexportation of items controlled under the Export Administration Regulations. It codifies the sanctions in effect on August 9, 2012 pursuant to E.O. 13606,<sup>55</sup> which targets persons providing or using technology that facilitates computer or network disruption, monitoring or tracking that promotes human rights abuses by the GOI or the Government of Syria. In addition, Subtitle B requires the Secretary of State to issue and periodically update guidelines: (i) clarifying “sensitive technology” as used in Section 106 of CISADA, which prohibits most Federal procurement from a person that exports such technology to Iran, and (ii) determining technologies that enable Iran’s indigenous capability to disrupt and monitor domestic communications. It also provides a statement of U.S. policy on Iranian political prisoners and dissidents, and requires the President to submit to certain congressional committees a strategy for promoting the free flow of information, including Internet and other telecommunications capacity and content.

#### **Title V – Miscellaneous**

Title V of the Act (Section 501) provides for denial of visas to, and exclusion from the United States of, Iranian citizens seeking higher education in preparation for a career in the Iranian energy, nuclear or related sectors.

Section 503 of the Act makes several amendments to Section 1245 of the NDAA, which restricts access to U.S. correspondent or payable-through accounts by FFIs that engage in certain transactions with Iran.

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<sup>54</sup> E.O. 13553 (Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses By the Government of Iran and Taking Certain Other Actions, 75 Fed. Reg. 60567 (Oct. 1, 2010)) blocks all property and interests in property within U.S. jurisdiction of persons responsible for or complicit in serious human rights abuses in Iran and prohibits all transactions and dealings of U.S. persons with the designated persons.

<sup>55</sup> E.O. 13606 (Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology, 77 Fed. Reg. 24571 (April 24, 2012)) blocks all property and interests in property of persons providing or using technology that facilitates computer or network disruption, monitoring or tracking that promotes human rights abuses by the Government of Syria or the Government of Iran.

It clarifies that the sanctions that may be imposed under the NDAA on FFIs for certain transactions with Iranian financial institutions do not apply to sales of agricultural commodities.

Section 504 of the Act amends Section 1245(d)(3) of the NDAA to expand the applicability of sanctions to FFIs owned or controlled by a foreign government. In addition, Section 1245(d)(1), as amended, provides for a renewable exemption from sanctions for financial transactions conducted or facilitated by an FFI if the President determines that the country with primary jurisdiction over the FFI has “significantly reduced” its volume of crude oil purchases from Iran during a specified period or has completely halted its Iranian crude purchases. Section 504 narrows the scope of this exemption to provide that a financial transaction conducted or facilitated by an FFI is exempted only if (i) the financial transaction is solely for trade in goods or services between the country with primary jurisdiction over the FFI and Iran; and (ii) 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 FFI.

#### **Title VI – General Provisions**

Title VI of the Act authorizes the President to impose sanctions and promulgate regulations to implement various sections of the Act, and to apply the civil and criminal penalty provisions of IEEPA to persons that violate, attempt, conspire or cause a violation of Sections 211, 212, 213, and 220, Title III Subtitle A, and Title VII of the Act, and new Sections 105A and 105B of CISADA.

In addition, Title VI exempts from the Act certain projects initiated before August 10, 2012 related to a natural gas pipeline being built from the Shah Deniz gas field in Azerbaijan to Turkey and Europe and related natural gas development, provided that various conditions are met, including no increase in ownership (relative to January 1, 2002) or participation by the GOI or an Iranian entity in the projects.

Finally, Title VI provides for termination of certain provisions of the Act 30 days after the President makes the certification described in Section 401(a) of CISADA with respect to the cessation of the GOI’s support for international terrorism and weapons proliferation.

#### **Title VII – Sanctions with Respect to Human Rights Abuses in Syria**

##### **1. Sanctions on Persons Responsible for or Complicit in Human Rights Abuses Committed Against Citizens of Syria or Their Family Members**

Title VII of the Act contains the Syria Human Rights Accountability Act of 2012 (the “**SHR Act**”), a separate statute. Section 702 of the Act includes a provision similar to Section 105 of CISADA, requiring the President to compile a list of, and impose sanctions on, persons who are responsible for or complicit in serious human rights abuses against Syrian citizens or their family members. The list must be provided to certain congressional committees not later than December 10, 2012, and periodically thereafter. Sanctions shall be imposed as provided in IEEPA, subject to such regulations as the President prescribes.

##### **2. Sanctions With Respect to the Transfer of Goods or Technologies to Syria Likely to be Used to Commit Human Rights Abuses**

The SHR Act also imposes sanctions similar to those implemented in new Section 105A of CISADA, requiring the President to list and sanction persons who knowingly provide to Syria goods or technologies likely to be used by the Government of Syria to commit serious human rights abuses, or provide services with respect to such goods or technologies after they are transferred to Syria. Targeted goods and technologies include, but are not limited to, firearms and ammunition, rubber bullets, chemical sprays, electroshock weapons, surveillance technology and sensitive technology. The list must be provided to certain congressional committees not later than December 10, 2012, and periodically thereafter. The President is required to impose sanctions on persons on the list, as well as on persons who (i) are successor entities to a listed person; (ii) own or control a listed person if the controlling persons knew or

should have known of the sanctioned activity; or (iii) are owned or controlled by or under common ownership with a listed person if such related person knowingly engaged in the activity for which the listed person was included on the list. Sanctions shall be imposed as provided in IEEPA, subject to such regulations as the President prescribes.

### 3. Sanctions with Respect to Persons Who Engage in Censorship or Other Forms of Repression in Syria

Finally, the SHR Act imposes sanctions similar to those implemented in new Section 105B of CISADA by Title IV of the Act. The SHR Act requires that the President list and sanction persons that engage “in censorship, or activities relating to censorship, in a manner that prohibits, limits, or penalizes the legitimate exercise of freedom of expression by citizens of Syria.” The list must be provided to certain congressional committees by December 10, 2012, and periodically thereafter.

### 4. Waiver and Termination

Sections 705 and 706 of the Act permit the President to waive any of the requirements of the SHR Act if a waiver is in the national security interest of the United States, and to terminate the SHR Act upon certification to specified congressional committees that a democratically elected government or transitional government is in place in Syria and such government has ended certain practices, including human rights abuses, support for foreign terrorist organizations, and development and deployment of ballistic missiles or WMD.

## Conclusion

The Act expresses Congress's determination to drive U.S. policy towards ever stricter sanctions against Iran, apparently reasoning that U.S. allies and trading partners will generally conform to new U.S. restrictions rather than risk losing access to U.S. markets and financial services. The Act's sanctions continue CISADA's focus on Iran's petroleum and petrochemical industries as the principal sources of Iran's foreign exchange and, therefore, its ability to finance weapons proliferation, terrorism and human rights abuses. In several respects, the Act narrows Executive branch discretion and flexibility, for instance, by restricting presidential waiver authority and codifying regulations currently imposed under Executive Orders or the President's discretionary IEEPA authority. Despite its exceptional detail, the Act's impact will nonetheless depend greatly on implementing regulations and guidance by OFAC, the SEC, and the State Department, among others. Meanwhile, as occurred after CISADA was enacted, private sector parties will have to cope with a period of uncertainty as they work through the practical effects of a statute that adds layers of new requirements and many new definitions to an already complex legal structure.

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