

CLIENT ALERT

Congress Readies Its Cudgel: Expansive New Iran Sanctions Advance Through The Senate

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President Obama issued a new Executive Order on Iran sanctions early on February 6, 2012. These sanctions, and two new General Licenses authorizing certain transactions with the newly designated financial institutions will be addressed in a forthcoming alert.

On Thursday, February 2, the Senate Banking Committee unanimously approved the Iran Sanctions, Accountability and Human Rights Act, a new 61 page Iran sanctions bill which would dramatically expand the reach of current U.S. sanctions. Painting with broad strokes, the measure will reshape many of the carefully-tailored provisions in current U.S. law, requiring substantial new mitigating steps from companies – including potential divestment – to bring themselves into compliance. The bill would affect a range of industries – but primarily focuses on (re)insurance, banking, shipping, financial institutions, petroleum and petrochemical sectors. Amongst other measures, the bill expands the range of activities on which it will sanction foreign entities, makes U.S. parent companies liable for the sanctionable activity of their foreign subsidiaries, and creates new individual sanctions on the key executives and major shareholders in sanctioned entities.

The measure must still be approved by the full Senate, but it has strong bipartisan support and is expected to pass largely unchanged in the coming weeks. The following list represents a brief summary of some of the key provisions in the bill:

- U.S. Parent Liability – While not reaching out as far as the Cuba sanctions in treating foreign subsidiaries as U.S. persons, a new measure would likely have similar effect -- forcing such subsidiaries to comply with U.S. law in relation to transactions not otherwise affecting U.S. commerce -- and possibly result in similar protests against U.S. extraterritorial interference with other nations' sovereignty. This measure would subject U.S. parent companies to penalty if any foreign entity that they owned or controlled undertook an action that would be sanctioned if undertaken by a U.S. entity even if the parent company had no reason to know of the foreign subsidiary's action.
- SEC Reporting Obligation – Directly addressing an issue that has festered for many years, the measure would require every entity registered as an issuer of a security and required to file a quarterly or annual report with the SEC to include in that report a disclosure of whether they or their affiliates had knowingly engaged in any activities prohibited by the Iran Sanctions Act or knowingly conducted transactions with certain sanctioned entities. The SEC would be required to make these disclosures public.
- Liability for Executives and Shareholders – Expansion of Menu of Sanctions under the Iran Sanctions Act – The measure would enable the President to exclude corporate officers and major shareholders of sanctioned entities from the United States. It would also enable the President to impose individual sanctions on the principal executive officer or officers of a sanctioned entity. This expands to ten the number of specific sanctions from which the President is required to choose and impose three on companies and individuals who violate the Iran Sanctions Act ("ISA") (as amended by CISADA).
- Targeting SWIFT – The bill targets global financial communications services providers, including the Society for Worldwide Interbank Financial Telecommunication ("SWIFT"). It authorizes, but does not require, the President to

impose sanctions on these entities, including their directors and shareholders, if they continue to provide financial communication services to the Central Bank of Iran or other designated Iranian financial institutions.

- Government Contractor Certification – All current and prospective government contractors would now be required to certify that neither the contractor nor any of its subsidiaries have knowingly engaged in transactions with Iran's Revolutionary Guard Corps ("IRGC") or its affiliates.
- Expanded Sanctions on the Iranian Revolutionary Guard Corps – The bill would require the President to designate all known officials, affiliates and agents of the IRGC. It would then require the President to impose sanctions on all persons who materially assist in a significant transaction with these individuals.
- Expanding Iran Sanctions Act Provisions on Joint Ventures – The measure expands in three ways the prohibitions placed on all entities, U.S. and foreign, for which the President is required to impose sanctions under ISA. First, the measure targets participation in joint ventures for the development of petroleum resources outside of Iran with the Government of Iran. Second, the measure would sanction entities engaging in a joint venture outside of Iran with the Government of Iran or an Iranian company that involved mining, production, or transportation of uranium. Third, it expands the definition of assistance to Iran's production of refined petroleum products to include assistance to the port facilities, railroads or roads if they are predominantly used to transport refined petroleum.
- National Iranian Tanker Company and National Iranian Oil Company – This provision clarifies that the sanctions contained in the National Defense Authorization Act passed at the beginning of January apply to NITC and NIOC only if the President has determined that there are sufficient alternative suppliers of petroleum to permit countries to reduce their reliance on Iranian petroleum.
- Sanctions on Vessels, Shipping Services, (Re)Insurance – The act would impose sanctions on a person who provided a vessel, insurance, reinsurance, or other shipping service that contributes to Iran's ability to develop WMD or support for acts of terrorism. The provision also expressly calls for successor liability for such services and allows, under certain circumstances, for the imposition of penalties on those who own or control the service provider.
- Amends those Targeted for Iran Sanctions Act Sanctions – The act would amend the criteria for those subject to a menu of at least three ISA sanctions to codify the restrictions President Obama implemented in Executive Order 13590 in November for those providing goods, services, technology or support to Iran's petroleum resource or petrochemical industry.
- Human Rights Sanctions – Entities which transfer or facilitate the transfer of goods or technologies which the Government of Iran may use to commit human rights abuses – *e.g.*, firearms or sensitive technologies – as well as those who assist in censorship of the Iranian population would now be subject to sanctions.
- Expedited Human Rights Licensing – The Office of Foreign Assets Control ("OFAC") would be required to establish an expedited process for the review and authorization for human rights or democracy-related activities where the applications are submitted by U.S. government agencies, the Broadcasting Board of Governors or entities receiving funding from the Department of State.
- Government Reports – The General Accountability Office would be required to issue a report to Congress within 180 days identifying all entities exporting gasoline and refined petroleum to Iran and all entities – including shipping lines, insurance and reinsurance companies – involved in providing refined petroleum to Iran. In addition, the President would be required to submit a report identifying: (1) the volume into and out of Iran of crude oil and refined petroleum products, persons selling and transporting those products, the countries with primary jurisdiction over those persons, and the importing countries; (2) sources of financing for imports to Iran of crude oil and refined petroleum products; (3)

those foreign persons assisting Iran in developing upstream oil and gas production, and those involved in existing or new petroleum refineries.

The bill also contains a brief section on Syria, added by Senator Schumer (D-NY). It imposes sanctions on (a) individuals who are responsible for or complicit in the commission of serious human rights abuses against the citizens of Syria; and (b) entities that transfer goods or technologies or provide services to Syria that are likely to be used by the Government of Syria to commit human rights abuses.

The measure has not yet been scheduled for a floor vote in the Senate, but a vote is expected as early as the week of February 13, 2012. The Senate would then need to meet with the U.S. House to reconcile the differences between this bill and the Iran Threat Reduction Act (H.R. 1905) already approved by the House. Expectations are that Congress will approve a reconciled bill and send it to President Obama for approval before the beginning of March.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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