

Association of International Bank Auditors

U.S. Sanctions and the Changing Face of the Middle East

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I. OFAC Basics: Who Are These Masked Strangers?



What Is OFAC?

- Office within Department of the Treasury that administers program of embargoes and sanctions for political or national security reasons by the United States against a number of countries, entities and persons
- “Economic warriors”
- Operates under national security/foreign policy authority, not subject to Administrative Procedure Act
- Not traditional regulator, acts proscriptively
- Strict liability regime– intent irrelevant
- Robust enforcement, both civil and criminal
- Programs apply to all persons subject to the jurisdiction of the US (“US persons”)
- US person
 - US citizen or permanent resident (wherever located)
 - Anyone physically present in the US
 - US corporations, partnerships, associations, including their non-US branches
 - Can also cover activities of non-US persons, e.g., causing US persons to violate OFAC sanctions
- US persons and companies prohibited from dealing directly or indirectly with targets
- Typically block assets, prohibit transactions
- Expansive concepts of “export of services” and “facilitation”
- Anti-evasion provisions

What Is OFAC? (cont'd)

- Each country program is different
- Basic regulatory format of prohibitions, interpretations, general licenses, authorizations and statements of licensing policy
- General vs. specific licenses
- Advisory opinions
- Redacted publication of advisory opinions
- Hot line: 1-800-540-6322
- Website:
 - www.ustreas.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx

OFAC Leadership

- **Political-level oversight at Department of the Treasury by Under Secretary for Terrorism and Financial Intelligence (David Cohen)**
- **OFAC Director Adam Szubin**
- **Reorganization, staff turnover, responsiveness issues**
- **Initiatives**
 - **Focus on financial services industry**
 - **Growth of list-based sanctions**
 - **Increased designations for WMD**
 - **Risk-based compliance**
 - **Steeper penalties**
 - **Enforcement guidelines**



The Roots of the OFAC Problem

- Two main statutory bases for US sanctions:
- Trading with the Enemy Act (1917)
- International Emergency Economic Powers Act (1977)
 - Cuba program under TWEA, all rest under IEEPA
 - Both have jurisdictional predicates of persons subject to US jurisdiction
 - TWEA-based program defines US person to include controlled foreign subsidiaries of US persons (extraterritorial application). IEEPA ones do not.
- Pending legislation would extend IEEPA jurisdiction to foreign subsidiaries of US persons in the case of Iran
- Multilateral sanctions
- Unilateral US sanctions
- Multiplying federal and state players in sanctions area

Current Sanctions

- **Types of sanctions programs:**
 - Country-based
 - List-based (including some countries, counterterrorism, narcotics, nonproliferation)
- **Country programs:**
 - Full-scope embargoes/major programs:**
 - Cuba (E.O. 12859; 31 CFR Part 515)
 - Iran (21 Executive Orders; 31 CFR Parts 560 and 561)
 - Sudan (E.O. 13067, 13401, 13412; 31 CFR Part 558)
 - Syria (E.O. 13338, 13399, 13460, 13572, 13573, 13582; 31 CFR Part 542)
 - Burma (E.O. 13047, 13310, 13448, 13464; 31 CFR Part 537)
 - Recently lifted/modified full-scope embargoes:**
 - Iraq (9 Executive Orders; 31 CFR Part 575)
 - Libya (E.O. 13566; 31 CFR Part 550)
 - Partial and/or list-based country sanctions:**
 - Former Liberian Regime of Charles Taylor (E.O. 13348; 31 CFR Part 593)
 - Zimbabwe (E.O. 13288, 13391, 13469; 31 CFR Part 541)
 - Belarus (E.O. 13405; 31 CFR Part 548)
 - Cote d'Ivoire (E.O. 13396); 31 CFR Part 543)
 - Democratic Republic of Congo (E.O. 13413; 31 CFR Part 547)
 - Lebanon-related (E.O. 13441; 31 CFR Part 549)
 - Somalia (E.O. 13466, 13551, 13570; 31 CFR Part 551)
 - Residual sanctions:**
 - Balkans (E.O. 13219; 31 CFR Part 588)
 - North Korea (E.O. 13466, 13551, 13570; 31 CFR Part 570)

Sanctioned Entities and Individuals

- **Four sets of list-based anti-terrorism regulations:**
 - **Global Terrorism Sanctions Regulations (31 CFR Part 594)**
 - **Terrorism Sanctions Regulations (31 CFR Part 595)**
 - **Terrorism List Governments Sanctions Regulations (31 CFR Part 596)**
 - **Foreign Terrorist Organizations Sanctions Regulations (31 CFR Part 597)**

Sanctioned Entities and Individuals

- **List-based Nonproliferation:**
 - Weapons of Mass Destruction Trade Control Regulations (31 CFR Part 539)
 - Highly Enriched Uranium Assets Control Regulations (31 CFR Part 540)
 - Weapons of Mass Destruction Proliferators Sanctions Regulations (31 CFR Part 544)
- **List-based Narcotics:**
 - Narcotics Trafficking Sanctions Regulations (31 CFR Part 536)
 - Foreign Narcotics Kingpin Sanctions Regulations (31 CFR Part 598)
- **Other:**
 - Rough Diamond Trade Sanctions (31 CFR Part 592 Implementing the Clean Diamond Trade Act of July 29, 2003)
 - Transnational Criminal Organizations (E.O. 13581)

Specially Designated Nationals List ("SDN" List)

- The "Bad Guys"
- Extensive but not exclusive list of prohibited entities and persons
- Master list of terrorists, narcotics traffickers and third-country fronts for embargoed regimes
- Updated almost daily
- Available at:
www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf
- Example: AL ZAWAHIRI, Dr. Ayman (a.k.a. AL-ZAWAHIRI, Aiman Muhammad Rabi; a.k.a. AL-ZAWAHIRI, Ayman; a.k.a. SALIM, Ahmad Fuad); DOB 19 Jun 1951; POB Giza, Egypt; Passport 1084010 (Egypt); alt. Passport 19820215; Operational and Military Leader of JIHAD GROUP (individual) [SDT] [SDGT]
- Problem of false positives

Other Lists

- Some key addresses:

- Commerce Control List

- (http://www.access.gpo.gov/bis/ear/ear_data.html)

- Denied Persons List

- (<http://www.bis.doc.gov/dpl/thedeniallist.asp>)

- Entity List (<http://www.bis.doc.gov/Entities/Default.htm>)

- Unverified List

- (http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html)

- Department of State Nonproliferation Lists

- (<http://www.state.gov/t/isn/c15231.htm>)

Penalties

- **IEEPA Enhancement Act, enacted October 16, 2007, raised IEEPA civil fines from \$50,000 to greater of \$250,000 or twice the amount of the transaction**
- **Up from \$11,000 in 2006 (almost 25-fold increase)**
- **Criminal penalties raised from \$50,000/10 years to \$1 million/20 years**
- **Expanded scope of persons liable for civil or criminal penalties in connection with exports by including “conspiracy” and “aiding and abetting” a violation as subject to penalties (likely to impact on customs brokers, shippers and trade finance providers but also could apply to anyone)**
- **TWEA-based penalties remain at \$65,000 for civil violations**
- **Foreign Narcotics Kingpin Sanctions Regulations remain at \$1,075,000 maximum for civil violations**

II. Compliance and the Role of Auditors



Regulators' General Expectations for Internal Compliance Programs

- **Senior management buy-in (not just compliance function but also Board, business lines, internal audit)**
- **Clearly articulated and communicated structure and model**
- **Risk-based assessments (documented and kept up-to-date)**
- **Complete program – written policy, procedures that work at every level and function, and testing and auditing to identify and correct gaps**
- **Considered application to each business, product line, customer, geographic region**
- **Screening – automated or manual depending on risk profile and resources**
- **Training and awareness – from management level to functional levels**
- **Reporting of violations internally and prompt corrective actions**

“Risk-Based Compliance” – FFIEC Examination Manual

- **April 29, 2010 version of FFIEC BSA/AML Examination Manual (key document)**
- **Risk-based approach: “Effective, written OFAC compliance program commensurate with OFAC risk profile based on products, services, customers and geographic locations”**
- **Five pillars:**
 - **Identify high-risk areas**
 - **Provide for internal controls for screening/reporting**
 - **Independent testing for compliance**
 - **Designation of OFAC compliance officer(s)**
 - **Periodic training of relevant personnel**

FFIEC Examination Manual (cont'd)

- **Examples of higher risk include:**
 - **International funds transfers**
 - **Nonresident alien accounts**
 - **Foreign customer accounts**
 - **Cross-border ACH transactions**
 - **Commercial L/Cs**
 - **Transactional electronic banking**
 - **Foreign correspondent accounts**
 - **Payable through accounts**
 - **International private banking**
 - **Overseas branches or subsidiaries**

FFIEC Examination Manual (cont'd)

- Initial identification of OFAC high-risk customers part of CIP and CDD procedures
- New accounts checked against OFAC lists prior to opening or shortly thereafter (e.g., during nightly processing, but with safeguards to prevent transactions beyond initial deposit if after opening)
- Risk-based processes for reviewing transactions and transactional parties
- Checks: OFAC guidance states if bank knows or has reason to know that transactional party on check is OFAC target, the bank's processing of the transaction would expose it to liability, "especially personally handled transactions in a higher risk area"
- Screening of parties other than accountholders (e.g., beneficiaries, guarantors, beneficial owners, nominee shareholders, etc.) "depends on bank's risk profile and available technology"

FFIEC Examination Manual (cont'd)

- **Identifying and reporting suspect transactions**
 - Bank policies and procedures must address how bank will identify and review transactions and accounts for possible OFAC violations, whether manually or through screening
 - Must address how it will determine whether hit is valid or false
 - Screening criteria for handling name variations and misspellings should be based on level of risk associated with particular product or type of transaction (e. g., in high-risk area with high volume of transactions software should identify “close name derivatives,” including variations of name not included on SDN List (OCC/fuzzy logic)
 - Should periodically reassess OFAC filtering systems
 - Procedures to check existing customers when additions or changes to SDN List
 - All parties to ACH transactions are subject to OFAC (detailed guidance in Examination Manual)
 - Compliance program must include procedures for blocking/rejecting and reporting transactions and for maintaining license information

Appendix M: Quantity of Risk Matrix — OFAC Procedures

Low	Moderate	High
Stable, well-known customer base in a localized environment.	Customer base changing due to branching, merger, or acquisition in the domestic market.	A large, fluctuating client base in an international environment.
Few high-risk customers; these may include nonresident aliens, foreign individuals (including accounts with U.S. powers of attorney), and foreign commercial customers.	A moderate number of high-risk customers.	A large number of high-risk customers.
No overseas branches and no correspondent accounts with foreign banks.	Overseas branches or correspondent accounts with foreign banks.	Overseas branches or multiple correspondent accounts with foreign banks.
No electronic banking (e-banking) services offered, or products available are purely informational or non-transactional.	The bank offers limited e-banking products and services.	The bank offers a wide array of e-banking products and services (i.e., account transfers, e-bill payment, or accounts opened via the Internet).

Appendix M: Quantity of Risk Matrix — OFAC Procedures

Low	Moderate	High
<p>Limited number of funds transfers for customers and noncustomers, limited third-party transactions, and no international funds transfers.</p>	<p>A moderate number of funds transfers, mostly for customers. Possibly, a few international funds transfers from personal or business accounts.</p>	<p>A high number of customer and noncustomer funds transfers, including international funds transfers.</p>
<p>No other types of international transactions, such as trade finance, cross-border ACH, and management of sovereign debt.</p>	<p>Limited other types of international transactions.</p>	<p>A high number of other types of international transactions.</p>
<p>No history of OFAC actions. No evidence of apparent violation or circumstances that might lead to a violation.</p>	<p>A small number of recent actions (i.e., actions within the last five years) by OFAC, including notice letters, or civil money penalties, with evidence that the bank addressed the issues and is not at risk of similar violations in the future.</p>	<p>Multiple recent actions by OFAC, where the bank has not addressed the issues, thus leading to an increased risk of the bank undertaking similar violations in the future.</p>

FFIEC Examination Manual (cont'd)

- **Third party agents and service providers:**
 - **Bank ultimately responsible for third party's compliance with OFAC requirements**
 - **Bank “should establish adequate controls and review procedures for such relationships”**

FFIEC Examination Manual (cont'd)

- **Suspicious Activity Reports (“SARs”)**
 - No longer need file SARs based solely on blocked terrorism or narcotics-related transactions, provided file blocking report with OFAC
 - However, if have additional information not included in blocking report filed with OFAC separate SAR should be filed with FinCEN including that information
 - Also should file SAR if transaction itself is suspicious in absence of valid OFAC match

Considerations on Upgrading Sanctions Compliance

- **Routine self-evaluation:**
 - Is written policy sufficiently explicit?
 - Does it cover all relevant business lines, geographic jurisdictions and risks?
 - Does it address actions contrary to company policy?
 - Does it have whistleblower protections?
 - Is it too explicit or detailed so as to be unworkable in practice?
- **Re-evaluate with every major business change**
 - Acquisition or divestiture
 - Entry/withdrawal from product line or market
 - Change in key compliance personnel
 - After major compliance issues detected (corrective actions expected by OFAC)

Considerations on Upgrading Sanctions Compliance (cont'd)

- **How confident are you in screening systems and procedures?**
 - Sufficient coverage of parties, geographies, etc.?
 - Sufficient fuzzy logic? Problem of false positives.
 - Screening for relevant information in transactional supporting documentation?
 - How often do you input changes to SDN List, etc.?
 - How often do you test or upgrade the system?
 - How do you handle manual reviews when you have a potential hit? Appropriate escalation?
- **How do you stay informed of changes to OFAC regulations and train to reflect changes in sanctions programs?**
- **Do your internal auditors review OFAC compliance? Do you use third party auditing of compliance function?**

III. The Changing Face of the Middle East



IRAN



Iran

- **Major themes:**
 - **Dynamic and fluid situation**
 - **Both multilateral and unilateral initiatives**
 - **Congressional pressure via legislation, oversight to target petroleum-related sectors and human rights abusers (IRGC)**
 - **Administration responses via mix of Executive Orders, implementing regulations, general licenses, enforcement**
 - **Designation of Iran Government-owned banks as SDNs, including Banks Sepah, Saderat, Melli, Mellat, Markazi (Central Bank of Iran)**
 - **Designation of National Iranian Oil Company (NIOC) and Islamic Republic of Iran Shipping Line (IRISL)**
 - **“Safety and soundness” initiative with foreign banks to cease Euro and Yen business with Iran**
 - **Enforcement mainly with Treasury (OFAC and FinCEN), State Department**
 - **Financial institutions front and center**
 - **Increasing move to apply controls extraterritorially to non-US subsidiaries**
 - **More to come, e.g., SWIFT**

1. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”)

- **Exports/imports**
 - Flat prohibition on exports of US goods, services or technology from the US or by US person to Iran (Section 102(b)(2))
 - Exceptions for agricultural commodities, food, medicine and medical devices subject to TSRA, humanitarian assistance, informational materials, personal communications over Internet, support for democracy-promoting NGOs, etc.
 - Although broad on its face, legislative history states purpose is only to reflect in statute existing provisions on exports and reexports in OFAC’s Iranian Transactions Regulations (ITR)
 - Therefore no new restrictions on general inventory or substantial transformation exceptions in ITR or on 10% de minimis rule
- Does NOT contain prior provision which would have held US parents liable for trade transactions with Iran by their non-US subsidiaries
- Eliminates general licenses for import of carpets, pistachios and small gifts from Iran (OFAC issued final rule September 28, 2010 (75 FR 59611) to implement)

CISADA Amendments to Iran Sanctions Act (“ISA”)

- Amendments to ISA (Section 102)
- Three new provisions aimed at Iran’s petroleum industry
 - Mandatory extraterritorial sanctions on any person who makes an investment of \$20 million or more (or combination of investments each of which is at least \$5 million and that equal or exceed \$20 million in the aggregate in any 12 month period) that “directly and significantly contributes” to enhancement of Iran’s ability to develop “petroleum resources”
 - Mandatory ET sanctions on any person who sells, leases or provides to Iran any goods, services, technology, information or support valued at \$1 million or more or with aggregate FMV of \$5 million or more during any 12 month period which could “directly and significantly facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products”
 - Mandatory ET sanctions on any person who (i) provides Iran with refined petroleum products valued at \$1 million or more or having aggregate FMV of \$5 million or more during any 12 month period or (ii) sells, leases or provides to Iran any goods, services, technology, information or support that “could directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products”

CISADA ISA

- **Three new penalties in addition to existing six under ISA:**
 - **Prohibition on foreign exchange transactions subject to US jurisdiction**
 - **Prohibition on banking transactions (transfers of credit or payments between financial institutions) subject to US jurisdiction**
 - **Prohibition on property transactions (effectively blocking assets subject to US jurisdiction)**
- **Separately, Section 102(b) requires certification from any person who is prospective contractor with US federal government that the person does not engage in any sanctionable activity under ISA, on pain of debarment for false certification**
- **Department of State administers ISA; not expected to issue regulations**

CISADA Amendments to ISA

- **President given waiver authority on case-by-case basis but must first certify to Congress that company is domiciled in country cooperating with US on multilateral Iran sanctions and that waiver is in US “national interest”**
- **Waivers limited to six months but renewable**

CISADA Financial Institutions

- **Section 104(c)**
- **Requires Treasury to issue regulations which “prohibit or strictly limit” the opening or maintenance within the US of a “correspondent” or “payable through” account by any foreign bank which engages in listed prohibited activity, including:**
 - **Facilitating “significant transaction” or providing “significant financial services for” any Iranian bank which has had its property blocked based on proliferation or terrorism reasons**
 - **Facilitating efforts by GOI (including IRGC and its “agents or affiliates”) to acquire or deal in WMD or provide significant support for designated terrorist organizations such as Hamas or Hezbollah**
 - **Facilitating “significant transaction” or providing “significant financial services for” IRGC or any of its agents or affiliates whose property is blocked by OFAC**
- **Would require banks in US to “audit” prohibited activities, certify to Treasury that foreign financial institution is not to the best of its knowledge engaging in prohibited activity or implement due diligence procedures to determine same**
- **Treasury (OFAC) issued interim final rules on above August 16, 2010 (75 FR 49836) (Iranian Financial Services Regulations, 31 CFR Part 561), subsequently revised and reissued in final February 27, 2012 (described below)**

2. Implementation of CISADA—FinCEN 104(e) Rule

- **FinCEN issued rule on October 11, 2011 (76 FR 62607) implementing Section 104(e) of CISADA**
 - **Requires a U.S. bank, upon request from FinCEN, to inquire of a specified foreign bank for which the U.S. bank maintains any correspondent account and report to the Department of the Treasury on whether the specified foreign bank:**
 - **Maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA; or**
 - **Has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of Iran's IRGC or any of its agents or affiliates designated under IEEPA**
 - **Requires the U.S. bank to request that the foreign bank agree to notify it within 30 days if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response; the U.S. bank must in turn report the information to FinCEN**

Implementation of CISADA

- **Congressional pressure to make Obama Administration implement and enforce ISA**
 - **Bipartisan Congressional Working Group on Iran Sanctions co-chaired by Howard Berman (D-CA) and Ileana Ros-Lehtinen (R-FL) (Chair and Ranking Member of House Foreign Affairs Committee)**
- **First State Department ISA designation September 30, 2011 against Naftiran Intertrade Company of Switzerland**
- **Ramped up investigations of and negotiations with other companies**
- **Four major oil companies— Total of France, Statoil of Norway, Eni of Italy and Royal Dutch Shell of UK/Netherlands pledged to end investment in Iran's petroleum sector**
- **Other companies pulling out of Iran: Toyota, Kia, Lukoil, Allianz, Lloyds**
- **Further Iran-related SDN designations by OFAC (over 50 entities, ships and individuals)**
- **Increased enforcement against large international banks for prior conduct with Iran, resulting in fines in hundreds of millions of dollars**

Multilateral Efforts Post-CISADA

- **EU sanctions July 26, 2010**
 - **General ban on most trade with Iran, targeting its energy, financial and transportation sectors**
 - **Ban on direct or indirect exports to Iran of (1) arms and related material, (2) goods and technology that could contribute to nuclear activities and (3) most dual-use goods and technology regardless of its origin**
 - **Prohibition on supply to Iran of equipment and technology for use in key sectors in oil and gas industries**
 - **Requirement that EU branches and subsidiaries of Iranian banks notify national authorities of all money transfers over Euro 10,000 and obtain prior authorization for transfers over Euro 40,000**
 - **No new medium or long term trade finance commitments except for food, agricultural, medical or humanitarian purposes**
 - **Requirement that member states inspect cargo to and from Iran if they suspect illegal material**
- **Separate, more recent EU ban on Iranian crude imports effective July 1, 2012**

3. E.O. 13590 (November 21, 2011)

- Issued under authority of IEEPA (not CISADA) November 21, 2011. Strictly Administration initiative
- Sanctions aimed at Iran's petroleum industry
 - Mandatory extraterritorial sanctions on “any person” who:
 - Knowingly provides goods, services, technology or support with a fair market value of \$1 million or more or, during any 12-month period, an aggregate fair market value of \$5 million or more, that could “directly and significantly contribute to the maintenance or enhancement of Iran’s ability to develop petroleum resources located in Iran.” Similar to first prohibited activity under CISADA, but it lowers the threshold significantly from CISADA’s \$20 million threshold. Defines the term “to develop” petroleum resources to mean “to explore for, or to extract, refine, or transport by pipeline, petroleum resources”
 - Knowingly provides goods, services, technology or support with a fair market value of \$250,000 or more or, during any 12-month period, an aggregate fair market value of \$1 million or more, that could “directly and significantly contribute to the maintenance or expansion of Iran’s domestic production of petrochemical products.” Similar to, but broader in its application than, the third CISADA-prohibited activity, which covers “refined petroleum products.” In addition, trigger thresholds are much lower than CISADA’s \$1 million/\$5 million for that prohibited activity

4. FinCEN Designation and Special Due Diligence (November 25 & 28, 2011)

- Designates Iran as “jurisdiction of primary money laundering concern” under Section 311 of USA PATRIOT Act. 76 FR 72756 (11/25/11)
- FinCEN invoked so-called “fifth special measure” under Section 311 to prohibit financial institutions in the U.S. from establishing or maintaining correspondent or payable-through accounts with Iranian banks
 - Proposed rules at 76 FR 72878 (11/28/11)
 - Practical effect is to bar accounts with remaining Iranian banks not on SDN List
- Requires “special due diligence”:
 - Covered financial institutions must provide one-time notice to correspondent account holders that they may not provide Iranian banks with access to correspondent accounts in U.S.
 - Covered financial institutions must take “reasonable steps” to identify indirect use of correspondent accounts by Iranian banks (but only from records maintained in normal course of business)
 - “Risk-based approach” to any additional due diligence measures
 - If knowledge that correspondent account is being used to provide indirect access to Iranian bank, must take “all appropriate steps” to prevent it, including notification to account holder and/or termination of account
- Exceptions for indirect access to correspondent accounts by Iranian banks to conduct licensed activity, such as TSRA exports or reexports of EAR99 de minimis U.S. content under OFAC’s Iranian Transactions Regulations (ITR)

5. National Defense Authorization Act ("NDAA") December 31, 2011

- Section 1245(c) requires the President to block all property and property interests of Iranian financial institutions subject to U.S. jurisdiction
- Section 1245(d)(A) requires the President, within 60 days after enactment, to "prohibit the opening or maintaining in the United States of a correspondent account or payable-through account by a foreign financial institution that the President determines has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury for the imposition of sanctions" pursuant to IEEPA
- Authorizes, but does not require, sanctions with respect to the Central Bank of Iran
- Exceptions for sales of food, medicine and medical devices
- Mandatory reporting requirement every 60 days, by which the Administration must submit to Congress a report on the availability and price of petroleum and petroleum products produced in countries other than Iran
- Not later than 90 days after the date of enactment, and every 180 days thereafter, the President must determine whether the price and supply of petroleum and petroleum products produced in countries other than Iran is sufficient to permit purchasers of petroleum and petroleum products from Iran to "reduce significantly" in volume their purchases from Iran
- Sanctions against any foreign bank owned or controlled by foreign government (including central bank) if it engages in financial transaction for sale or purchase of petroleum or petroleum products to or from Iran on or after 180 days after enactment, if President determines that "there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions"

NDAA (cont'd)

- Under the “Exception” at Section 1245(d)(4)(D), sanctions shall not apply as to a foreign financial institution if the President determines and reports to Congress not later than 90 days after the determination noted above, and every 180 days thereafter, that “the country with primary jurisdiction over the foreign financial institution 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 the separate “Waiver” provision at Section 1245(d)(5), the President is authorized to waive the imposition of the above sanctions for a period of not more than 120 days and may renew that waiver for additional periods of not more than 120 days each if the President determines that the waiver is “vital to the national security of the United States” and submits a report to Congress providing a justification for the waiver

6. E.O. 13599 (February 6, 2012)

- Issued by Administration in implementation of NDAA
- Requires U.S. persons to block all property and interests in property subject to U.S. jurisdiction which belong to:
 - The Government of Iran, including the Central Bank of Iran, Iranian ministries, state-owned enterprises and commercial firms which are owned or controlled by the Government of Iran
 - Any Iranian financial institution, including the Central Bank of Iran
 - Any person determined to be owned or controlled by or acting on behalf of any person whose property is blocked under the Executive Order
- Previously, U.S. persons were required to reject, but not block, transactions that involved the Government of Iran or Iranian financial institutions, except to the extent transactional parties were named on the SDN List and were thus subject to blocking
- The term “Iranian financial institution” includes not only Iranian financial institutions but also any financial institution “in Iran” (thus, the prohibitions would appear to reach property of any third-country financial institution located in Iran, presumably including any branch or representative office of such a third-country financial institution)

E.O. 13599 (February 6, 2012)

- **General Licenses:**
- **General License A authorizes the continuation of most transactions already permitted under existing general or specific licenses, including those issued pursuant to TSRA, provided that the existing specific licenses have expiration dates (General License A contains additional steps for licenses that do not have expiration dates)**
- **General License A specifically does not authorize the closing of any account of the Government of Iran or of Iranian financial institutions and the transfer of the account balance to a non-U.S. account (rather, the funds must be blocked in the United States)**
- **General License B authorizes U.S. financial institutions to process non-commercial, personal remittances to or from Iran**
 - **Payment must not be made by, to or through a designated entity**
 - **Because of the November 21 FinCEN designation that prohibits U.S. banks from holding correspondent accounts for Iranian banks, transactions presumably must be done through a third country**
 - **The transaction may involve a blocked Iranian financial institution, but only if that institution was blocked pursuant to E.O. 13599 and not under other authority, including in particular designation under programs aimed at weapons of mass destruction proliferation and terrorism**

7. OFAC February 27, 2012 Final Rule To Implement Section 1245(d) of NDAA

- **Published in February 27, 2012 Federal Register (77 FR 11724)**
- **Rewrite and reissuance of OFAC's Iranian Financial Transactions Regulations (31 CFR Part 561)**
- **Applies IEEPA powers and civil/criminal penalties to NDAA and CISADA**
- **Extraterritorial reach in that it penalizes US parent whose subsidiary (including offshore subsidiary) violates NDAA or CISADA**
- **Lists factors Treasury will consider in judging whether transaction is "significant" under NDAA and CISADA**
- **Establishes new "Part 561 List" of foreign financial institutions designated under NDAA or CISADA**
- **10-day grace period to close correspondent or payable-through accounts of designated foreign financial institutions**

February 27, 2012 OFAC Rule (cont'd)

- **Prohibition on any person (US or foreign) owned or controlled by a US financial institution from “knowingly” engaging in transaction with or benefitting IRGC or any of its agents or affiliates**
 - **Subjects US parent to IEEPA civil penalties if subsidiary violates above prohibition and US parent knows or has reason to know**
- **Sets forth effective dates for NDAA prohibitions (February 28 and June 28, 2012)**
- **Clarifies that no sanctions apply for sale of food, medicine or medical devices to Iran**

8. Iran Sanctions, Accountability, and Human Rights Act of 2012 (S. 2101)

- Approved by Senate Banking Committee February 2 and placed on Senate calendar (not yet enacted but likely will be)
- Highlights:
 - Would close “foreign subsidiary loophole” under which foreign incorporated subsidiaries of US companies have not been subject to ITR by treating them the same as US persons (would not affect foreign subsidiaries of non-US companies)
 - Would extend CISADA sanctions to subsidiaries and agents of sanctioned parties
 - Mandatory disclosure and investigation of Iran-related activity by the SEC as to issuers.
 - Sanctions against SWIFT and its member banks if designated Iranian banks are not “cut off” within 90 days
 - Broad sanctions against anyone who provides “shipping services to Iran as to goods which “could” materially contribute to WMD or terrorism
 - Expansion of US jurisdiction to eliminate Foreign Sovereign Immunity Act claims by “Iran” or the Central Bank of Iran as to funds in the US
 - Deems ownership by “Iran” or Central Bank of Iran of any property-- in or apparently outside the US– to be “commercial activity in the US” so as give jurisdiction for attachment purposes

SYRIA



SYRIA

- **The old regime:**
 - **Executive Order 13338 May 11, 2004**
 - **Broad ban on exports and reexports of “products of the United States” to Syria**
 - **Export controls administered by Department of Commerce (General Order No. 2, Supp. No. 1 to Part 736)**
 - **Exceptions for food and medicine classified as EAR99**
 - **Case-by-case individual BIS licenses for medicine on CCL and medical devices**
 - **OFAC’s Syrian Sanctions Regulations, 31 CFR 542, separately blocked property of listed regime-related persons (list-driven sanctions)**

SYRIA

- **The new regime:**
 - **Executive Order 13582 August 17, 2011**
 - **Blocks Government of Syria property subject to US jurisdiction**
 - **Prohibits export or reexport of “services” from the United States or by a US person to Syria**
 - **Prohibits any approval, financing, facilitation or guarantee by a US person of a transaction by a foreign person which would be prohibited if by a US person or within the United States**
 - **No OFAC implementing regulations yet**

SYRIA

- **Series of 15 OFAC General Licenses**
- **General License No. 4:**
 - Authorizes export or reexport to Syria, Government of Syria or blocked persons in Syria, and “all transactions ordinarily incident thereto,” provided export or reexport licensed or otherwise authorized by BIS
 - Covers medicines authorized, and medical devices specifically licensed, by BIS
 - Problem with banks, coverage of services as incidental

SYRIA

- **General License No. 6: Authorizes certain noncommercial, personal remittances (no charitable donations or funds for operation of business)**
- **General License No. 8:**
 - **Authorizes transactions for the conduct of official business of the United Nations, its specialized agencies, programs and funds, by employees, contractors or grantees thereof**
 - **Specialized agencies include UNESCO, WHO, World Bank, IMF, UNDP, UNHCR, UNICEF, etc.**
 - **Five year record keeping requirement**
 - **No debits of blocked accounts**

SYRIA

- **General License No. 9:**
 - Authorizes individual persons residing in Syria to pay personal living expenses in Syria and to engage in other transactions , including with the Government of Syria, that are “ordinarily incident and necessary” to their personal maintenance within Syria
 - No transactions with blocked persons other than Government of Syria
 - No transactions related to operating or supporting a business, employment or new investment, in Syria
- **General License No. 10: Operation of accounts for non-blocked individuals in Syria (account of personal nature, not supporting or operating business, no transfers to individuals ordinarily resident in Syria unless authorized by General License No. 6)**

LIBYA



LIBYA

- **Executive Order 13566 February 25, 2011:**
 - Blocked property subject to US jurisdiction of listed regime persons and Government of Libya, including its “agencies, instrumentalities and controlled entities,” and the Central Bank of Libya
 - Effectively precluded transactions by US persons with Government of Libya
 - Implemented by Libyan Sanctions Regulations, 31 CFR Part 570, published July 1, 2011 (limited regulations dealing with blocked property)

LIBYA

- **Series of General Licenses culminating in General License No. 8A, effective September 19, 2011:**
 - Authorizes all transactions with Government of Libya, its agencies, instrumentalities and controlled entities, and the Central Bank of Libya
 - But all blocked property remains blocked and no transactions authorized with blocked regime persons except as authorized by General License No. 7A (Libyan National Oil Corporation)
 - Effectively recognizes Transitional National Council as Government of Libya

SUDAN



SUDAN

- **Sudanese Sanctions Regulations, 31 CFR Part 538**
- **Sanctions against “Sudan” and the “Government of Sudan”**
- **Blocks Government of Sudan property, otherwise rejection regime**
- **Since 2007 qualified exception for “Specified Areas of Sudan,” as defined in Section 538.320**
- **Formation of new state of Southern Sudan on July 9, 2011 (coterminous with Specified Areas of Sudan)**

SUDAN

- **OFAC Guidance issued April 12, 2011**
- **SSR will continue to apply only to Sudan and Government of Sudan**
- **New state of Southern Sudan will not be subject to them**
- **But certain activities by US persons in new state continue to be prohibited by SSR absent OFAC authorization because of interdependence of two countries**

Iran Chart

Summary of Principal U.S. Iran Sanctions (Other Than Iranian Transactions Regulations) as of 3/15/12

<p align="center">Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") June 30, 2010</p>	<p align="center">FinCEN 104(e) Rule October 11, 2011 Authority: CISADA 76 FR 62607</p>	<p align="center">E.O. 13590 November 21, 2011 Authority: IEEPA</p>	<p align="center">FinCEN Designation and Special Due Diligence November 25 and 28, 2011 Authority: USA PATRIOT Act</p>
<p>1. Financial Institutions Provisions.</p> <ul style="list-style-type: none"> • Prohibits opening or maintenance in the U.S. of correspondent or payable-through accounts by any foreign bank that engages in Section 104(c)(2) prohibited activities, including facilitating a "significant transaction" or providing "significant financial services" for an Iranian bank that has had its property blocked based on proliferation or terrorism reasons. (Section 104(c)). • Any financial institution in the U.S. that maintains correspondent or payable-through accounts for a foreign financial institution must do one or more of the following: <ul style="list-style-type: none"> • Perform audit of prohibited activities that may be carried out by the foreign financial institution. • Certify to Treasury that to best of its knowledge the foreign financial institution is not knowingly engaged in such activity. • Establish related due diligence, policies, procedures and controls. <p align="center">(Section 104(e)).</p> <p>2. Domestic Financial Institutions.</p> <ul style="list-style-type: none"> • Prohibits any subsidiary or affiliate (including foreign subsidiary or affiliate) of domestic financial institution from "knowingly" engaging in a transaction with or benefiting IRGC or any of its agents or affiliates whose property is blocked by OFAC (Section 104(d)). <p>3. Sanctions Aimed at Iran's Petroleum Industry.</p> <ul style="list-style-type: none"> • Mandatory sanctions under the ISA extraterritorially on any person who makes 	<ul style="list-style-type: none"> • Implements Section 104(e) of CISADA. • Requires a U.S. bank, upon request from FinCEN, to inquire of a specified foreign bank for which the U.S. bank maintains any correspondent account and report to the Department of the Treasury on whether the specified foreign bank: <ul style="list-style-type: none"> • Maintains a correspondent account for an Iranian-linked financial institution designated under the International Emergency Economic Powers Act (IEEPA); • Has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of Iran's Islamic Revolutionary Guard Corps (IRGC) or any of its agents or affiliates designated under IEEPA. • Requires the U.S. bank to request that the foreign bank agree to notify it within 30 days if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated 	<p align="center">Sanctions Aimed at Iran's Petroleum Industry.</p> <ul style="list-style-type: none"> • Mandatory extraterritorial sanctions on "any person" who: <ul style="list-style-type: none"> • Knowingly provides goods, 	<ul style="list-style-type: none"> • Designates Iran as "jurisdiction of primary money laundering concern" under Section 311 of USA PATRIOT Act. 76 FR 72756 (11/25/11). • FinCEN invoked so-called "fifth special measure" under Section 311 to prohibit financial institutions in the U.S. from establishing or maintaining correspondent or payable-through accounts with Iranian banks. Proposed rules at 76 FR 72878 (11/28/11). Practical effect is to bar accounts with remaining Iran banks not on SDN List. • Requires "special due diligence:" • Covered financial institutions must provide one-time notice to correspondent account holders that they may not provide Iranian banks with access to correspondent accounts in U.S. • Covered financial institutions must take "reasonable steps" to identify indirect use of correspondent accounts by Iranian banks (but only from records maintained in normal course of business). • "Risk-based approach to any additional due diligence measures. • If knowledge that correspondent account is being used to provide indirect access to Iranian bank, must take "all appropriate steps" to prevent it, including notification to account holder and/or termination of account. • Exceptions for indirect access to correspondent accounts by Iranian banks to conduct licensed activity, such as TSRA exports or reexports of

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<p>an investment of \$20 million or more (or a combination of investments, each of which is at least \$5 million and which equal or exceed \$20 million in the aggregate in any 12 month period) that "directly and significantly contributes" to the enhancement of Iran's ability to develop "petroleum resources." (Section 102(a)).</p> <ul style="list-style-type: none"> Mandatory sanctions on any person who sells, leases or provides to Iran any goods, services, technology, information or support valued at \$1 million or more with an aggregate fair market value of \$5 million or more during any 12 month period which could "directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products." Mandatory sanctions on any person who (i) provides Iran with refined petroleum products valued at \$1 million or more or having an aggregate fair market value of \$5 million or more during any 12 month period or (ii) who sells, leases or provides to Iran any goods, services, technology, information or support that "could directly and significantly" contribute to the enhancement of Iran's ability to import refined petroleum products, subject to the above dollar thresholds. <p>4. Exports. Prohibits exports of U.S. goods, services or technology from the U.S. or by a U.S. person to Iran. (Section 103(b)(2)). Exceptions:</p> <ul style="list-style-type: none"> Agricultural commodities, food, medicine and medical devices subject to TSRA licenses. Humanitarian assistance. 	<p>under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response. The U.S. bank must in turn report the information to FinCEN.</p>	<p>services, technology or support with a fair market value of \$1 million or more or, during any 12-month period, an aggregate fair market value of \$5 million or more, that could "directly and significantly contribute to the maintenance or enhancement of Iran's ability to <u>develop petroleum resources</u> located in Iran." Similar to first prohibited activity under CISADA, but it lowers the threshold significantly from CISADA's \$20 million threshold. Defines the term "to develop" petroleum resources to mean "to explore for, or to extract, refine, or transport by pipeline, petroleum resources."</p> <ul style="list-style-type: none"> Knowingly provides goods, services, technology or support with a fair market value of \$250,000 or more or, during any 12-month period, an aggregate fair market value of \$1 million or more, that could "directly and significantly contribute to the maintenance or expansion of Iran's <u>domestic production of petrochemical products</u>. Similar to, but broader in its application than, the third CISADA prohibited activity, which covers "refined petroleum products." In addition, trigger thresholds are much lower than CISADA's \$1 million/\$5 million for that prohibited activity. Defines "petrochemical products" to mean any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, 	<p>EAR99 de minimis U.S. content under OFAC's Iranian Transactions Regulations ("ITR").</p>

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<ul style="list-style-type: none"> • Information/informational materials. • Personal communications over Internet. • Exports related to safe operation of aircraft. • Exports to IAEA. • Exports to support NGOs promoting democracy in Iran. • Exports that the President has determined are in U.S. "national interest." 		<p align="center">touene, xylene, ammonia, methanol and urea.</p>	

Summary of Principal U.S. Iran Sanctions (Other Than Iranian Transactions Regulations) as of 3/15/12

<p align="center">National Defense Authorization Act ("NDAA") December 31, 2011</p>	<p align="center">E.O. 13599 February 6, 2012 Authority: NDAA</p>	<p align="center">31 CFR Part 561 February 27, 2012 Authority: CISADA, NDAA, IEEPA</p>
<ul style="list-style-type: none"> • Section 1245(c) requires the President to block all property and property interests of Iranian financial institutions subject to U.S. jurisdiction. • Section 1245(d)(A) requires the President, within 60 days after enactment, to "prohibit the opening or maintaining in the United States of a correspondent account or payable-through account by a foreign financial institution that the President determines has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury for the imposition of sanctions" pursuant to IEEPA. • Authorizes the President to impose sanctions with respect to the Central Bank of Iran (but does not require it). • Exceptions for sales of food, medicine and medical devices. • Mandatory reporting requirement every 60 days, by which the Administration must submit to Congress a report on the availability and price of petroleum and petroleum products produced in countries other than Iran. • Not later than 90 days after the date of enactment, and every 180 days thereafter, the President must determine whether the price and supply of petroleum and petroleum products produced in countries other than Iran is sufficient to permit purchasers of petroleum and petroleum products from Iran to "reduce significantly" in volume their purchases from Iran. • Sanctions against any foreign bank owned or controlled by foreign government (including central bank of foreign country) if it engages in financial transaction for sale or purchase of petroleum or petroleum products to or from Iran on or after 180 days after date of enactment, if the President has determined that "there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial 	<ul style="list-style-type: none"> • Requires United States persons to block all property and interests in property subject to U.S. jurisdiction which belong to: <ul style="list-style-type: none"> • The Government of Iran, including the Central Bank of Iran, Iranian ministries, state-owned enterprises and commercial firms which are owned or controlled by the Government of Iran. • Any Iranian financial institution, including the Central Bank of Iran. • Any person determined to be owned or controlled by or acting on behalf of any person whose property is blocked under the Executive Order. • Previously, United States persons were required to reject, but not block, transactions that involved the Government of Iran or Iranian financial institutions, except to the extent transactional parties were named on the SDN List and were thus subject to blocking. • The term "Iranian financial institution" includes not only Iranian financial institutions but also any financial institution "in Iran." Thus, the prohibitions would reach property of any third-country financial institution located in Iran (presumably including any branch or representative office of such a third-country financial institution). • General License A authorizes the continuation of most transactions already permitted under existing general or specific licenses, including those issued pursuant to TSRA, provided that the existing specific licenses have expiration dates. General License A contains 	<ul style="list-style-type: none"> • Section 561.201 implements sanctions on CISADA-designated foreign financial institutions. • Section 561.203 implements sanctions on NDAA-designated foreign financial institutions. • Clarifies that OFAC may use IEEPA authorities to investigate, regulate or prohibit covered transactions. • Applies IEEPA penalties to violations of both CISADA and NDAA. • Section 561.701 applies IEEPA civil penalties to U.S financial institutions whose (offshore) subsidiary attempts or conspires to violate CISADA or NDAA. • Defines key terms under NDAA, including "petroleum," "petroleum products" and "food, medicine and medical devices." • Section 561.404 sets forth factors Treasury will consider in determining whether a transaction is "significant" under both CISADA and NDAA. • Establishes "List of Foreign Financial Institutions Subject to Part 561" ("Part 561 List") to contain names of CISADA or NDAA-designated foreign financial institutions. • Authorizes 10-day wind-down to close accounts for Part 561 List financial institutions. • 30-day reporting requirement on closure of Part 561 List accounts. • Section 561.202 prohibits (offshore) subsidiary of U.S. financial institutions from knowingly engaging in any transaction with IRGC, with potential civil penalties applicable to U.S. parent. • Establishes effective dates for NDAA sanctions. • Clarifies that sanctions do not apply for sale of food, medicine or medical

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<p>institutions.”</p> <ul style="list-style-type: none"> • Under the “Exception” at Section 1245(d)(4)(D), sanctions shall not apply as to a foreign financial institution if the President determines and reports to Congress not later than 90 days after the determination noted above, and every 180 days thereafter, that “the country with primary jurisdiction over the foreign financial institution 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 the separate “Waiver” provision at Section 1245(d)(5), the President is authorized to waive the imposition of the above sanctions for a period of not more than 120 days and may renew that waiver for additional periods of not more than 120 days each if the President determines that the waiver is “vital to the national security of the United States” and submits a report to Congress providing a justification for the waiver. 	<p>additional steps for licenses which do not have expiration dates.</p> <ul style="list-style-type: none"> • General License A specifically does not authorize the closing of any account of the Government of Iran or of Iranian financial institutions and the transfer of the account balance to a non-U.S. account. Rather, the funds must be blocked in the United States. • General License B, authorizes U.S. financial institutions to process non-commercial, personal remittances to or from Iran. However, payment must not be made by, to or through, a designated entity. Because of November 21 FinCEN designation which prohibits U.S. banks from holding correspondent accounts for Iranian banks, transactions presumably must be done through a third country. The transaction may involve a blocked Iranian financial institution but only if that institution was blocked pursuant to E.O. 13599 and not under other authority, including in particular designation under programs aimed at weapons of mass destruction proliferation and terrorism. 	<p>devices to Iran.</p>

THE END

