

# Tightening the Knot

Existing U.S. laws prohibiting trade with Iran  
and their expansion under CISADA

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# General Introduction

- U.S. sanctions programs are comprehensive
- Implemented by different departments and agencies, e.g. Bureau of Industry & Security in Commerce Department, the State Department, the Office of Foreign Assets Control in the Treasury Department
- Web-like -- various statutes and regulations enacted thereunder



# OFAC -- General Overview

- Part of U.S. Treasury
- Administers a number of sanctions programs against foreign countries and foreign nationals
- OFAC regulations describe, in detail, types of activities that are prohibited.
- A number of different programs with respect to Iran
  - Iranian Assets Control Regulations (31 CFR Part 535)
  - Iranian Transactions Regulations (31 CFR Part 560)
  - Iranian Financial Sanctions Regulations (31 CFR Part 561)





# OFAC – SDN List

- Publishes Specially Designated Nationals List (the “SDN”).
- SDN lists individuals and organizations with whom certain activities are prohibited.
- Current SDN list includes a number of Iranian individuals and companies including Islamic Republic of Iran Shipping Lines (“IRISL”) and affiliates and subsidiaries of IRISL in countries other than Iran
- SDN also includes vessels
- Currently 3,400 entries on list.





# OFAC – “U.S. Persons”

- Generally speaking, OFAC regulations apply to “U.S. Persons”
- U.S. Persons include:
  - U.S. citizens and permanent resident aliens
  - Companies organized under U.S. law
  - Foreign branches of US companies
  - Individuals or companies located in the U.S.
  - U.S. branches and domestic affiliates of foreign companies



# OFAC – Source of Authority

- Acts under Presidential national emergency authorities as well as under acts of Congress
- Trading with the Enemy Act
  - oldest such statute in U.S.
  - gives economic powers to President
  - applies only in “time of war”
- Today, most sanction programs are authorized under more recent statutes



# International Emergency Economic Powers Act (IEEPA)

- Enacted in 1977 and first used with Iranian Hostage Crisis.
- Grants broad authority to President over financial transactions and property involving foreign citizens.
- President must declare “national emergency.”
- Powers to be exercised to deal with unusual and extraordinary threat from outside the U.S. to the national security, foreign policy or economy of U.S.
- Broadest statute available to President to impose economic sanctions



# IEEPA Penalties, 50 U.S.C. 1705

- Provides civil and criminal penalties for violations of regulations and orders issued under IEEPA.
- Civil penalty = greater of \$250,000 or twice the amount of transaction that is basis of violation.
- Criminal penalty = not more than \$1 million and/or imprisonment of not more than 20 years





# IEEPA Enhancement Act

- In 2007, IEEPA amended to increase penalties.
- Importantly, changed description of what acts can be considered violation.
  - Civil penalty: it is unlawful to “violate, attempt to violate, conspire to violate, or cause a violation ....”
  - Criminal: if a person “willfully commits, willfully attempts to commit or willfully conspires to commit, or aids or abets in the commission of, an unlawful act.”
- Significant expansion?



# Iran Sanctions Act of 1996

- Imposed sanctions on non-U.S. person who makes an investment of \$40 million or more that directly and significantly contributes to Iran's ability to develop petroleum resources of Iran.
- Never enforced.
- Amended and expanded by Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 ("CISADA")





# CISADA

- Signed into law by President Obama on July 1, 2010
- Designed to ratchet-up pressure on Iran by imposing sanctions on non-U.S. and non-Iranian persons.
- Several facets, including:
  - Requires new restrictions on financial institutions, which may include insurance companies
  - Strengthening of existing regulations
  - Mandates sanctions against non-U.S. companies for assisting Iran with development of WMD and petroleum



# Financial Sanctions

- CISADA mandates sanctions with respect to financial institutions that engage in certain transactions.
- Two relevant categories:
  - Sanctions directed at actions of “foreign financial institutions”
  - Sanctions directed at actions of person “owned or controlled by a U.S. financial institution.”
- In accordance with CISADA, OFAC enacted the Iranian Financial Sanctions Regulations





# Financial Sanctions: Foreign Financial Institutions

Sanctionable conduct:

- Facilitates efforts of Iran (including IRGC) to acquire or develop WMD
- Facilitates activities of persons subject to financial sanctions under U.N. resolutions
- Engages in money laundering
- Facilitates efforts by Central Bank of Iran or other Iranian financial institutions to conduct above.



## Sanctionable conduct (cont'd)

- Facilitates “significant transaction” or provides “significant financial services” for:
  - Iran’s Islamic Revolutionary Guard Corps. or any of its affiliates whose property and interests in property are blocked.
  - A financial institution whose property and interests in property are blocked in connection with Iran’s proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran’s support for international terrorism.





# Penalties

- Imposed if “foreign financial institution” “knowingly” engages in listed activities.
- Institution will be listed on OFAC list.
- Sanctions can include limitations on the opening and maintaining of correspondent accounts or payable-through accounts in U.S.
- A U.S. financial institution barred from opening or maintaining such accounts for sanctioned financial institutions.
- Civil penalties (as described in IEEPA) can be imposed on person who violates orders imposing sanctions.



# Financial Sanctions: Persons Owned or Controlled

- A person “owned or controlled” by a U.S. financial institution is prohibited from “knowingly engaging in a transaction with or benefitting [IRGC] or any of its agents or affiliates....”
- Agents or affiliates of IRGC are listed on SDN List with “IRGC” designation.
- Penalties: the U.S. financial institution can be subject to civil penalties if any person it owns or controls violates, attempts to violate, conspires to violate, or causes a violation and the U.S. financial institution “knew or should have known” of such





# Strengthening Existing Sanctions

CISADA modifies and codifies several aspects of existing economic sanctions pertaining to Iran implemented by OFAC

- No good or service of Iranian origin may be imported directly or indirectly into the U.S. (with very few exceptions)
- No good, service or technology of U.S. origin may be exported to Iran from the U.S. or by a U.S. person, wherever located.

See 22 U.S.C. § 8512



# Regulations & Penalties

- Pursuant to CISADA, OFAC strengthened existing Iranian sanctions – see Iranian Transaction Regulations, 31 CFR Part 560.
- The civil and criminal penalties of IEEPA apply to a person who violates, attempts to violate, conspires to violate, or causes a violation of these regulations.





# CISADA –

## Petroleum & Nuclear Sanctions

- CISADA amended and supplemented the ISA
- ISA, as supplemented by CISADA, requires the imposition of sanctions on activities with respect to Iran's petroleum sector and nuclear efforts.
- To be implemented and enforced by State Department
- Unknown if regulations will be published



# Persons Subject to Sanctions

- Extra-territorial effect
- Any person who carries out sanctionable activities
- Can also include successor, parent, subsidiary and affiliate entities.





# Sanctions – 9 Possible

1. Denial of U.S. Export-Import Bank loans or credit facilities for U.S. exports
2. Denial of licenses for the U.S. export of military or military useful technology
3. Denial of U.S. bank loans exceeding \$10 million/year
4. If sanction person is “financial institution,” prohibition on serving as primary dealer in U.S. government bonds or as repository for U.S. government funds.
5. Prohibition on U.S. government procurement contracts



# Sanctions – 9 Possible (cont'd)

- 6. Prohibitions within U.S. of foreign exchange transactions.
- 7. Prohibitions within U.S. of banking transactions such as transfers of credits or payments between financial institutions.
- 8. Freezing of assets within U.S.
- 9. Restriction on imports into U.S.

\*\*Sanctions shall remain in effect for a period of not less than 2 years or until such time as President confirms to Congress that person no longer engaging in sanctionable activity, except that sanction shall remain in effect for at least 1 year.





# Mandatory Sanctions – WMD

- CISADA requires President to impose 3 or more sanctions if person has “exported, transferred, or otherwise provided to Iran any goods, services, technology, or other items knowing that the provision of such goods ... would contribute materially to the ability of Iran” to acquire or develop weapons (chemical, biological, nuclear or “advanced conventional” weapons)



# Additional Sanction

- In addition to the nine potential sanctions, if a violation of this aspect of CISADA occurs, the President may impose sanctions on the country which has primary jurisdiction over the person engaging in the prohibited activities
- This additional sanction can include the restriction on the ability to receive nuclear material, facilities, components or other goods from the U.S.



# Mandatory Sanctions – Petroleum: Important Definitions

- “develop” and “development” = the exploration for, or the extraction, refining or transportation by pipeline of, petroleum resources.
- “knowingly” = a person has actual knowledge, or should have known, of the conduct, the circumstance or the result.

# Mandatory Sanctions – Petroleum: Important Definitions

- petroleum resources” = 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
- “refined petroleum products” = diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel) and aviation gasoline



# Sanctionable Conduct: Development of Petroleum Resources

- Requires imposition of 3 or more sanctions if a person knowingly makes an investment of \$20 million or more (or any combination of investments of at least \$5 million which in the aggregate equals or exceeds \$20 million in any 12-month period) that “directly and significantly contributes to the enhancement of Iran’s ability to develop petroleum resources.”



# Sanctionable Conduct: Production of Refined Petroleum Products

- Requires sanctions if person “knowingly” sells, leases, or provides to Iran goods, services, technology, information or support 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 the construction, modernization, or repair of petroleum refineries.”
  - sanctions triggered if any of the foregoing has a “fair market value” of \$1 million or more, or during a 12-month period, has an aggregate fair market value of \$5 million or more



# Sanctionable Conduct: Exportation of Refined Petroleum Products

- Requires sanctions if a person “knowingly”
  - sells or provides to Iran refined petroleum products; or
  - sells, leases, or provides to Iran goods, services, technology, information or support that “could directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products.”
- Sanctions triggered if any such activity has a “fair market value” of \$1 million or more, or during a 12-month period, has an aggregate fair market value of \$5 million

# Sanctionable Conduct: Exportation of Refined Petroleum Products

- CISADA provides non-exhaustive examples of services that could be caught by this provision, including:
  - Underwriting or entering into a contract to provide insurance or reinsurance for the sale, lease or provision of such goods, services, technology or information or support
  - Financing or brokering such sale, lease or provision;
  - Providing ships or shipping services to deliver refined petroleum products to Iran.



# Sanctionable Conduct: Exportation of Refined Petroleum Products

- CISADA provides that no sanctions are to be imposed on an underwriter, insurer, or reinsurer if the President determines that such a person has exercised due diligence in establishing and enforcing policies, procedures, and controls to insure that the person does not underwrite, insure or reinsure the sale, lease, or provision of goods, services, technology, information or support that falls within CISADA



# Practical Considerations

- Dual-use cargoes
- Chartering ships
- Contract clauses