

## New Iran Sanctions Targeting Oil Industry and International Banking Institutions

On July 1, 2010, President Obama signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), an amendment and extension of the existing Iran sanctions under the Iran Sanctions Act of 1996 (ISA). The new sanctions are intended to put further pressure on the Iranian regime in the wake of continued tension over Iran's nuclear program and human rights violations related to the June 2009 presidential election in Iran. The new sanctions target Iran's energy and banking sector, both considered areas where the United States can exert significant pressure on the Iranian regime. The sanctions also extend and expand existing sanctions on Iran.

Overall, the new law will impact more non-US companies, create new tougher sanctions focused on the petroleum refining and financial sectors, and force the Obama Administration to conduct more investigations of potential violations and to justify any decision not to impose sanctions to Congress. This legislation will have its greatest effect on those whose activities are not already subject to US sanctions legislation. US companies, US persons wherever located, and anyone actually in the United States are already subject to comprehensive sanctions enforced by the US Department of the Treasury's Office of Foreign Assets Control (OFAC) and certain non-US companies are already subject to some sanctions under the ISA. But more foreign companies, including shipping companies, international brokers, insurers, and other companies involved in international trade, and more foreign subsidiaries of US companies will face harsh new sanctions under CISADA. For example, a foreign insurance or shipping company could face US sanctions under the new law for business operations entirely outside the United States, even if they do not have any offices or employees in the United States. Enforcement of this extraterritorial jurisdiction is likely to create foreign policy tensions for the Administration.

### Petroleum Industry Sanctions

The new sanctions require the President to impose three or more of the sanctions available under the ISA on any individual or entity, domestic or foreign, that "knowingly" makes an investment of US\$20 million or more in the Iranian petroleum industry, or makes individual investments of US\$5 million or more in the Iranian petroleum industry that add up to US\$20 million over the course of a 12-month period. (CISADA Section 102(a).) This expands the existing law, which only requires imposition of two sanctions for such violations. The

**Brussels**  
+32 (0)2 290 7800

**Denver**  
+1 303.863.1000

**London**  
+44 (0)20 7786 6100

**Los Angeles**  
+1 213.243.4000

**New York**  
+1 212.715.1000

**Northern Virginia**  
+1 703.720.7000

**San Francisco**  
+1 415.356.3000

**Washington, DC**  
+1 202.942.5000

investments must “directly and significantly” contribute to the Iranian petroleum industry. CISADA does not define the term “directly and specifically,” thereby leaving that term open to interpretation. CISADA does define “knowingly” to mean that a person must have actual knowledge or a reason to know of the investment or other conduct prohibited by CISADA. (CISADA Section 101.)

The new law also expands the scope of the ISA to cover the petroleum refining industry and refined petroleum products in addition to the investments in the petroleum industry that are already covered by the existing law. CISADA requires the President to impose three or more of the ISA sanctions on any individual or entity, domestic or foreign, that knowingly provides goods or services valued at US\$1 million or more (or US\$5 million in total over a 12-month period) to support the Iranian petroleum refining industry. The prohibited goods and services include construction, modernization, and repair of refineries and refinery equipment. (CISADA Section 102(a).)

Finally, CISADA requires the President to impose sanctions on any domestic or foreign person that knowingly sells or otherwise provides refined petroleum products to Iran valued at US\$1 million in any individual transaction, or US\$5 million over the course of a 12-month period. The President must also impose sanctions on any company providing goods or services valued at US\$1 million in any individual transaction (or US\$5 million over the course of a 12-month period) that enhance Iran’s ability to import refined petroleum products. These services include shipping refined petroleum to Iran or financing, brokering, underwriting, or insuring shipments of refined petroleum to Iran. (CISADA Section 102(a).)

It is particularly important to note that the petroleum-related sanctions apply to both foreign and domestic entities. Non-US companies may be sanctioned, even if they do not have any offices or employees in the United States. Non-US companies currently doing petroleum business in Iran must therefore choose between ceasing their business activities in Iran, or continuing business in Iran and risking sanctions in the United States.

CISADA does provide additional presidential waiver authority for specific companies located in countries that the United States considers to be “closely cooperating” with the United States in multilateral efforts to prevent Iran’s acquisition of weapons of mass destruction. (CISADA Section 102(g).)

However, it may be hard for countries to be classified as closely cooperating. The President cannot automatically waive sanctions on an entity or all entities from an individual country. Before waiving sanctions on a particular company, the President must certify to Congress that the company’s home country is closely cooperating with the United States in preventing Iran’s acquisition of weapons of mass destruction and provide a description of how that country is cooperating, and certify that the waiver is vital to US national security. (CISADA Section 102(g).) These presidential waivers can last no more than one year; the President can renew the waiver for six-month periods by following the same process as for the original waiver. (CISADA Section 102(g).)

### **Expansion of Sanctions Available Under the ISA**

CISADA adds three new sanctions to the panoply of available sanctions under the ISA. First, a sanctioned entity may be prohibited from any foreign exchange transactions that fall within US jurisdiction, and in which the sanctioned party has any interest. The President may also prohibit transfers of credit or payments in which the sanctioned party has an interest between financial institutions, to the extent those transactions are subject to US jurisdiction. Finally, CISADA permits the President to prohibit a sanctioned entity from acquiring, holding, importing, or exporting any property subject to US jurisdiction or engaging in other transactions involving such property. (CISADA Section 102(b).)

### **Sanctions on International Banks**

CISADA also subjects non-US banks that engage in or facilitate transactions involving certain Iranian entities and activities to significant new sanctions. Non-US banks that support or service the Iranian Revolutionary Guard and its affiliates, or facilitate transactions relating to the Iranian government’s efforts to acquire weapons of mass destruction or its support of terrorism may be prohibited or severely restricted from participating in the US banking system by the Treasury Department. (CISADA Section 104(c).) Specifically, the new sanctions permit the Treasury Department to prohibit or impose strict conditions on the ability of sanctioned non-US banks to open or maintain a correspondent account or payable-through account in a US bank.

US banks that maintain accounts for non-US banks will be required under the new law to audit the non-US banks’ activities and certify that they are not performing services

for the Iranian Revolutionary Guard or related entities, or facilitating transactions related to Iranian efforts to acquire weapons of mass destruction or to support terrorist activities. The US banks must report the results of these audits to the Treasury Department (CISADA Sections 102(e).)

### **Impact of Sanctions on Government Contractors**

Companies bidding on US government procurements, whether domestic or foreign, must certify under the new law that they do not engage in any activity regarding Iran that is prohibited by the ISA and CISADA. False certifications can result in termination of ongoing contracts and federal contract debarment for up to three years. (CISADA Section 102(b).)

In addition, CISADA prohibits US government agencies from contracting with any entity—foreign or domestic—that exports certain “sensitive technology” to Iran. The “sensitive technology” includes any hardware, software, or other equipment that restricts the free flow of information in Iran or which monitors, disrupts, or restricts free speech in Iran. (CISADA Section 106.)

### **Sanctions on Iranian Human Rights Abusers**

The new legislation directs the President to submit a list of names of Iranian government officials (or persons acting on their behalf) identified as being responsible for or complicit in the human rights violations that occurred in the aftermath of the June 2009 Iranian presidential election. The sanctions on these identified individuals include ineligibility for visas to enter the United States, blocking of property subject to US jurisdiction, and restrictions on financial transactions and imports within US jurisdiction. (CISADA Section 105.)

### **Increases in Criminal Penalties for Export and Sanctions Violations**

CISADA increases the criminal penalties for any violations of the Arms Export Control Act (AECA) (not just those involving Iran) to a maximum 20 years’ imprisonment, an increase over the previous maximum of 10 years’ imprisonment; the maximum fine was unchanged and remains US\$1 million per violation. AECA governs the export of munitions items appearing on the US Munitions List and subject to the International Traffic in Arms Regulations (ITAR). The new law also increases the criminal penalty for violations of the prohibition on exporting or otherwise providing munitions items to countries that

have been determined to support international terrorism from 10 to 20 years’ imprisonment; the maximum fine amount remains US\$1 million. The criminal penalty for violations of the Trading with the Enemy Act by individuals was also increased, to 20 years’ imprisonment from 10 years’ imprisonment; the maximum fine for individuals remains US\$100,000. Finally, CISADA increases penalties for violations of regulations implementing United Nations sanctions to 20 years’ imprisonment and US\$1 million in fines from 10 years’ imprisonment and US\$10,000 in fines. (CISADA Section 107.)

### **Creation of the Destination of Diversion Concern List**

The CISADA creates a mechanism to identify countries to be placed on a “Destination of Diversion Concern” list. A country is to be designated a “destination of diversion concern” if that country is identified as allowing substantial diversion to Iranian end-users or intermediaries of US-origin items that would materially contribute to Iran’s weapons or missile programs or terrorism activities, and that are listed on the State Department’s US Munitions List or the Commerce Department’s Commerce Control List. Exports of all such items require a license to countries designated as Destinations of Diversion Concern, and US government export licensing agencies will operate under a presumption of denial for any export license application for such items. (CISADA Sections 302, 303.)

### **Procedural Changes to Strengthen Enforcement**

The new law makes important procedural changes designed to strengthen how the Executive branch implements the sanctions on Iran. CISADA requires the President to initiate an investigation when the US has credible information indicating that a person may have violated the Act, unlike the existing law which does not mandate such investigations. The new law also mandates that the President must make a determination within 180 days after commencing an investigation and must notify the appropriate congressional committees. These relatively simple changes will force the Department of State, which Congress had previously accused of being lax in its enforcement of the ISA, to conduct investigations of transactions reported in the press (or elsewhere) and to give reasons for not imposing sanctions. The new law also requires the President to certify that any

waivers granted are “necessary to the national interest,” which is a higher standard than the standard of “important to the national interest” in the previous Iran Sanctions Act.

### **Other CISADA Provisions**

The new legislation extends the sanctions regime of the ISA, as amended by the CISADA, through December 31, 2016. (CISADA Section 102(e).) In addition to the various sanctions provisions, the new legislation provides a framework permitting states and localities to divest from Iran.

Overall, the sanctions imposed by CISADA represent a tightening of the United States’ existing Iran sanctions regime. While the new sanctions are focused on the petroleum and financial sectors, all companies doing business in Iran should be familiar with the scope of the new sanctions. Companies outside the United States that do business with Iran must consider the implications of these sanctions, as the sanctions apply to foreign companies. The activities of shipping companies, international brokers, insurers, and other companies involved in international trade are covered by these sanctions.

*We hope that you have found this advisory useful. If you have additional questions, please contact your Arnold & Porter LLP attorney or:*

**John P. Barker**  
+1 202.942.5328  
John.Barker@aporter.com

**John B. Bellinger III**  
+1 202.942.6599  
John.Bellinger@aporter.com

**Michael E. Ginsberg**  
+1 202.942.5585  
Michael.Ginsberg@aporter.com

**Jeffrey H. Smith**  
+1 202.942.5115  
Jeffrey.Smith@aporter.com

**Nicholas L. Townsend**  
+1 202.942.5249  
Nicholas.Townsend@aporter.com

**Samuel M. Witten**  
+1 202.942.6115  
Samuel.Witten@aporter.com

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