

CISADA

The New U.S. Sanctions on Iran



The Financial Provisions of “CISADA”

The New Iran Sanctions Administered
by the U.S. Treasury Department

Questions and Answers

In June 2010, the United Nations Security Council (UNSC) adopted Resolution 1929 – the fourth in a series of UNSC resolutions (UNSCRs) imposing sanctions on Iran for its nuclear activities. Among its measures, UNSCR 1929 includes targeted asset-freezing provisions and calls upon all States to prevent the provision of financial services, if the State has reasonable grounds to believe such financial services could contribute to Iran’s nuclear aspirations. The Resolution also notes the particular need to exercise vigilance over transactions involving Iran’s banks and the potential connection between Iran’s energy industry and the funding of its nuclear effort. Since the adoption of UNSCR 1929, the European Union and countries including Canada, Japan, South Korea, and Australia have promulgated sweeping rules significantly limiting Iran’s access to their banking and finance systems.

On July 1, 2010, President Obama signed into law the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA). This law builds upon UNSCR 1929 by strengthening existing U.S. sanctions with respect to the Iranian energy industry, and adds the potential for the imposition of serious limits on foreign financial institutions’ access to the U.S. financial system if they engage in certain transactions involving Iran. CISADA is consistent with the global consensus regarding Iranian behavior and is in line with the U.S. Government’s core role of protecting its domestic financial system from exposure to Iran’s illicit and deceptive financial practices.

This document briefly outlines the financial provisions of CISADA administered by the U.S. Department of the Treasury.¹ In addition, this document addresses many of the most common questions received by the Treasury Department regarding the implementation of these provisions.

1. The Treasury Department only administers Sections 103, 104, and 105 of CISADA. Other aspects of the legislation are implemented and/or administered by other agencies. Of note, the amendments to the Iran Sanctions Act concerning energy investment and refined petroleum activities are implemented by the State Department. All questions and concerns regarding the Iran Sanctions Act as amended by CISADA should be directed to the State Department (www.state.gov).

Resources

- U.S. Treasury Department – Updated List of Designated Entities
www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx
- U.S. Treasury Department – Iranian Financial Sanctions Regulations
www.treasury.gov/resource-center/sanctions/Programs/Documents/fr75_49836.pdf
- U.S. Government – Federal Register
www.gpo.gov/fdsys/

The financial provisions of CISADA are implemented through the Iranian Financial Sanctions Regulations (IFSR), which the Treasury Department issued in August 2010. The IFSR prohibit entities owned or controlled by U.S. financial institutions from knowingly engaging in transactions with or benefiting Iran's Islamic Revolutionary Guard Corps (IRGC).² Additionally, foreign financial institutions that engage in certain transactions with specific, troubling Iran-linked individuals and entities risk impeding their access to the U.S. financial system. Under the IFSR, the Secretary of the Treasury may prohibit or impose strict conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts for foreign financial institutions that the Secretary finds knowingly engage in one or more sanctionable activities.

Q&A

Q1. What activities by foreign financial institutions can subject them to CISADA sanctions?

- A1.** As described in the IFSR, the sanctionable activities of a foreign financial institution are:
- Facilitating the efforts of the Government of Iran (GOI) to acquire or develop Weapons of Mass Destruction (WMD) or delivery systems for WMD or to provide support for terrorist organizations or acts of international terrorism;
 - Facilitating the activities of a person subject to financial sanctions pursuant to UNSCRs 1737, 1747, 1803, or 1929, or any other Security Council resolution that imposes sanctions with respect to Iran;
 - Engaging in money laundering, or facilitating efforts by the Central Bank of Iran or any other Iranian financial institution, to carry out either of the facilitating activities described above; or
 - Facilitating a significant transaction or transactions or providing significant financial services for: (i) the IRGC or any of its agents or affiliates whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (IEEPA), or (ii) a financial institution whose property and interests in property are blocked pursuant to IEEPA in

² In this context, the "IRGC" refers to the Corps itself, as well as any of its agents or affiliates whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act. See Q1.

connection with Iran's proliferation of WMD, Iran's proliferation of delivery systems for WMD, or Iran's support for international terrorism.

Q2. Where can I find a list of IRGC affiliates and Iran-linked financial institutions "blocked pursuant to IEEPA"?

A2. The list of blocked IRGC affiliates and blocked Iran-linked financial institutions is dynamic and is based on the identity of "designated" persons, which refers both to natural persons (i.e., individuals) and legal persons (such as corporations and other entities). The most recent list of designated persons – which includes most, but not all, blocked entities³ – can be found at www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx. The listings of designated IRGC entities will be followed by the tag [IRGC]; those of designated Iran-linked financial institutions will have the tag [IFSR].

Q3. How do the IFSR define "U.S. financial institutions"?

A3. The IFSR define "U.S. financial institutions" to include: depository institutions, banks, savings banks, money service businesses, trust companies, insurance companies, securities brokers and dealers, commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of these entities. Covered institutions include those branches, offices, and agencies of foreign financial institutions that are located in the United States.

Q4. How do the IFSR define "foreign financial institutions"?

A4. The IFSR define "foreign financial institutions" to include foreign depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodities exchanges, clearing corporations, investment companies, employee benefit plans, and holding companies, affiliates, or subsidiaries of any of these entities.

³ Under Department of the Treasury regulations, designated persons are those that are named on the list. All interests in property of such persons are blocked, and such persons are considered to have an interest in all property of an entity in which they own, directly or indirectly, a 50 percent or greater interest. As a result, such an entity and its property are also blocked, even if the entity does not itself appear on the list.

Q5. How do the IFSR define the term “knowingly”?

A5. The term “knowingly” as used in the IFSR means that a person has actual knowledge or should have known of specific conduct, a circumstance, or a result. In other words, the IFSR could be implicated if the Treasury Department finds that a foreign financial institution knew or should have known that it engaged in one or more of the sanctionable activities.

Q6. How does the Treasury Department determine whether a transaction or financial service is “significant” for purposes of the IFSR?

A6. As set out in the IFSR, in determining whether a transaction or financial service is “significant,” the Treasury Department may consider: (1) the size, number, frequency, and nature of the transaction(s); (2) the level of awareness of management of the transaction(s) and whether the transaction(s) are a part of a pattern of conduct; (3) the nexus between the foreign financial institution involved in the transaction(s) and a blocked IRGC individual or entity or blocked Iran-linked financial institution; (4) the impact of the transaction(s) on the goals of CISADA; (5) whether the transaction(s) involved any deceptive practices; and (6) other factors the Treasury Department deems relevant on a case-by-case basis.

Q7. When are the prohibitions and strict conditions on foreign financial institutions’ correspondent accounts or payable-through accounts in the United States effective?

A7. A finding by the Treasury Department that a foreign financial institution knowingly engages in one or more of the sanctionable activities is necessary before the Treasury Department can prohibit or impose strict conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts for that foreign financial institution.

Q8. How will U.S. and foreign financial institutions know that the Treasury Department has made such a finding?

A8. As a general matter, the Treasury Department will reach out to foreign financial institutions to inquire about their conduct before making a finding. If the Treasury Department decides to impose strict condition(s), the Treasury Department will issue an order or a regulation that sets out the strict condition(s) to be imposed on the U.S. correspondent accounts or U.S. payable-through accounts of the relevant foreign financial institution and publish the order or regulation in the *Federal Register*. The *Federal Register* is available at www.gpo.gov/fdsys/.

If the Treasury Department decides to prohibit the opening or maintaining of U.S. correspondent accounts or U.S. payable-through accounts for a foreign financial institution, the Treasury Department will add the name of the foreign financial institution to the Appendix to the IFSR and publish it in the *Federal Register*.

Q9. How will the Treasury Department enforce the IFSR with respect to U.S. entities?

A9. Any U.S. person who violates the correspondent account provisions of the IFSR may be subject to civil penalties of up to the greater of \$250,000 or twice the transaction value, and criminal penalties for willful violations of up to \$1 million and 20 years in prison.

A U.S. financial institution may be subject to civil penalties of up to the greater of \$250,000 or twice the transaction value, if any person that it owns or controls violates the IFSR prohibition on engaging in any transaction with or benefiting the IRGC or any of its agents or affiliates whose property and interests in property are blocked pursuant to IEEPA, and if the U.S. financial institution knew or should have known that the person violated the IFSR.

Q10. Can the application of any part(s) of the IFSR be waived by the Department of the Treasury?

A10. CISADA provides for a waiver of the sanctions under the IFSR if the Secretary of the Treasury determines that a waiver is necessary to the national interest of the United States.

Q11. Where can I find the text of the IFSR?

A11. The text of the IFSR can be found at: www.treasury.gov/resource-center/sanctions/Programs/Documents/fr75_49836.pdf.

Note: This document does not constitute legal advice regarding the provisions of CISADA. It is intended to provide a broad overview of certain provisions of CISADA that the Treasury Department implements and/or administers.

