

# The Iran Threat Reduction and Syria Human Rights Act of 2012 Implications for Global Professional Services Firms

On August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "Act"). The Act tightens still further U.S. sanctions against Iran, particularly in the energy, shipping, financial services, and insurance sectors. The Act has a broad extraterritorial reach that subjects to U.S. sanctions many activities undertaken by non-U.S. persons outside the United States involving Iran or Iranian clients, even if those activities have no nexus to the United States.

This Alert addresses those aspects of the Act that might apply to professional services firms other than financial service providers.<sup>1</sup> As a result of the Act, non-U.S. professional services firms may need to consider much more closely professional engagements on behalf of Iranian clients, or on behalf of non-Iranian clients in support of certain activities in or with Iran. Because the potential application of the Act to any particular transaction requires an analysis of the facts of the transaction, this note focuses on the more important general provisions of the Act that *could* apply to activities of non-U.S. professional services providers.

## 1. Expansion of Iran Sanctions Act

The Act broadens the scope of activities reached by the Iran Sanctions Act ("ISA").<sup>2</sup> In summary term, prior to passage of the Act, the ISA (as amended by the Comprehensive Iran Sanctions, Accountability, and Disinvestment Act of 2010<sup>3</sup> ("CISADA")) required that, if specified conditions were met, the President would be required to impose specified sanctions on non-U.S. persons who were determined to have made certain investments in the development of Iran's petroleum and natural gas resources, or who provided products and services to Iran to facilitate Iran's ability to refine petroleum. The President, however, could waive the imposition of the sanctions if he determined that a waiver was "important" to the U.S. national interest.

The Act adds to the ISA several more sanctionable activities, increases the number of sanctions that can be imposed (from nine to twelve) for violations, increases the minimum number of sanctions that must be imposed from the list of twelve (from three to five), and reduces still further the President's discretion not to impose sanctions. (As amended by the Act, the President must find that waiver of sanctions is not just necessary to the national interest, but is "essential" to U.S. national security.)

Among the additional activities by non-U.S. persons that now can attract ISA sanctions are those listed below. The provision of any audit or consulting services directly or indirectly in support of projects described below could be reached by these new provisions.

- Significant involvement in providing services in support of an Iran energy sector project (broader than development of Iran's petrochemical resources). The Act adds a definition for the word "services," which includes "software, hardware, financial, professional consulting,

engineering, and specialized energy information services."

- Providing significant services or support with respect to infrastructure that is directly associated with Iran's domestic production of refined petroleum products, including construction of port facilities, railways, and roads used to support the delivery of refined petroleum products.
- Providing insurance or reinsurance for transactions involving the transport of Iranian oil.
- Purchasing, subscribing to, or *facilitating* the issuance of sovereign debt of the Government of Iran. "Facilitation" tends to be a very broad concept in U.S. sanctions law.

If a violation is found, the Act adds the three new sanctions to the existing ISA list of possible sanctions<sup>4</sup>:

- A ban on any U.S. person investing in a sanctioned person;
- Exclusion from the U.S. of corporate officers of the sanctioned foreign person; and
- Sanctions directly on the principal executive officer or officers of the sanctioned person.

## 2. Iranian Debt and Other Activities

The Act also identifies a group of activities that can result in the imposition of sanctions beyond those covered by the ISA, including activities by a foreign person who purchases, subscribes to, or *facilitates* the issuance of, Iranian sovereign debt, or the debt of any entity owned or controlled by the Government of Iran. While not made part of the ISA, such activities would be subject to the same sanctions as are available under the ISA (again, five or more out of the 12). Any role by an accounting firm in support of the issuance - even with no U.S. firm involvement - of such debt could trigger this sanction.

The Act also codifies into law all Executive Branch action taken under specified Executive Orders targeting Iran. One of those, Executive Order ("EO") 13608 (issued on May 1, 2012), broadly allows the imposition of sanctions against foreign persons that evade, conspire to violate, or cause a violation of U.S. sanctions against Iran or Syria, or that facilitate deceptive practices on behalf of any person that is subject to U.S. sanctions on Iran or Syria. Sanctions for violating the May 1, 2012 EO include prohibiting all U.S. transactions that involve the foreign person, including a prohibition on the import, export, brokering, facilitation, financing, etc. of any goods or services to or from the sanctioned person.

## 3. Foreign Subsidiaries of U.S. Persons and Filers with the U.S. Securities and Exchange Commission

The Act imposes two entirely new restrictions on non-U.S. persons.

- The Act for the first time directly prohibits foreign persons that are owned or controlled by a U.S. person from engaging in any transaction with Iran or any persons subject to Iranian jurisdiction that would be prohibited to a U.S. person. This makes the Iranian sanctions comparable to the U.S. Cuban sanctions regulations. To the extent that any U.S. professional services firm has any wholly or partially owned or controlled non-U.S. subsidiaries, the subsidiaries could now be subject to civil and criminal penalties under the International Emergency Economic Powers Act ("IEEPA"), to the same extent as the U.S. parent. And, not

only can the foreign person be subject to the normal IEEPA penalties, but the U.S. parent can be subject to IEEPA civil penalties for its foreign subsidiary's violations.

- Issuers of securities that are required to file quarterly or annual reports with the U.S. Securities and Exchange Commission (which could include foreign companies that are clients of non-U.S. professional services firms) will now be required to report on whether they engage in certain activities covered by the ISA or the CISADA. Reports can trigger investigations, which can lead to sanctions. If a non-U.S. firm's client was involved in providing services (*e.g.*, due diligence) for a transaction that was reported and investigated, at a minimum the firm could incur adverse publicity, and in the worst case, if the firm's own activities were substantial enough to be covered under the ISA or CISADA, it too could be sanctioned.

#### 4. Use of IEEPA Authorities

The Act authorizes the President to exercise certain of his authorities under IEEPA with respect to specifically listed provisions of the Act. These IEEPA authorities include the authority to block assets of a sanctioned person. The following activities are among those that can be subject to this provision of the Act.

- Purchasing, subscribing to, or *facilitating* the issuance of, Iranian sovereign debt, or the debt of any entity owned or controlled by the Government of Iran.
- Provision of underwriting or insurance services for the National Iranian Oil Company or the National Iranian Tanker Company.
- The Act provides that the civil and criminal penalty provisions of IEEPA apply to any person that violates, attempts to violate, conspires to violate, or causes a violation of specified provisions of the Act, including, among others, those that address (i) shipping to or from Iran, (ii) the provision of underwriting services or insurance or reinsurance for the National Iranian Oil Company or the National Iranian Tanker Company, and (iii) purchasing, subscribing to, or facilitating the issuance of, Iranian sovereign debt, or the debt of any entity owned or controlled by the Government of Iran.<sup>5</sup>

#### 5. Executive Order 13622

On July 30, 2012, at the same time as Congress passed the Act, President Obama issued another Executive Order targeting Iran. Among other things, this EO allows for the imposition of sanctions against any person (including a non-U.S. person) that materially assists, sponsors, or provides financial, material, or technological support for, or goods and services in support of, the National Iranian Oil Company, Naftiran Intertrade Company (NICO), or the Central Bank of Iran. Sanctions can include the blocking of assets of the foreign person - *i.e.*, being placed on the SDN list.

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If you have any questions or would like to discuss these developments or other related matters in more detail, please contact:

Bill Stein  
(202) 721-4650  
[stein@hugheshubbard.com](mailto:stein@hugheshubbard.com)

Alan Kashdan  
(202) 721-4630  
[kashdan@hugheshubbard.com](mailto:kashdan@hugheshubbard.com)



Hughes Hubbard & Reed LLP  
One Battery Park Plaza | New York, New York 10004-1482 | 212-837-6000

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1. In addition, a number of the Act's provisions target entities that are engaged in shipping crude oil or refined petroleum products from Iran, or in shipping services for the transport of goods to facilitate Iran's terrorism or weapons of mass destruction activities. This Alert does not focus on those activities, on the assumption that a professional services firm would not be engaged in the provision of shipping services. This Alert does not address sanctions that are specific to financial institutions.
  2. 50 U.S.C. 1701 note.
  3. 22 U.S.C. 8501 note.
  4. The original nine ISA sanctions are: prohibitions on issuance of US export licenses to export anything to a sanctioned person; prohibition on U.S. financial institutions' loans to sanctioned persons; prohibition on U.S. Government procurement from sanctioned persons; prohibition on any transaction in foreign exchange that is subject to U.S. jurisdiction that involves a sanctioned person; prohibition on U.S. banking transactions that involve an interest of a sanctioned person; and blocking of property and interests of property of sanctioned persons that come under U.S. jurisdiction.
  5. In June 2012, ING Bank NV settled a case with OFAC by agreeing to pay penalties of over US\$600 million for conspiracy to cause violations of various OFAC sanctions regulations.