

Government Contracts Blog

Posted at 10:54 AM on August 4, 2010 by Sheppard Mullin

Comprehensive Iran Sanctions, Accountability, And Divestment Act Of 2010 - The Expanded Categories Of Sanctionable Activities

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As a follow-up to our previous blog article, available [here](#), we provide this month a more in depth analysis of some of the key features of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”) passed July 1, 2010. Our focus this month is on the expansion of the types of activities and persons that may be sanctioned. We also address the new mandatory representation and certification for government contractors. Finally, we note that the EU and Canada have imposed similar sanctions against Iranian transactions and we provide a brief synopsis of those sanctions.

Previous Law

CISADA builds upon the pre-existing Iran Sanctions Act of 1996 (“ISA”). ISA was enacted to curb international energy investment in Iran, with the State Department designated as the administrator of the ISA sanction program. ISA limited sanctionable activities to (a) investment in Iran’s energy sector, (b) the provision of weapons of mass destruction (“WMD”) or WMD technology to Iran, and (c) the enhancement of Iran’s conventional military capabilities. **No** firm, however, had ever been sanctioned under ISA. The prohibited activity and sanctions under ISA are distinct from the Iranian Assets Control and Transaction Regulations administered by OFAC.

Expanded Sanctionable Activities

CISADA adds new categories of sanctionable activities. In all contexts, the prohibited activity must be done “knowingly,” which is defined to include not only actual knowledge, but also constructive knowledge, *i.e.*, information which the person in question “should have known.”

- Development of the Iranian Petroleum Industry. Effective July 1, 2010, CISADA prohibits certain investments that “directly or significantly” contribute to development of petroleum resources in Iran. This prohibition applies (i) to any investment of \$20,000,000 or more; or (ii) to any combination of investments, each at least \$5,000,000, that in the

aggregate equal \$20,000,000 during a 12-month period. This conduct is punishable by the imposition of three or more of the nine sanctions that are available under the law.

- Production of Refined Petroleum Products in Iran. As of July 1, 2010, CISADA also prohibits the knowing sale, lease, or provision to Iran of certain

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 respect to the construction, modernization, or repair of petroleum refineries. [Emphasis added]

While it is not yet clear what constitutes "direct and significant" contribution or assistance, it is likely that the State Department will broadly interpret this phrase. This prohibition applies to transactions (i) with a fair market value of \$1,000,000 or more; or (ii) that, during a 12-month period, have an aggregate fair market value of \$5,000,000 or more.

- Exportation of Refined Petroleum Products to Iran. As of July 1, 2010, CISADA now also prohibits the knowing sale, lease, or provision to Iran of certain "goods, services, technology, information or support" that could "directly or significantly contribute to the enhancement of Iran's ability to import refined petroleum products." Here, underwriting, insuring, financing, brokering, or providing ships or shipping services are specifically mentioned as examples of activities that can directly or significantly enhance Iran's ability to import refined petroleum products. This prohibition applies to transactions (i) that have a fair market value of \$1,000,000 or more; or (ii) that, during a 12-month period, have an aggregate fair market value of \$5,000,000 or more.

ISA already prohibited persons from knowingly exporting, transferring, or otherwise providing to Iran any goods, services, technology, or other items that would contribute materially to the ability of Iran to (i) acquire or develop chemical, biological, or nuclear weapons; or (ii) acquire or develop destabilizing number and types of advanced conventional weapons. Under CISADA, these activities remain sanctionable, but CISADA also creates a sanction against the country in which the violator principally operates, denying that country access to any nuclear-related materials.

Expansion Of The "Persons" Who May Be Sanctioned

One of the most significant changes in CISADA relates to the increased risk of liability for domestic parents. Under ISA, sanctions were applicable to the person who directly engaged in the prohibited conduct, to any successor in interest, and to parents, subsidiaries and affiliates who had "actual knowledge" of the prohibited conduct. CISADA, however, applies sanctions to any parent company who "had actual knowledge or *should have known*" that a subsidiary

engaged in prohibited activity.

Government Contract Certification of Compliance

Within 90 days, the Federal Acquisition Regulation must be modified to require a certification from a prospective contractor that neither it, nor any person owned or controlled by it, engages in any activity for which sanctions may be imposed under ISA, as amended by CISADA. The consequences of the submission of a false certification are contract termination, suspension, and/or debarment, and potential False Claims Act violations. The procurement of “eligible products” from any foreign country designated under the Trade Agreements Act, however, is excepted from this certification requirement.

In recent congressional testimony, Joseph Neurauder, the deputy associate administrator of GSA’s Office of Acquisition Policy, explained that the FAR councils have opened a FAR case to amend the FAR to include the CISADA requirements. Mr. Neurauder explained that the FAR councils anticipate publishing an interim rule by September 29, 2010 to meet the 90-day deadline imposed by CISADA. Further details regarding the certification requirement, which we anticipate will simply be additive to the existing standard set of offeror representations and certifications used in federal solicitations, will need to await the impending regulatory implementation.

EU and Canadian Sanctions

The U.S. is not alone in imposing new sanctions on transactions with Iran. On July 26, 2010, the European Union and Canada also announced new sanctions against Iran, targeting the country’s foreign trade, banking, energy, and transportation sectors.

The new EU sanctions forbid the sale and supply or transfer of energy equipment and technology to Iran for refining, liquefying natural gas, exploration, and production. The sanctions also forbid European companies from insuring or reinsuring Iranian state businesses, including its shipping industry. EU member states must monitor Iranian banks operating in Europe and are required to obtain governmental authorization for any financial transfers exceeding 40,000 Euros (\$52,000). Finally, new EU sanctions also bar Iran’s shipping and air cargo companies from operating in EU territory.

Similarly, Canada banned investment in Iran’s energy sector and imposed restrictions on exporting goods that could be used in nuclear programs. Canada also has barred Iranian banks from opening branches in Canada and Canadian banks from operating in Iran.

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