

ALERT

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Further Round of U.S. Sanctions on Iran Likely if Diplomatic Talks Do Not Succeed

Jonathan M. Epstein

Early last week, on the eve of diplomatic talks between six nations (including the United States) and Iran regarding Iran's nuclear program, the U.S. Senate passed the Iran Sanctions, Accountability, and Human Rights Act of 2012 (ISAHA). If enacted, ISAHA would impose significant additional sanctions against Iran and Syria. Since the Iranian government refused to make any real concessions in those diplomatic talks, it is likely that ISAHA will be enacted into law in the near future.

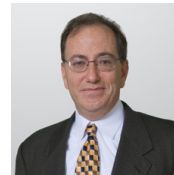
This Senate action comes less than three weeks after President Obama issued a new Executive Order (E.O. 13608) which sanctions foreign companies that aid Iranian and Syrian entities in evading U.S. sanctions. In particular, this order targets foreign companies engaged in deceptive practices used to disguise the origin or nature of payments from or to Iranian and Syrian entities.

The rapid escalation of U.S. (and European Union) sanctions against Iran since 2010, along with the extraterritorial nature of the U.S. sanctions against Iran, create real challenges for non-U.S. companies.

Status of ISAHA

There was a concerted effort by Senate leadership to pass additional Iran sanctions legislation before diplomatic talks commenced in Baghdad on May 23, 2012. As a result of these efforts, on May 21, the Senate passed ISAHA as H.R. 1905. There are still several steps before ISAHA is enacted into law. Initially, ISAHA will need to be reconciled with the corresponding House of Representatives bill, passed in December 2011. While bearing the same bill number, there are significant differences between the bills enacted by the House and Senate. The Senate essentially replaced the text passed by the House with a modified version of the Shelby/Johnson bill (S. 2101). This reconciliation will be done by a House and Senate conference committee. Once the final conference report is approved by both House and Senate, ISAHA will be presented to President Obama for his signature.

Six months from the U.S. elections, it would take significant concessions by the Iranian government on its nuclear program to stay Congress' hand, and the president, if presented with ISAHA, would have no political choice but to sign it into law.



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Major Provisions of ISAHA

ISAHA is complex legislation that amends a number of other laws. Most of the sanctions are targeted at Iran rather than Syria. The major provisions affecting Iran are the following:

- **Close U.S. Foreign Subsidiary Exception.** ISAHA would, with a 60-day grace period, close the longstanding exception under the Iran Transaction Regulations that allows foreign companies owned or controlled by U.S. companies to operate in or trade with Iran, provided the U.S. parent does not facilitate such activities of the foreign subsidiary. Further, ISAHA would sanction the U.S. parent company for such activities of its foreign subsidiaries unless the U.S. parent divests or terminates its business with the foreign subsidiary within 180 days.
- **Sanctions Against Financing Messaging Services.** Notwithstanding that the SWIFT banking service has cut-off message processing with Iranian financial institutions subject to EU sanctions, ISAHA seeks to force SWIFT to cease providing messaging services to all Iranian financial institutions. Under ISAHA, the United States could sanction SWIFT and other financial messaging service providers possibly being used by Iranian banks.
- **Incorporation of November 2011 Executive Order into CISADA.** In November 2011, the president issued Executive Order 13590. It expanded extraterritorial U.S. sanctions from those set forth in the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA) to include sanctions on a non-U.S. person who:
 - provides goods, services or support valued at \$1 million or more (or \$5 million or more over a 12-month period) that contributes to the maintenance or development of Iran's petroleum resources
 - provides goods, services or support valued at \$250,000 or more (or \$1 million over a 12-month period) that contributes to the maintenance or expansion of Iran's domestic production of petrochemicals

Under the Executive Order, imposition of sanctions is discretionary, and to date, the president has not used this Executive Order to impose sanctions on any entity. By adding the substantive language of the Executive Order to CISADA, this removes much of the president's discretion. Under CISADA, the commencement of an investigation is based on credible evidence and is mandatory, as is imposition of sanctions if a violation is found. ISAHA also clarifies that providing goods or services over certain dollar thresholds for infrastructure like port facilities, roads, or railways used in transporting refined petroleum would violate CISADA.

- **Increased Reporting and Enforcement.** ISAHA would force the president to investigate and sanction foreign persons engaged in transactions with Iran by requiring more frequent and detailed reporting, and by expanding the definition of "credible evidence" of a violation necessary to trigger a mandatory investigation and imposition of penalties.
- **Mandatory Disclosures for Issuers.** For foreign companies that are publicly traded on U.S. stock exchanges (e.g., issuers), ISAHA would remove ambiguity about when activities relating to Iran must be disclosed in public filings with the Securities and Exchange Commission (SEC). In particular, if the issuer or its affiliates knowingly engage in activity described in CISADA, or knowingly engage in transactions with certain blocked entities (including the government of Iran and its instrumentalities), such activity must be disclosed. Furthermore, such information would be "credible evidence" of a violation requiring a mandatory investigation. (Mandatory reporting would commence 180 days after enactment).
- **Targeting Joint Ventures with Iran Government Entities.** ISAHA would sanction companies that do not (within 180 days) divest from joint ventures relating to the development of petroleum resources *outside of Iran*, in which the government of Iran is directly or indirectly a partner or substantial investor.
- **Sanctioning Executives of Companies Sanctioned.** ISAHA would expand sanctions under CISADA. When sanctioning a company, the U.S. State Department can also sanction its principal executive officer, as well as exclude company officers from entry into the United States.

- **NIOC/NITC Targeted for Additional Sanctions.** ISAHA also targets the National Iranian Oil Company (NIOC) and the National Iranian Tanker Company (NITC) for further sanctions. ISAHA would require the president to determine within 60 days if NIOC and NITC are agents or affiliates of the Iranian Revolutionary Guard Corp. (IRGC). Such designation would trigger other extraterritorial sanctions for these entities and their subsidiaries. Further, ISAHA would clarify that any transactions or financial services relating to the purchase of petroleum or petroleum products with these entities on or after June 28, 2012, will be sanctionable under the National Defense Authorization Act (NDAA), whether or not an Iranian financial institution is involved. The NDAA, passed in December 2011, authorizes sanctioning of foreign financial institutions that engage in significant transactions or significant petroleum-related transactions with Iranian financial institutions. Sanctions under the NDAA relating to significant petroleum transactions go into effect June 28, 2012.

Complex and Changing U.S. Sanctions on Iran

Compliance with U.S. sanctions continues to present challenges, particularly for non-U.S. companies. ISAHA would only add a further layer to the already complex and overlapping U.S. sanctions enacted by regulation, executive order and legislation. Further, the rapid escalation of sanctions since 2010 means that companies need to be continually updating their compliance procedures and policies to ensure that they do not run afoul of U.S. sanctions.

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Jonathan M. Epstein is a partner in the firm's Washington, D.C., office. Mr. Epstein's practice focuses on international trade and transportation law. His trade practice includes advising clients in the maritime, aerospace, electronics, agrochemical, biochemical and other high-technology industries on export, import and related trade issues. His transportation practice focuses on representing clients before the Federal Aviation Administration (FAA) and the Department of Transportation (DOT), and assisting clients in corporate jet transactions and structuring of corporate aircraft operations to comply with FAA regulations.

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