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## New Legislation Marks Significant Expansion of U.S. Sanctions Against Iran and Syria

On August 10, 2012, President Obama signed the Iran Threat Reduction and Syria Human Rights Act of 2012 (“ITRA”) into law. At 56 pages, ITRA is sweeping legislation that expands the types of Iran-related activities subject to sanctions, supplements the list of available sanctions, and prescribes numerous measures designed to further isolate Iran from the international financial community.<sup>1</sup> ITRA also expands the sanctions authority relating to Syria, with a focus on human rights issues.

Of particular note, ITRA continues the extraterritorial expansion of U.S. sanctions law by requiring foreign entities majority owned or controlled by a U.S. person to abide by U.S. sanctions against Iran to the same extent as a U.S. person. Previously, foreign entities were not directly bound by U.S. sanctions against Iran even if they were subsidiaries of U.S. companies.

ITRA also requires issuers with securities registered in the United States who have engaged in activity sanctionable under CISADA or transactions with Iranian Specially Designated Nationals (“SDNs”), or transactions with SDNs of any nationality designated in connection with terrorism or weapons of mass destruction, to publicly self-disclose such activity. While it is not *per se* illegal for non-U.S. companies listed in the United States to engage in business with U.S.-sanctioned parties, failure to disclose such activities will now constitute a violation of U.S. securities law and may result in civil and criminal penalties. Following a required disclosure of such activities, the President is then called upon to initiate an investigation into whether sanctions should be imposed on the disclosing party.

More generally, ITRA: (i) substantially broadens the scope of sanctionable activities, particularly those related to the provision of financial services to entities linked to the Iranian government, U.S.- or U.N.-sanctioned Iranian persons, or affiliates of the Iranian Revolutionary Guard Corps; (ii) further expands the already broad sanctions against the Iranian energy sector; (iii) further expands the menu and quantity of sanctions to be applied

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<sup>1</sup> ITRA amends the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”) and the 1996 Iran Sanctions Act (“ISA”) as amended by CISADA. The main body of the ISA and CISADA can be found at 50 U.S.C. § 1701 note; additional CISADA provisions may be found at 22 U.S.C. § 8501 et seq. For more detail on CISADA, please see our July 6, 2010 memorandum, available at [http://www.cgsh.com/president\\_obama\\_signs\\_new\\_iran\\_sanctions\\_into\\_law/](http://www.cgsh.com/president_obama_signs_new_iran_sanctions_into_law/).

under CISADA; and (iv) requires an extensive range of regular Executive Branch reporting to Congress that could publicize Iran-related dealings and lead to further expansion of sanctions. This memorandum outlines the major provisions of ITRA.

## **I. Parent Liability for Actions of Foreign Subsidiaries**

Section 218 of ITRA prohibits an entity owned or controlled by a U.S. person and established or maintained outside the U.S. from knowingly engaging in Iran-related transactions that would be unlawful if conducted by a U.S. person or in the United States. The President is to take action to implement the prohibition within 60 days of ITRA's enactment. Ownership or control means: (i) holding more than 50% of equity interest by vote or value; (ii) holding a majority of seats on the board of directors; or (iii) control of the actions, policies, or personnel decisions of the entity.

Penalties for violations of this section are applied against the U.S. parent, which is subject to the same civil penalties as if it itself had directly violated, or attempted to violate, the sanctions. The penalties apply if the subsidiary knew or should have known it was engaging in a transaction with an Iranian entity, whether or not the parent had any knowledge and whether or not the subsidiary was aware that U.S. sanctions prohibited such transactions.<sup>2</sup> Civil penalties will not be applied if the U.S. person divests or terminates its business with the foreign entity within 180 days after enactment of ITRA.

## **II. Enhanced Disclosure Requirements for Sanctionable Activity**

Section 219 of ITRA amends the Securities Exchange Act of 1934 to require any issuer of securities registered in the United States required to file quarterly or annual reports under Section 13 to make specific disclosure in its public filings if it or an affiliate has knowingly engaged in: sanctionable activity under the ISA (as amended by CISADA and ITRA), including the provisions relating to the Iranian oil and gas industry, financial services, WMD, and other activities; sanctionable activity under the provisions of CISADA and the Iranian Financial Sanctions Regulations relating to activities by foreign financial institutions; sanctionable activities relating to goods, services, or technologies likely to be used for human rights abuses; or any transactions with SDNs designated for their support of WMD proliferation or terrorist activity (i.e., SDNs designated as “[SDGT]” or “[WMD],” regardless of nationality), or with the “Government of Iran” as defined in OFAC regulations, including the Iranian government, entities it owns or controls directly or indirectly, persons who are, or there is reasonable cause to believe are, acting on behalf of the foregoing, and any SDNs designated as “[IRAN].”

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<sup>2</sup> This is implicit in the “knowingly” language of Section 218 and explicitly confirmed by a colloquy on the Senate floor between the author of the provision and the Chairman of the Senate Banking Committee.

The new disclosure requirement will take effect 180 days after enactment of ITRA. Disclosure must include: (i) the nature and extent of the activity; (ii) the gross revenues and net profits attributable to the activity; and (iii) whether the issuer or affiliate intends to continue the activity. The issuer is obligated to file a separate notification of the disclosures to the SEC concurrently with the report. Upon receipt of this notice, the SEC will transmit the report to the President and specified Congressional committees and post it on the SEC's website. The President is then required to initiate an investigation and determine within 180 days if sanctions should be imposed on the issuer or its affiliate.

This provision considerably increases the risks associated with engaging in sanctionable activity. Disclosure could result in financial and reputational pressures and triggers a process that could result in imposition of sanctions, while inadequate disclosure may be subject to civil and criminal liability under securities laws.<sup>3</sup>

### III. Expansion of Sanctionable Activities under ISA and CISADA

ITRA, like CISADA before it, is largely an amendment to the ISA, and its provisions must be read together with those of the ISA and CISADA.

#### A. Goods, Services, Technology, or Support Relating to the Energy Sector of Iran

Section 201 of ITRA codifies into the ISA and further expands sanctionable activity first targeted in Executive Order 13590<sup>4</sup> relating to the knowing provision of goods, services,<sup>5</sup> technology, or support that could directly and significantly contribute to:

- Iran's ability to maintain or expand domestic production of petrochemical products, if the transaction has a fair market value of \$250,000 or more or a series of transactions within a 12-month period has a value of \$1 million or more;<sup>6</sup> or
- Iran's ability to develop domestic petroleum resources or domestic production of refined petroleum products (now defined to encompass directly associated infrastructure, including construction of port facilities, railways

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<sup>3</sup> 15 U.S.C. § 78ff(a). Any person who willfully violates the 1934 Act be fined up to \$5,000,000 and/or imprisoned for up to twenty years. If such person is an entity, the fine may be up to \$25,000,000.

<sup>4</sup> For more detail on Executive Order 13590, see our November 22, 2011 memorandum, available at [http://www.cgsh.com/u\\_s\\_expands\\_sanctions\\_against\\_iran/](http://www.cgsh.com/u_s_expands_sanctions_against_iran/).

<sup>5</sup> The statutory definition of "services" now includes "software, hardware, financial, professional consulting, engineering, and specialized energy information services, energy-related technical assistance, and maintenance and repairs."

<sup>6</sup> The term 'petrochemical product' includes any "aromatic, olefin, or synthesis gas, and any derivative of such a gas, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea."

and roads, the primary use of which is to support delivery of refined petroleum products), if the transaction has a fair market value of \$1 million or more or a series of transactions within a 12-month period has a value of \$5 million or more.

Further, Section 201 specifies that goods, services, technology, or support that may be sanctionable if provided to the Iranian petroleum sector include: (i) bartering or contracting by which goods are exchanged for goods, including the insurance or reinsurance of such exchanges; (ii) purchasing, subscribing to, or facilitating the issuance of debt of the Government of Iran or any of its agencies and instrumentalities issued on or after the date of ITRA's enactment.

Section 201 also authorizes sanctions against participants in a joint venture to exploit petroleum resources outside of Iran created after January 1, 2002 where: (i) the Government of Iran (including its agencies and instrumentalities) is a participant or investor; or (ii) the business could provide Iran with new energy development technology. However, participants in a joint venture created before ITRA's enactment will not be sanctioned if participation is terminated within 180 days after enactment.

*B. Transportation and Insurance of Crude Oil from Iran*

Section 202 of ITRA authorizes the imposition of sanctions under the Iran Sanctions Act ("ISA sanctions")<sup>7</sup> against a person who is a controlling beneficial owner of, or otherwise owns, operates, controls or insures a vessel used to transport crude oil from Iran to another country. In the case of a controlling beneficial owner, sanctions may be imposed where the person had actual knowledge that the vessel was so used; in the other cases, sanctions may be imposed where the person knew or should have known that the vessel was so used. Sanctions may also be imposed against such persons if the vessel is used to conceal the Iranian origin of crude or refined petroleum products, including by turning off satellite tracking of the vessel or concealing its ownership, operation and control by Iranian entities.

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<sup>7</sup> The sanctions available under the ISA, as amended by CISADA and ITRA, include: prohibition of export assistance from the Export-Import Bank of the United States; denial of licenses for export of U.S. military, "dual use," or nuclear-related goods or technology; prohibition of U.S. bank loans exceeding \$10 million in any 12-month period; prohibition of designation as a primary dealer in U.S. government debt instruments or service as a repository of U.S. government funds (if the sanctioned person is a financial institution); debarment from procurement contracts with the U.S. Government; prohibition of foreign exchange transactions subject to U.S. jurisdiction; prohibition of financial transactions subject to U.S. jurisdiction; prohibition of transactions with respect to property subject to U.S. jurisdiction (treatment of the sanctioned person as an SDN); prohibition of imports to the U.S. from the sanctioned person; prohibition of investment in equity or debt of the sanctioned person by U.S. persons; exclusion of corporate officers from the United States; and the imposition of any of the sanctions above individually on the principal executive officers of any sanctioned person. See Part IV, *infra*. Any sanctioned person would be subject to at least five and as many as all of the above sanctions.

In the case of such concealment, in addition to the imposition of ISA sanctions, the vessel may be barred from U.S. ports for a period of two years.

Previously, Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (the “NDAA”) targeted financial institutions engaged in financial transactions related to the purchase of Iranian crude oil; the NDAA provides an exception to such sanctions if (i) the President determines that there are not sufficient global supplies of crude oil to permit significant reductions in purchases from Iran or (ii) the President determines that a waiver should apply to institutions from a given country because that country has significantly reduced its purchases of crude oil from Iran.<sup>8</sup> These exceptions based on presidential determinations also apply to Section 202; the shipping components of transactions that are not sanctionable under the NDAA also are not sanctionable under Section 202. Furthermore, insurers and reinsurers are exempt from sanctions under Section 202 if the President determines that they exercised due diligence in establishing and enforcing policies and controls to prevent sanctionable activity.

These authorities apply with respect to transportation occurring on or after 90 days following ITRA’s enactment.

*C. Financial Activities*

Several provisions of ITRA expand the scope of financial activities sanctionable under CISADA.

Section 213 of ITRA authorizes imposition of sanctions on a person that knowingly, on or after the date of the enactment, purchases, subscribes to, or facilitates the issuance of sovereign debt of Iran or debt (including bonds) of any entity owned or controlled by the Iranian government. These sanctions, as with other ISA sanctions, do not require any United States nexus and may be applied regardless of the currency of the transaction or the nationality of the participants.

Section 215 of ITRA expands the existing provisions under Section 104 of CISADA and the implementing Iranian Financial Sanctions Regulations (the “IFSR”)<sup>9</sup> mandating the restriction or prohibition of access to U.S. correspondent accounts for a non-U.S. financial institution that has been determined to have facilitated a significant transaction or provision of financial services for a financial institution whose property or interests in property are blocked in connection with Iran’s support for terrorism or WMD proliferation. Now access to U.S. correspondent accounts may be lost if such financial services are provided to any person or entity designated as an SDN in connection with Iran’s terrorism or WMD

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<sup>8</sup> 22 U.S.C. § 8513a. For more detail on the NDAA, see our January 2, 2012 memorandum, available at [http://www.cgsh.com/president\\_obama\\_signs\\_new\\_us\\_sanctions\\_targeting\\_foreign\\_banks\\_dealing\\_with\\_iran/](http://www.cgsh.com/president_obama_signs_new_us_sanctions_targeting_foreign_banks_dealing_with_iran/).

<sup>9</sup> 31 C.F.R. pt 561.

activities, not just to Iranian financial institutions so designated.<sup>10</sup> The Treasury Department is to issue new regulations implementing this change within 90 days of ITRA’s enactment.

Sections 214, 215, and 216 of ITRA further expand the CISADA §104/IFSR correspondent account sanctions to include foreign financial institutions that are determined to (i) facilitate the activities of persons acting on behalf of, or owned or controlled by, a person subject to U.N. Security Council financial sanctions with respect to Iran;<sup>11</sup> (ii) facilitate or engage in any significant transaction with any person (not, as before, any Iranian financial institution) sanctioned in connection with Iran’s terrorism or WMD-related activities; (iii) knowingly facilitate, participate, or assist in an activity sanctionable under any provision of CISADA §104; (iv) attempt or conspire to facilitate or participate in such an activity; or (v) be owned or controlled by a foreign financial institution that knowingly engages in such an activity. Section 216 also expands the definition of “financial institutions” subject to CISADA §104.<sup>12</sup>

*D. Financial Communications Services*

Section 220 of ITRA authorizes sanctions against financial communications service providers servicing certain Iranian financial institutions. Financial communications services have not previously been targeted under U.S. sanctions law. In particular, ITRA authorizes sanctions on a person who knowingly and directly provides specialized financial messaging services to, or knowingly enables or facilitates direct or indirect access to such messaging services for, the Central Bank of Iran (“CBI”) or financial institutions sanctioned for Iran-related WMD or terrorism activities,<sup>13</sup> beginning 90 days after enactment of ITRA. Enabling or facilitating such access includes doing so as an intermediary financial institution with access to such messaging services.

However, no such sanctions may be imposed if the financial communications service provider is subject to a sanctions regime under its governing law that prohibits the knowing provision, enabling or facilitation of such messaging services for the CBI and a group of Iranian financial institutions identified under such foreign law. For the exception to apply,

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<sup>10</sup> This will likely require further modification to the SDN list, as it may not be apparent that a non-Iranian person or entity designated under the WMD or terrorism programs was designated in connection with Iranian activity.

<sup>11</sup> The facilitation of the activities of U.N.-sanctioned persons themselves was already sanctionable under CISADA § 104(c)(2)(B). The relevant U.N. resolutions include United Nations Security Council Resolutions 1737 (2006), 1747 (2007), 1803 (2008), or 1929 (2010).

<sup>12</sup> The term “financial institution” is expanded to include a number of new categories: (i) an issuer, redeemer, or cashier of travelers’ checks, checks, money orders, or similar instruments; (ii) a dealer in precious metals, stones, or jewels; or (iii) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

<sup>13</sup> These entities are designated by the notation “[IFSR]” on the SDN list.

the President must also determine that the group is substantially similar to the group described under Section 220 and the differences do not adversely affect the national interest of the US, and the person must have terminated such services or facilitation of access for such institutions pursuant to the foreign law. The European Union has adopted similar sanctions, as ITRA recognizes; while no formal determination has yet been announced, it is expected that they will be treated as equivalent to current U.S. sanctions and that compliance with EU sanctions will be sufficient to avoid exposure under Section 220.

*E. Shipping Activities Relating to WMD Proliferation or Terrorism*

Section 211 of ITRA authorizes sanctions against any person that, after enactment of ITRA, knowingly sells, leases, or provides a vessel, or provides insurance or reinsurance or any other shipping service, for transporting goods to or from Iran that could materially contribute to WMD proliferation or terrorism-related activities. Such persons are subject to being designated as SDNs subject to the full range of restrictions on transactions and property transfers. Such sanctions may also be imposed on anyone that: (i) owns or controls such a person, if the controlling entity knew or should have known about the activity; (ii) is a successor to such a person; or (iii) is owned or controlled by, or under common ownership or control with, such a person and knowingly participated in the sanctionable activity. The President may waive sanctions on such persons if vital to the national security interest of the United States.

*F. Non-Proliferation*

Section 203 of ITRA clarifies and expands the scope of sanctionable activity relating to proliferation of weapons to Iran. Such activities include exporting, transferring or permitting or otherwise facilitating the transshipment of such items to any person where the person knew or should have known (i) that the export, transfer or transshipment would likely result in another person exporting, transferring, transshipping or otherwise providing the goods, services, technology or other items to Iran and (ii) that the goods, services, technology or other items would contribute materially to Iran's ability to acquire or develop WMDs or destabilizing numbers and types of advanced conventional weapons. Such activities may be sanctioned under CISADA.

Section 203 also provides new authority to impose ISA sanctions on foreign persons and entities if they knowingly participate in a joint venture involving any activity relating to the mining, production, or transportation of uranium: (i) established on or after February 2, 2012, with an entity incorporated in Iran, an agent of such an entity, or a person subject to Iranian jurisdiction, and participation in the venture is not terminated within 180 days of enactment; or (ii) established before February 2, 2012 and through which uranium is transferred directly or indirectly to Iran, the Iranian Government receives significant revenue, or Iran could develop its ability to produce nuclear weapons or related technologies.

*G. Underwriting and Insurance of NIOC and NITC*

Section 212 of ITRA, with certain exceptions, requires the imposition of ISA sanctions against a person that the President determines knowingly provided, on or after the date of ITRA's enactment, underwriting services or insurance or reinsurance for the National Iranian Oil Company (NIOC) or the National Iranian Tanker Company (NITC), or any successor entity to either company. The President may forego the imposition of sanctions on underwriters and insurers exercising due diligence in establishing and enforcing policies, procedures, and controls to prevent such activity, or if he receives reliable assurances that such services will be terminated within 120 days of the enactment of ITRA. Services related solely to the shipment of food, medicine, medical devices, or humanitarian assistance are exempt from sanctions.

**IV. Expansion of ISA Sanctions; Limitations on Waivers**

Section 204 of ITRA expands by three the pre-existing ISA/CISADA menu of Iran-related sanctions<sup>14</sup> that can be imposed to include the following penalties against individuals, which now includes, with respect to activities commenced on or after the date of ITRA's enactment:

- Prohibition on any U.S. person from investing in, or purchasing significant amounts of, the equity or debt instruments of the sanctioned person.
- Denial of U.S. visa issuance and entry to any alien who is a corporate officer or principal of, or a shareholder with a controlling interest in, the sanctioned person.
- Imposition of any available sanctions individually on the principal executive officer or officers of the sanctioned person or on persons performing similar functions and with similar authorities.

ITRA also systematically changes the number of sanctions required to be imposed on persons engaged in sanctionable activity under the ISA (as amended by CISADA and ITRA). Whereas previously sanctioned persons were to be subjected to at least three of a possible nine sanctions, now at least five of the menu of twelve sanctions must be imposed.<sup>15</sup>

Section 205 of ITRA heightens the standard for waivers of sanctions under the ISA as amended and limits the duration of such waivers. Sanctions related to the Iranian oil and gas sector may be waived if "essential" to U.S. national security and sanctions related to Iran's WMD activities may be waived if "vital" to U.S. national security. More importantly,

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<sup>14</sup> For the complete list of ISA sanctions as amended, see footnote 7 *supra*.

<sup>15</sup> Correspondent account restrictions under § 104 of CISADA and under the NDAA remain a separate regime.

the new provision clarifies that any waiver must be made on a case-by-case basis and may continue for a maximum period of one year, after which the President must re-certify that the waiver remains essential or vital; in the case of waivers granted previously under the ISA, the waivers have not been revisited and have simply remained in place.

## **V. Expansion of NDAA/IFSR Sanctions Relating to Purchases of Iranian Oil**

### *A. Narrowing of Exemptions*

The NDAA authorized the imposition of IFSR correspondent account sanctions on any foreign financial institution that “knowingly conduct[s] or facilitate[s] any significant financial transaction” with the CBI (or other Iranian financial institutions if designated as SDNs), but it exempted government-controlled institutions from sanctions except with respect to petroleum-related transactions. Section 504 of ITRA places significant restrictions on this exemption. Section 504 also introduces some ambiguity regarding the ability of the President to provide multiple 6-month exemptions from the provisions of the NDAA to a given country on the basis that it is “significantly reducing” its purchases of Iranian petroleum.

First, as noted, the NDAA as originally enacted exempted foreign financial institutions owned or controlled by a foreign government from being sanctioned except to the extent they conducted or facilitated transactions related to the purchase of petroleum or petroleum products from Iran (i.e., other commercial transactions were not sanctionable). Section 504 substantially amends this exemption. Government-owned financial institutions (other than central banks), and all other foreign financial institutions, are now subject to being sanctioned under the NDAA for facilitating significant non-petroleum transactions with Iranian financial institutions, unless the following conditions are met: first, the country with primary jurisdiction over the foreign financial institution must be found to have significantly reduced its purchases of Iranian oil (the existing standard for NDAA exemptions); second, the transactions must relate solely to the trade of goods and services between the country of primary jurisdiction and Iran; and third, any funds due to Iran as the result of such transactions must be credited to an account in the country of primary jurisdiction. As a result, both commercial banks and government-owned banks may engage in the specified transactions with Iran without fear of NDAA sanctions, but only if the transaction meets the eligibility criteria and for so long as a presidential determination that the country of primary jurisdiction has significantly reduced its petroleum purchases from Iran is in effect. Note, however, that the IFSR sanctions remain independently in effect and apply to significant transactions with any IFSR-designated Iranian financial institution.

Second, Section 504 amends the provision governing the presidential determination that a foreign country has substantially reduced its purchases of Iranian crude oil (a number of which have already been made) in a manner that makes it unclear whether such determinations may be renewed. As amended, the relevant provision of the NDAA requires

a certification from the President “that the country with primary jurisdiction over the foreign financial institution (I) has significantly reduced its volume of crude oil purchases from Iran during the period beginning on the date on which the President submitted the last report with respect to the country under this subparagraph, or (II) in the case of a country that has previously received an exception under this subparagraph has, after receiving the exception, reduced its crude oil purchases from Iran to zero.” The language can be read either to require that any country that has previously received an exception can only receive a second exception if its crude oil purchases from Iran are reduced to zero or to clarify that a country may continue to receive successive 180-day exceptions (which permit qualified commercial transactions other than petroleum purchases, as described above) even after petroleum purchases have been reduced to zero (and therefore no further reductions are possible).

Section 504 also makes a number of other technical and conforming changes, including clarifying that a “significant reduction” of purchases of petroleum and petroleum products from Iran may include a reduction in price as well as in volume. The changes take effect 180 days from the passage of ITRA.

*B. Extension to Transactions with NIOC or the NITC*

Section 312 of ITRA amends CISADA § 104 to potentially provide for correspondent account sanctions against banks engaged in petroleum-related transactions involving the NIOC or the NITC (whether or not the transaction involves any Iranian financial institution targeted by CISADA § 104 or the NDAA). Section 312 directs the Secretary of the Treasury to determine within 45 days whether NIOC or the NITC is an agent or affiliate of the IRGC. If so, Section 312 further provides that foreign financial institutions knowingly facilitating or providing significant transactions or financial services for the IRGC affiliate related to the purchase of Iranian petroleum or petroleum products are to be sanctioned under the IFSR. The NDAA exceptions regarding presidential certification of the availability of sufficient alternative sources of supply and countries that have significantly reduced their purchases of Iranian oil apply to these provisions.

**VI. New Bases for Targeted Sanctions**

*A. Human Rights Abuses*

Prior to enactment of ITRA, Executive Order 13606 provided for the imposition of IEEPA sanctions<sup>16</sup> against individuals found to have provided Iran or Syria with specified goods or services to be used in human rights abuses. Sections 402 and 411 of ITRA codify and expand this authority. The President is called upon to identify and impose IEEPA sanctions and visa restrictions upon persons who have knowingly transferred or facilitated

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<sup>16</sup> The International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. § 1701, is the primary statute underlying OFAC sanctions. In practice, designation under IEEPA usually means designation as an SDN.

the transfer of specified goods, services, or technologies to Iran, any entity organized in or subject to the jurisdiction of Iran, or any Iranian national, for use in or with respect to Iran, or provided services with respect to any such goods, technologies, or services already transferred to Iran. (In the case of transfers or services to the Iranian Revolutionary Guard Corps, ISA sanctions may also be imposed.) The targeted goods and services include any goods or technology that the President determines are likely to be used to commit human rights abuses against the people of Iran, including firearms or ammunition, riot gear, surveillance technology, or “sensitive technology,” defined as hardware, software, or other telecommunications equipment that the President determines is to be used specifically to restrict the flow of information in Iran or to disrupt, monitor, or otherwise restrict communications.<sup>17</sup> Section 402 applies to conduct on or after the date of enactment of ITRA, but there is no exception for fulfillment of contracts that pre-date ITRA. The President may waive the imposition of sanctions if the person is no longer engaging in, or has taken significant verifiable steps toward stopping, the sanctionable activity, and has received reliable assurances that the person will not engage in such activity in the future.

Section 403 of ITRA also calls upon the President to identify, and designate for sanctions under Section 105(c) of CISADA, persons who, on or after June 12, 2009, have engaged in censorship or other activities that limit freedom of expression or assembly by Iranian citizens. Such activities include limiting access to print or broadcast media, such as frequency manipulation to jam or restrict international signals.

*B. Support for Iran’s Revolutionary Guard Corps*

Section 301 of ITRA calls upon the President to identify, designate as SDNs, and bar from the United States foreign persons that are officials, agents or affiliates of Iran’s Revolutionary Guard Corps (the “IRGC”). The President is directed to prioritize entities already identified as part of the Government of Iran and persons who have engaged in significant transactions with the IRGC, including transactions outside Iran valued at \$1 million or more and transactions relating to the energy sector, surveillance technology, or weapons of mass destruction. The President may waive the application of sanctions if vital to the national security interest of the United States, or if identifying the relevant individual would damage the national security of the United States (for example, by revealing intelligence sources).

Section 302 of ITRA calls upon the President to identify and impose ISA sanctions against, and authorizes IEEPA sanctions against, foreign persons who knowingly (i) materially assist, sponsor, or provide financial, material, or technological support for, or goods or services in support of, the IRGC or its U.S. designated affiliates (which, pursuant to the determination required by Section 312, may soon include NIOC or the NITC); (ii) engage in any significant transaction (including barter transactions) with the IRGC or its

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<sup>17</sup> ITRA requests that the State Department issue guidelines to further describe what may be considered a “sensitive technology” within 90 days of enactment. ITRA § 412.

U.S.-designated affiliates, or (iii) engage in significant transactions with persons subject to sanctions under U.N. Security Council Resolutions, or persons owned, controlled, or acting on behalf of U.N.-sanctioned persons. Section 302 permits waivers when essential to U.S. national security interests or when identification of individuals would damage U.S. national security.

C. *Support of U.N.-Sanctioned Persons or IRGC Affiliates by Foreign Government Agencies*

Section 303 of ITRA calls on the President to identify each foreign government agency (except those in Iran) that the President determines knowingly and materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, or knowingly and materially engaged in a significant transaction with: (i) U.S.-designated persons affiliated with the IRGC; (ii) foreign persons designated and subject to financial sanctions pursuant to United Nations resolutions; or (iii) a foreign person that the agency knows is acting on behalf of or at the direction of, or owned or controlled by a person described in (i) or (ii). The President may impose specified restrictions on U.S. cooperation with the agencies if such cooperation could directly or indirectly contribute to the agencies' capability to continue the targeted activity. Such measures may include a prohibition on U.S. foreign aid assistance to the agency, bans on provision of dual-use or military goods and services to the agency, U.S. opposition to any loan or financial or technical assistance to the agency by international financial institutions, and denial of any credit or financial assistance to the agency by any department, agency, or instrumentality of the U.S. government. Note that the specified sanctions do not apply more broadly to the government or country in question. The President may waive the imposition of sanctions if essential to U.S. national security.

## VII. Executive Branch Reports to Congress

In addition to various reports tied to imposition of sanctions and adoption of waivers or exclusions, ITRA requires the executive branch to submit an extensive series of more general reports to Congress that will provide information about the effects of the sanctions efforts and identify the extent of continued dealings with Iran. The reports could trigger future focus on particular business activities and additional legislation. The more noteworthy of such reporting requirements include the following:

- reports every 180 days on the status of diplomatic efforts to expand multilateral sanctions against Iran (Section 102(b));
- reports every 90 days that identify operators of vessels and other persons that conduct or facilitate significant financial transactions with persons that manage ports in Iran that have been designated for the imposition of sanctions (Section 211(d));

- reports every 180 days on the effect of CISADA on the financial system and economy of Iran and capital flows to and from Iran, and on the role of Iranian and other foreign financial institutions (Section 216(a));
- reports every 90 days listing persons identified as providing or facilitating specialized financial messaging services to the Central Bank of Iran or other Iranian financial institutions and assessment of the status of efforts to end such activities (Section 220(b));
- a report within 120 days after enactment covering a period beginning January 1, 2009, to be updated one year thereafter, listing all foreign investors in the energy sector of Iran, including (i) entities exporting gasoline and other refined products to Iran, (ii) entities involved in providing refined petroleum products to Iran including entities providing ships and entities providing insurance, and (iii) entities involved in commercial transactions of any kind with Iranian energy companies, and identifying the countries where gasoline or refined products exported to Iran were produced or refined (Section 223);
- reports every 180 days identifying the volume of crude oil and refined products imported to, and exported, from Iran and the persons and countries involved, the sources of financing for imports to Iran of crude oil and refined products, and the involvement of foreign persons in efforts to assist Iran in (i) developing upstream oil and gas production capacity, (ii) importing advanced technology to upgrade existing Iranian refineries, (iii) converting existing chemical plants to petroleum refineries, or (iv) maintaining, upgrading or expanding existing refineries or constructing new refineries (Section 224);
- a report within 180 days after enactment identifying certain Iranian government officials who have ordered, controlled or directed the commission of serious human rights abuses against Iran citizens or their families on or after June 12, 2009 (Section 401(b));
- reports on natural gas exports from Iran, their economic benefit to Iran, and whether the imposition of sanctions on natural gas exports similar to those applying to petroleum exports is feasible (Section 505); and
- annual reports listing the international organizations of which Iran is a member and detailing the amounts that the U.S. annually contributes to them (Section 506).

## VIII. Other Provisions

Other ITRA provisions of potential interest include the following:

Section 102(a) urges the President to intensify diplomatic efforts to expand multilateral sanctions, including United Nations Security Council sanctions, to (i) prohibit visa issuances to any Iranian government official involved in human rights violations (in and out of Iran), development of nuclear weapons or ballistic missiles in Iran, or Iranian government support for terrorist organizations, and (ii) require U.N. member countries to prohibit the Islamic Republic of Iran Shipping Lines (and potentially other Iranian entities designated for sanctions following ITRA enactment) from landing at their seaports and cargo flights of Iran Air from landing at their airports, as well as to more generally expand the scope of the Iranian sanctions imposed by U.S. allies.

Section 206 requires the President to provide a comprehensive briefing to Congress on the implementation of the ISA (as amended by CISADA and ITRA) every 120 days, which may provide sustained political pressure for additional enforcement action.

Section 207 defines the “credible information” of sanctionable activity that requires the President to initiate investigation into the possible imposition of sanctions. Such credible information is to include public announcements or information in stockholder reports by the entity admitting to sanctionable activity (which should be read with the mandatory disclosure requirements for U.S. issuers discussed above). At the discretion of the President, credible information may also include an announcement by the Iranian Government that the person has engaged in such an activity or indications of sanctionable activity by a person set forth in reports of reputable governmental organizations<sup>18</sup> or trade or industry organizations.

Section 222 contains provisions encouraging states to consider sanctions issues when valuing securities for purposes of evaluating the safety and soundness of insurers and financial institutions and providing that no Iranian sanctions legislation pre-empts state authority to regulate the business of insurance or the safety and soundness of financial institutions.

Section 311 requires revision of the Federal Acquisition Regulation to require a certification from each prospective U.S. government contractor that it, and any person owned or controlled by it, does not knowingly engage in a significant transaction with the IRGC or any of its officials, agents, or affiliates the property and interests in property of which are blocked pursuant to the IEEPA.

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<sup>18</sup> Reports by the Government Accountability Office, the Energy Information Administration, and the Congressional Research Service are specifically identified.

Section 413 directs the Office of Foreign Assets Control, in consultation with the Department of State, to establish an expedited procedure for authorization to engage in activities connected to the promotion of human rights, democracy, or humanitarian assistance.

Section 501 requires the Departments of State and Homeland Security to bar from the United States any citizen of Iran (who is not also a citizen of the United States) who seeks to enter the United States to attend a university in preparation for a career in the energy or nuclear sector in Iran.

Section 502 enables creditors holding personal injury damages awards against Iran related to torture, extrajudicial killing, aircraft sabotage or hostage-taking to attach and execute against certain assets held by foreign securities intermediaries for the benefit of Iran to satisfy claims for compensatory damages. The assets in question are identified in and the subject of restraining orders in a case in the United States District Court for the Southern District of New York, *Peterson et al. v. Islamic Republic of Iran et al.*, which concerns families of marines killed in the 1982 attack on the marine barracks in Lebanon. For this provision to apply, the assets must be held for a securities intermediary doing business in the U.S., they must be equivalent in value to Iranian assets held abroad by that intermediary or a related intermediary, and a court must conclude that Iran has equitable title or a beneficial interest in the asset and no other party holds a constitutionally protected property interest in the asset (except as custodian). This is a significant deviation from standard rules governing attachment of securities held through intermediaries (and specifically pre-empts the provisions of the Uniform Commercial Code), although it applies only to a limited and defined universe of assets.

Section 603 excludes from ITRA's coverage certain pre-existing projects related to a pipeline for natural gas from Azerbaijan to Turkey and Europe.

Section 604 states that nothing in ITRA shall be construed as a declaration of war or an authorization of the use of force against Iran or Syria.

## **IX. Measures Addressing Human Rights Abuses in Syria**

Title VII of the new law, designated the "Syria Human Rights Accountability Act of 2012" (the "SHRAA"), requires the President to develop lists identifying, and authorizes sanctions against:

- persons acting on behalf of the Syrian government (including their agents and subsidiaries) and Syrian government officials who assist in committing

serious human rights abuses against Syrian citizens or their family members;<sup>19</sup>

- persons who knowingly transfer or facilitate the transfer of, or provide services with respect to, goods or technology likely to be used to commit human rights abuses against the people of Syria, including firearms or ammunition, riot gear, surveillance technology, or “sensitive technology” to be used specifically to disrupt the free flow of information in Syria;<sup>20</sup> and
- persons who have engaged in censorship, or activities relating to censorship, in a manner that prohibits, limits, or penalizes the legitimate exercise of freedom of expression by Syrian citizens.<sup>21</sup>

Sanctions to be imposed under the SHRAA are IEEPA sanctions (designation as an SDN). The President may waive the imposition of sanctions discussed above upon determination that such a waiver is in the national security interests of the United States.<sup>22</sup> As a practical matter, while the imposition of sanctions is phrased to be mandatory, action by the Administration to identify the relevant sanctions target is still required and sanctions do not take effect prior to such designation.

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If you have any questions, please feel free to contact any of your regular contacts at the Firm, or Ken Bachman, Paul Marquardt, or Rick Bidstrup of our Washington office, listed on our website at <http://www.clearygottlieb.com>.

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<sup>19</sup> ITRA § 702.

<sup>20</sup> ITRA § 703. Sanctions may also be imposed on anyone that: (i) is a successor to such a person; (ii) owns or controls such a person, if the controlling entity knew or should have known about the activity; (iii) is owned or controlled by, or under common ownership or control with, such a person and knowingly engaged in the activity. The President may waive the imposition of sanctions if the person is no longer engaging in, or has taken significant verifiable steps toward stopping, the sanctionable activity, and reliable assurances that the person will not knowingly resume such activity.

<sup>21</sup> ITRA § 704.

<sup>22</sup> ITRA § 705.

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