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U.S. Sanctions Update: The Freeze Deepens In Iran And Syria; The Thaw Continues In Burma

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U.S. sanctions against Iran and Syria have expanded rapidly in 2012, while sanctions against Myanmar (still referred to by the U.S. government by its pre-coup name, Burma) have been eased. These changes reflect the complex responses of U.S. policymakers to rapidly changing geopolitical, strategic and national security concerns. This article summarizes some of the recent highlights of U.S. sanctioning toward the three countries.

Iran

Iran sanctions have attracted perhaps the most policy attention in 2012. The centerpiece of that activity is the Iran Threat Reduction and Syria Human Rights Act of 2012, which we will refer to as "ITRA." The bill was signed into law on Friday, August 10, 2012. Separately, President Obama and the Securities and Exchange Commission have both taken an expanded role in Iran sanctions. Some highlights of new Iran sanctions are outlined below:

Applying prohibitions to foreign subsidiaries of U.S. companies. Prior to ITRA, a non-U.S. subsidiary of a U.S. company could lawfully conduct business in Iran, so long as no U.S. person or entity participated in the business and no U.S. goods or technology were exported unlawfully to Iran. Now, Section 218 of

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the ITRA expands Iran sanctions to directly reach non-U.S. entities owned or controlled by a U.S. person. It also requires the secretary of the treasury to promulgate regulations within 60 days after the date of enactment implementing the change, which means regulations should be issued by October 9, 2012. The new law also creates a safe harbor under which penalties would not be applied if the U.S. parent divests or terminates its business with the non-U.S. entity within 180 days after the date of enactment of the statute, which gives companies until early February 2013 to comply. In our experience, it takes enormous time and effort to divest from Iranian activities. In many cases, doing so requires a license from the U.S. Office of Foreign Assets Control, or OFAC. This is because the very act of divestment often involves transactions that are prohibited by existing U.S. sanctions, including negotiating share transfers; settling claims; and working out responsibility for existing contracts, deliveries and warranty claims. OFAC typically grants such licenses, but the process takes time.

Expanding existing sanctions on foreign companies involved in Iran's energy sector. Under the Iran Sanctions Act (ISA) and the Comprehensive Iran Sanctions, Accountability, and Divestment Act

(CISADA), the President was already authorized to impose sanctions on foreign companies involved in certain energy investments in Iran.

The new ITRA increases the number of sanctions available to the President under ISA from nine to 12 by adding the following new potential sanctions:

- Limiting access to U.S. debt and equity markets;
- Denying U.S. entry visas; and
- Freezing personal assets of top officers of the sanctioned company.

The new law also increases the number of sanctions the President must impose under ISA from three to five of the available sanctions. It adds the following to the list of activities subject to sanction: construction of infrastructure "associated" with Iran's petroleum sector, including construction of port facilities, railways and roads to support the delivery of refined petroleum products. Separately, the new law also imposes sanctions on non-U.S. companies that are involved in certain energy joint ventures involving Iran.

ITRA also imposes sanctions on owners or operators of vessels that transport crude oil from Iran under certain circumstances, or who conceal the Iranian origin of crude oil or refined petroleum products transported on the vessel. In addition, ITRA imposes sanctions on persons who provide underwriting services, insurance or reinsurance to the National Iranian Oil Company, to the National Iranian Tanker Company or to any successor entity of either.

New sanctions against Iranian students. One of the most surprising new restrictions is found in ITRA Section 501, which denies U.S. visas to Iranian students who seek to come to the United

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States to study to prepare for work in Iran's energy sector or in fields related to its nuclear program, including nuclear sciences or nuclear engineering. This is a major development, since thousands of Iranian students study at U.S. universities each year. See <http://www.iie.org/Research-and-Publications/Open-Doors/Data/Fact-Sheets-by-Country/2011> (stating that the number of Iranian students studying in the United States in 2011 rose by nearly 19 percent to over 5,600).

Imposing new SEC reporting requirements. The ITRA amends Section 13 of the Securities and Exchange Act of 1934 to require any issuer of securities on any U.S. exchange (whether or not it is a U.S. company) to disclose in its annual and quarterly reports whether it or any of its affiliates have knowingly engaged in certain Iran-related activities, including certain energy investments; certain activities related to Iran's Revolutionary Guard Corps; or dealings with the government of Iran or its entities or agents.

New sanctions for conducting transactions with NIOC and NITC. Separate from the ITRA, President Obama signed Executive Order 13622 on July 31, 2012, which imposes new sanctions on non-U.S. companies that conduct business with the National Iranian Oil Company and the National Iranian Tanker Company.

Syria

The ITRA also includes provisions on Syria, including a requirement that the President impose sanctions against officials of the Syrian government involved in serious human rights abuses against Syria's citizens. Sanctions must be imposed within 90 days of the effective date of the ITRA, that is, by early November 2012.

The statute also establishes new sanctions against persons who transfer certain technologies that are determined to be likely to be used by Syrian officials to commit human rights abuses or to restrict the free flow of information. Designated technologies include weapons, rubber bullets, riot control equipment, equipment for jamming or monitoring electronic communications and surveillance equipment.

Burma

Over the course of 2012, the United States has taken multiple but careful steps to respond to the extraordinary political reform going on in Burma. The end result

is nonetheless that U.S. companies and individuals can now conduct many transactions with Burma that were long prohibited.

For years, the United States had prohibited U.S. persons from engaging in new investment in Burma and from providing financial services in the country. U.S. sanctions have also prohibited imports of Burmese goods.

In late 2011, after the Burmese government released some political prisoners and lifted a ban on the main opposition party, the National League for Democracy, U.S. Secretary of State Hillary Clinton outlined conditions necessary for removal of U.S. sanctions on Burma, including further opening of the country's political process, establishment of the rule of law and severing ties to North Korea.

The U.S. government has apparently determined that certain of these conditions have been met, as the United States has, since the beginning of the year, lifted many sanctions on Burma. The following summary illustrates both the pace of change and what that change has entailed since the start of 2012:

General License authorizing financial services related to humanitarian, religious and other not-for-profit activities. The first tangible action came on April 17, when OFAC issued General License No. 14-C to authorize certain financial transactions in support of humanitarian activities in Burma. Until this time, the United States had prohibited the provision of most financial services to Burma; even financial transactions that were permitted often triggered blocking by U.S. banks because their software screening tools were set to halt all financial transactions with reference to Burma. General License 14-C was a small but important first step.

General License for financial services. On July 11, OFAC took much further-reaching action with the issuance of General License No. 16 (GL 16). Under GL 16, subject to limited exceptions, U.S. entities and individuals are now authorized to provide most types of financial services to Burma.

There continues to be a prohibition on transactions with individuals and entities whose property interests are frozen pursuant to OFAC's Burmese Sanctions Regulations. Yet perhaps reflecting the lack of Burmese banks equipped to handle sophisticated financial transactions, GL

16 authorizes transfers of funds to or from an account of a Burmese financial institution whose property and interests in property are blocked so long as the account is not on the books of a financial institution that is a U.S. person. In other words, you can transact with blocked Burmese banks if the transaction does not involve an already blocked account of that bank.

General License for new investment. Also on July 11, OFAC issued General License No. 17 (GL 17), which authorizes U.S. persons to engage in new investment in Myanmar. Such new investment has been prohibited for roughly 15 years. New investment in the country will still be carefully monitored: any U.S. company or individual investing more than \$500,000 in Burma must file annual reports to the U.S. Department of State about its policies and procedures with respect to human rights, workers' rights, environmental stewardship, payments to Burmese government entities, and other enumerated categories. In addition, any new investment involving the Myanmar Oil and Gas Enterprise requires a separate notification to the State Department within 60 days. More generally, many Burmese companies and entities still have their assets frozen, and many government officials are still listed on U.S. prohibited parties lists, so caution is still very much warranted in any new activity in Myanmar.

Washington hedging its bets. It is interesting to note that OFAC has provided authorizations in the form of general licenses, which can be revoked easily in case Burma takes a wrong turn. Illustrating how tentative the new gains are in Burma, on the same day General Licenses 16 and 17 were issued, President Obama issued new sanctions against persons who threaten the peace, security or stability of Burma, commit human rights abuses, or conduct certain arms trades with North Korea.

Conclusion

Adverse developments in Iran and Syria have brought sanctions against those countries to new heights. By contrast, the desire to encourage further political reform in Burma has led to the easing of restrictions on that country. And though the pace of U.S. policy making can often be slow, dramatic developments around the world can sometimes spur abrupt action in Washington. The rest of us need to be aware that new sanctions can come and old sanctions can go anytime.