

# **APPLICATION INSTITUTING PROCEEDINGS**

## ***IN THE NAME OF GOD***

To the Registrar, International Court of Justice:

I, the undersigned, duly authorised by the Government of the Islamic Republic of Iran (“Iran”) of which I am the Agent, have the honour to submit to the International Court of Justice, in accordance with Articles 36(1) and 40(1) of its Statute and Article 38 of its Rules, an application instituting proceedings brought by Iran against the United States of America (the “USA”) in the following case.

### **I. SUBJECT OF THE DISPUTE**

1. The dispute between Iran and the USA concerns the adoption by the USA of a series of measures that, in violation of the Treaty of Amity, Economic Relations, and Consular Rights signed at Tehran on 15 August 1955 (the “Treaty of Amity”), which entered into force between Iran and the USA on 16 June 1957,<sup>1</sup> have had, and/or are having a serious adverse impact upon the ability of Iran and of Iranian companies (including Iranian State-owned companies) to exercise their rights to control and enjoy their property, including property located outside the territory of Iran / within the territory of the USA.

### **II. THE JURISDICTION OF THE COURT**

2. The Court has jurisdiction in relation to the above dispute, and to rule on the claims submitted by Iran, pursuant to Article 36 (1) of the Statute of the Court and Article XXI (2) of the Treaty of Amity.

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<sup>1</sup> 284 UNTS 93, II *Recueil des traités bilatéraux* 69, 8 UST 899, TIAS No. 3853. The text of the Treaty of Amity is appended to this Application as Appendix 1.

3. Article 36 (1) of the Statute of the Court provides in the relevant part that the Court's jurisdiction:

“comprises all cases which the parties refer to it and all matters specifically provided for in the Charter of the United Nations or in treaties and conventions in force.”

4. Article XXI (2) of the Treaty of Amity provides:

“Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means.”

5. The dispute has not been satisfactorily adjusted by diplomacy, and there has been no agreement to settle the dispute by some pacific means other than the Treaty of Amity.

### **III. THE FACTS**

6. The USA has adopted, and is implementing, a broad series of measures against Iran and Iranian companies, including Iranian State-owned companies such as the Central Bank of Iran (also known as “Bank Markazi Jomhuri Islami Iran” or “Bank Markazi”), and their property, which are in violation of the USA's obligations under the Treaty of Amity. The USA's violations of the Treaty of Amity include its (a) failure to recognise the separate juridical status of such entities including Iranian State-owned companies, (b) unfair and discriminatory treatment of such entities and their property, which impairs the legally acquired rights and interests of such entities including enforcement of their contractual rights, (c) failure to accord to such entities and their property the most constant protection and security that is in no case less than that required by international law, (d) expropriation of the property of such entities, (e) failure to accord to such entities freedom of access to the US courts, including the abrogation of the immunities to which Iran and Iranian State-owned companies, including Bank Markazi, and their property, are entitled under customary international law and as required by the Treaty of Amity, both with respect to jurisdictional immunities and immunities from enforcement, (f) failure to respect the right of such entities to acquire and dispose of property, (g) application of restrictions to such entities on the making of payments and other transfers of funds to or from the USA, and (h) interference with the freedom of commerce between the territories of Iran and the USA.

7. The USA has for many years adopted the position that Iran may be designated a State sponsoring terrorism (a designation which Iran strongly contests).<sup>2</sup> Consequent upon the enactment of the legislative and executive acts referred to below, a wide series of claims and enforcement proceedings have been determined or are underway against Iran and Iranian entities in the USA. As at the date of this application, US courts had awarded total damages of over US\$ 56 billion (consisting in approximately US\$ 26 billion in compensatory damages and US\$ 30 billion in punitive damages) against Iran in respect of its alleged involvement in various terrorist acts mainly outside the USA.<sup>3</sup> On 9 March 2016, the US District Court for the Southern District of New York ordered Iran to pay more than US\$ 10.5 billion to families of people killed in the 11 September 2001 terrorist attacks, and to a group of insurers.<sup>4</sup>
8. On 3 July 2012, the US District Court of Columbia stated that it had issued over US\$ 8.8 billion in judgments against Iran regarding alleged involvement in the deaths of US Marines killed in the bombing of their barracks in Beirut, Lebanon, in 1983 alone.<sup>5</sup> In one such set of claims primarily concerning the 1983 Beirut bombing, *Deborah D. Peterson et al. v. Islamic Republic of Iran et al.*, the US District Court for the District of Columbia has ordered Iran in a default judgment to pay in excess of US\$ 2.6 billion. The US District Court for the Southern District of New York has granted summary judgment to the *Peterson* claimants and ordered the ‘turnover’ of approximately US\$ 1.75 billion in cash proceeds of security entitlements previously held in a custodial ‘omnibus account’<sup>6</sup> with Citi Bank N. A. in New York by the Luxembourg-based international central securities depository Clearstream Banking S.A. to the ultimate benefit of Bank Markazi (the “Blocked Assets”).<sup>7</sup> On 20 April 2016, the US Supreme Court upheld as constitutional the relevant enactment specifically abrogating the immunity from enforcement which would otherwise apply to such assets and interests of Bank Markazi. On 6 June 2016, the US District Court authorised the payment of the Blocked Assets to the judgment creditors and closed the proceedings.<sup>8</sup>

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<sup>2</sup> The USA purported to designate Iran as a State sponsoring terrorism on 19 January 1984 (see section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act).

<sup>3</sup> A list of damages claims and enforcement proceedings determined, or in the course of being determined, by the US courts is appended to this Application as Appendix 2. For an earlier list prepared by the USA see “Terrorism Judgments against Iran: U.S. Court Cases Under the Terrorism Exception to the FSIA (as of August 11, 2015)”, publicly available at <http://www.kirk.senate.gov/pdfs/AmericanIranianJudgments.pdf> (accessed on 16 May 2016).

<sup>4</sup> *Terrorist Attacks on September 11, 2001*, US District Court for the Southern District of New York, Memorandum Opinion and Order dated 9 March 2016, 03 MLD 1570 (GBD) (FM).

<sup>5</sup> *Brown v. Iran* 08-cv-531 (RCL) US District Court for District of Columbia, 3 July 2012 per Chief Judge Royce C. Lamberth.

<sup>6</sup> An account opened in the name of a financial institution through which the assets of the financial institution’s underlying customers are commingled.

<sup>7</sup> According to the US District Court’s Order of 9 July 2013, as at 4 June 2013, the Blocked Assets constituted US\$ 1,895,600,513.03.

<sup>8</sup> *Deborah D. Peterson et al v. Bank Markazi a/k/a Central Bank of Iran et al*, US District Court for the Southern District of New York, Order authorizing distribution of funds dated 6 June 2016.

**(i) US legislative and executive acts against Iran and Iranian companies**

9. In 1996, the USA enacted section 1605(a)(7) of the Foreign Sovereign Immunity Act (the “FSIA”), pursuant to which immunity was removed in respect of claims “in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources ... for such an act ...”.<sup>9</sup>
10. In 2008, a new section 1605A FSIA was enacted to replace and extend section 1605(a)(7) FSIA.<sup>10</sup> In particular:
  - a. Section 1605A(a)(1) provides: “NO IMMUNITY - A foreign state<sup>11</sup> shall not be immune from the jurisdiction of the courts of the United States ... in any case ... in which money damages are sought against a foreign state for personal injury or death that was caused by the act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act ... .”
  - b. Pursuant to section 1605A(a)(2), US courts will hear a claim under section 1605A(a)(1) where – but only where – the foreign State has been designated as a State sponsor of terrorism.
  - c. Pursuant to section 1605A(c), a private right of action is established, *i.e.* it is established that a foreign State that is or was at the material time designated by the USA as a State sponsor of terrorism is liable to US nationals (and certain others) for personal injury or death caused by acts of torture. Punitive damages may be awarded.
  - d. Pursuant to section 1605A(g), a lien of *lis pendens* is established over any real or personal property within a given US District Court’s judicial district.
11. The provisions of section 1605A apply with respect to past actions, and without regard to defences such as *res judicata*, limitation of actions and collateral estoppel.<sup>12</sup>

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<sup>9</sup> In 1996, the USA enacted the Foreign Operations, Export Financing, and Related Programs Appropriations Act 1997, which extended the application of s.1605(a)(7) FSIA to “an official, employee or agent of a foreign state designated as a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 while acting within the scope of his or her office employment, or agency”.

<sup>10</sup> The text of legislative and executive acts referred to below, including section 1605A, is appended to this Application as Appendix 3.

<sup>11</sup> A “foreign state” is defined in section 1603(a) FSIA as including “a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).” Section 1603(b) FSIA provides: “An “agency or instrumentality of a foreign state” means any entity— (1) which is a separate legal person, corporate or otherwise, and (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and (3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.”

<sup>12</sup> See section 1083(c) of the National Defense Authorization Act for Fiscal Year 2008, introducing the new section 1605A FSIA.

12. As to enforcement against property of the foreign State and State owned-companies, with respect to section 1605A, section 1610(b)(3) provides:

“In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if –

...

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.”<sup>13</sup>

13. Further, section 1610(g)(1) FSIA provides:

“... the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

- (A) the level of economic control over the property by the government of the foreign state;
- (B) whether the profits of the property go to that government;
- (C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
- (D) whether that government is the sole beneficiary in interest of the property; or
- (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.”<sup>14</sup> (emphasis added)

14. It follows that the property of an agency or instrumentality of Iran may be the subject of enforcement even though (i) the relevant judgment is against Iran alone, and (ii) the property is owned by, or to the ultimate benefit of, a separate juridical entity, and (iii) the Government of Iran has no economic or management control over the separate juridical entity or its property. The US Court of Appeals for the Ninth Circuit recently held that: “Congress did not limit the type of property subject to attachment and execution under § 1610(g) to property connected to commercial activity in the United States. The only

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<sup>13</sup> Section 1610(b)(3) FSIA was introduced by section 502(e)(1) of the Iran Threat Reduction and Syria Human Rights Act 2012 (referred to below).

<sup>14</sup> Section 1610(1)(g) FSIA was introduced by section 1083(b)(3)(D) of the National Defense Authorization Act for Fiscal Year 2008.

requirement is that property be “the property of” the foreign state or its instrumentality.”<sup>15</sup>

15. Section 1611(b)(1) FSIA provides that, notwithstanding the provisions of section 1610, “the property of a foreign central bank or monetary authority held for its own account” shall be immune from attachment and from execution. However, in order to “lessen...enforcement difficulties”<sup>16</sup>, the USA has deliberately abrogated the protection which would otherwise be granted to the property of Bank Markazi.
16. Through the Terrorism Risk Insurance Act 2002 (“TRIA”), the USA authorised the enforcement of certain judgments obtained under section 1605(a)(7) FSIA against the “blocked assets”<sup>17</sup> of the (alleged) “terrorist party”<sup>18</sup>, including the blocked assets of any agency or instrumentality of that (alleged) “terrorist party”. Section 201(a) TRIA, as amended,<sup>19</sup> currently provides:

“Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.”<sup>20</sup> (emphasis added)

17. According to the US District Court for the Southern District of New York (“the US District Court”): “TRIA’s broad language – “notwithstanding any other provision of law...in every case” – provides one basis pursuant to which a separate “central bank” analysis becomes unnecessary; TRIA trumps the central bank provision in 28 U.S.C. § 1611(b)(2).”<sup>21</sup>

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<sup>15</sup> *Bennett et al. v. Bank Melli*, US Court of Appeals for the Ninth Circuit, Order and Opinion dated 22 February 2016, at page 18 per Circuit Judge Graber.

<sup>16</sup> *Bank Markazi, AKA Central Bank of Iran v. Peterson et al.*, US Supreme Court, Judgment dated 20 April 2016, at page 3 per Ginsburg J.

<sup>17</sup> The term “blocked asset” is defined in section 201(d)(2) TRIA as any asset seized or frozen by the Executive Branch pursuant to either the Trading with the Enemy Act or the International Emergency Economic Powers Act.

<sup>18</sup> The term “terrorist party” is defined in section 201(d)(4) TRIA as including “a foreign state designated a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979...or section 620A of the Foreign Assistance Act of 1961”.

<sup>19</sup> Section 201(a) TRIA was amended by section 502(e)(2) of the Iran Threat Reduction and Syria Human Rights Act 2012 (referred to below).

<sup>20</sup> Subsection 201(b) establishes scope for a Presidential waiver. There is no relevant waiver so far as concerns the current Application.

<sup>21</sup> *Deborah D. Peterson et al. v. Bank Markazi a/k/a Central Bank of Iran et al.*, US District Court for the Southern District of New York, Opinion and Order dated 28 February 2013, at p.16.

18. The USA's attempts unlawfully to permit or assist the seizure and attachment of the assets and interests of Iran and Iranian State-owned companies, including Bank Markazi, in the USA have intensified.
19. On 5 February 2012, pursuant (*inter alia*) to the International Emergency Economic Powers Act (50 U.S.C. 1701) and the National Defence Authorization Act for Fiscal Year 2012 (the "NDAA"), the President of the USA made Executive Order 13599 "Blocking Property of the Government of Iran and Iranian Financial Institutions".<sup>22</sup> The purported effect of sections 1(a) and (b) of Executive Order 13599 is as follows:
- “(a) All property and interests in property of the Government of Iran<sup>23</sup>, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.
- (b) All property and interests in property of any Iranian financial institution, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.” (emphasis added)
20. The effect of Executive Order 13599 appears to be that the pre-condition specified in section 201 TRIA (that there be relevant blocked assets of the alleged terrorist party, including the blocked assets of any agency or instrumentality of that terrorist party) is to be considered met with respect to all property and interests in property of Iran and also any Iranian financial institution, including Bank Markazi, that are in the United States. According to the US District Court for the Southern District of New York:

“E.O. 13599 had the effect of turning any restrained asserts owned by the Iranian Government (or any agency or instrumentality thereof) into “Blocked Assets”. As Bank Markazi is the Central Bank of Iran, any of its assets located in the United States as of February 5, 2012, became “Blocked Assets” pursuant to E.O. 13599.”<sup>24</sup>

21. On 1 August 2012, the US Congress passed the “Iran Threat Reduction and Syria Human Rights Act 2012” (the “2012 Act”). President Obama signed the 2012 Act into law on

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<sup>22</sup> Executive Order 13599 implements section 1245(c) of the National Defence Authorization Act for Fiscal Year 2012, which provides: “The President shall, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block and prohibit all transactions in all property and interests in property of an Iranian financial institution if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person”

<sup>23</sup> Defined at section 7(d) Executive Order 13599 as “the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran”.

<sup>24</sup> *Deborah D. Peterson et al. v. Bank Markazi a/k/a Central Bank of Iran et al.*, US District Court for the Southern District of New York, Opinion and Order dated 28 February 2013, at p.12.

10 August 2012. Pursuant to section 502 of the 2012 Act (also known as 22 U.S.C. § 8772), a definition of “Interests in Blocked Assets” of extraordinary breadth has been enacted, and with specific reference to the ongoing enforcement proceedings in *Deborah D. Peterson et al. v. Islamic Republic of Iran et al.* (referred to above):

“(a) INTERESTS IN BLOCKED ASSETS.–

(1) IN GENERAL.– Subject to paragraph (2), notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of State law, a financial asset that is–

- (A) held in the United States for a foreign securities intermediary doing business in the United States;
- (B) a blocked asset<sup>25</sup> (whether or not subsequently unblocked) that is property described in subsection (b); and
- (C) equal in value to a financial asset of Iran<sup>26</sup>, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities intermediary or a related intermediary holds abroad,

shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage, or hostage-taking, or the provision of material support or resources for such an act.

...

(b) FINANCIAL ASSETS DESCRIBED.– The financial assets described in this section are the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in *Peterson et al. v. Islamic Republic of Iran et al.*, Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings, as modified by court order dated June 27, 2008, and extended by court orders dated June 23, 2009, May 10, 2010, and June 11, 2010, so long as such assets remain restrained by court order.” (emphasis added)

22. As the US Supreme Court has stated, in its Judgment of 20 April 2016 upholding the constitutionality of section 502 of the 2012 Act, the purpose and effect of that provision was “[t]o place beyond dispute the availability of some of the Executive Order No.

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<sup>25</sup> Defined as any asset seized or frozen by the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)) or under section 202 or 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701 and 1702) (s502(d)(1)).

<sup>26</sup> The term ‘Iran’ is defined as the Government of Iran, including the central bank or monetary authority of that Government and any agency or instrumentality of that Government (s502(d)(3)).



13599-blocked assets for satisfaction of judgments rendered in terrorism cases”.<sup>27</sup> In a passage approved by the US Supreme Court, the District Court recognised: “On its face, the statute sweeps away the FSIA provision setting forth a central bank immunity, 28 U.S.C. § 1611(b)(1); it also eliminates any other federal or state law impediments that might otherwise exist, so long as the appropriate judicial determination is made...the 2012 Act therefore provides a separate basis – in addition to the FSIA and TRIA – for execution.”<sup>28</sup>

23. In their joint dissenting opinion in the US Supreme Court’s judgment in the *Peterson* case (as referred to above), Roberts C.J. and Sotomayer J explained the effect of section 502 as follows:

“Section 8772 does precisely that, changing the law – for these proceedings alone – simply to guarantee that respondents win. The law serves no other purpose – a point, indeed, that is hardly in dispute. As the majority acknowledges, the statute “sweeps away...any...federal or state law impediments that might otherwise exist” to bar respondents from obtaining Bank Markazi’s assets. ...In the District Court, Bank Markazi had invoked sovereign immunity under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §1611(b)(1). ...Section 8772(a)(1) eliminates that immunity. Bank Markazi had argued that its status as a separate juridical entity under federal common law and international law freed it from liability for Iran’s debts. ...Section 8772(d)(3) ensures that the Bank is liable. Bank Markazi had argued that New York law did not allow respondents to execute their judgments against the Bank’s assets. ...Section 8772(a)(1) makes those assets subject to execution.”<sup>29</sup>

24. The practical impact of the above measures is that the assets and interests of Iran and Iranian entities are subject to enforcement proceedings in various cases in the USA, even where such assets or interests:

- a. are found to be held by separate juridical entities, such as Bank Markazi, that are not party to the judgment on liability in respect of which enforcement is sought, and/or
- b. are held by Iran or Iranian entities (including Bank Markazi) and benefit from immunities from enforcement proceedings as a matter of international law, and as required by the Treaty of Amity.

25. Consequent upon the USA’s executive and legislative acts referred to above, a wide series of claims have been determined, or are underway, against Iran and Iranian entities

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<sup>27</sup> *Bank Markazi, AKA Central Bank of Iran v. Peterson et al*, US Supreme Court, Judgment dated 20 April 2016, at page 5 per Ginsburg J.

<sup>28</sup> *Peterson et al v. Bank Markazi a/k/a Central Bank of Iran et al*, US District Court for the Southern District of New York, Opinion and Order dated 28 February 2013, at p.21; cited in *Bank Markazi, AKA Central Bank of Iran v. Peterson et al*, US Supreme Court, Judgment dated 20 April 2016, at page 10 per Ginsburg J.

<sup>29</sup> *Bank Markazi, AKA Central Bank of Iran v. Peterson et al*, US Supreme Court, Judgment dated 20 April 2016, joint dissenting opinion of Roberts CJ and Sotomayer J, at pages 7-8.

in the USA. As at the date of this Application, the US courts have awarded approximately US\$ 56 billion against Iran in respect of its alleged involvement in terrorist acts mainly outside the USA.<sup>30</sup> Moreover, the US courts have granted applications to enforce various of these compensatory awards against the property of Iranian companies, including Iranian State-owned companies (including Bank Markazi), which are a separate juridical entities under Iranian law.

**(ii) Recent US judicial acts against Iran and Iranian companies**

26. In the set of claims comprising *Deborah D. Peterson et al. v. Islamic Republic of Iran et al.* (as referred to above), the US courts have issued default judgments ordering Iran to pay in excess of US\$ 2.6 billion, and granted summary judgment permitting execution against the Blocked Assets pursuant to section 201 TRIA and section 502 of the 2012 Act.
27. In the course of these proceedings, the US courts have repeatedly dismissed attempts by Bank Markazi to rely on the immunities to which such property is entitled (including under section 1611(b)(1) FSIA), and the protections of the Treaty of Amity (including the requirement for recognition of the separate juridical status of Iranian companies). In summary:
  - a. On 28 February 2013, the US District Court rejected Bank Markazi's motion to dismiss the enforcement claim for lack of subject matter jurisdiction, and granted partial summary judgment to the US judgment creditors. Specifically, the US District Court held that "Congress has abrogated any application of the Treaty in the FSIA context" and that "TRIA § 201(a), E.O. 13599, and 22 U.S.C. § 8772 expressly pre-empt any immunity" from enforcement.<sup>31</sup>
  - b. On 9 July 2013, the US District Court issued a final partial judgment and made directions for 'turnover' of the Blocked Assets pursuant to section 201 TRIA and §8772.<sup>32</sup> These directions included making provision for the US judgment creditors to apply for an order authorising distribution of the Blocked Assets, which were to be paid into a separate account, within thirty days of that judgment becoming a "Non-Appealable Sustained Judgment".<sup>33</sup> Further, the US District Court issued anti-suit

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<sup>30</sup> A list of damages claims and enforcement proceedings determined, or in the course of being determined, by the US courts is appended to this Application as Appendix 2.

<sup>31</sup> *Deborah D. Peterson et al. v. Bank Markazi a/k/a Central Bank of Iran et al.*, US District Court for the Southern District of New York, Opinion and Order dated 28 February 2013, at p. 52.

<sup>32</sup> *Deborah D. Peterson et al. v. Bank Markazi a/k/a Central Bank of Iran et al.*, US District Court for the Southern District of New York, Order dated 9 July 2013 entering partial final judgment and directing turnover of the blocked assets.

<sup>33</sup> Defined in §5 of the US District Court's Order of 9 July 2013 as meaning "when the time to file an appeal from the Partial Judgment has expired or, if any appeal is filed and not dismissed, after the Partial Judgment is upheld in all material respects on appeal or after review by writ of certiorari and is no longer subject to review on appeal or review by writ of certiorari."

injunctions restraining Iran and Bank Markazi from initiating any claim to the Blocked Assets in another jurisdiction.<sup>34</sup>

- c. Bank Markazi appealed to the Court of Appeals for the Second Circuit on the grounds, *inter alia*, that enforcement against the Blocked Assets pursuant to section 201 TRIA and/or §8772 was precluded by the Treaty of Amity and section §1611(b)(1) FSIA. On 9 July 2014, the US Court of Appeals for the Second Circuit dismissed Bank Markazi's appeal, finding that it did not need to resolve the dispute regarding immunity under the TRIA because Congress "has changed the law governing this case" by enacting §8772.<sup>35</sup> Even assuming that this provision is inconsistent with the USA's obligations under the Treaty of Amity (which the Court of Appeals found it was not), "§ 8772 would have to be read to abrogate any inconsistent provisions in the Treaty".<sup>36</sup>
  - d. Bank Markazi appealed to the US Supreme Court on the ground that section 502 of the 2012 Act is unconstitutional. On 20 April 2016, the US Supreme Court dismissed the appeal and affirmed the judgment of the US Court of Appeals for the Second Circuit, upholding the lawfulness of section 502 under the US Constitution.<sup>37</sup> On 23 May 2016, the US Supreme Court issued a certified copy of its judgment and order to the US Court of Appeals for the Second Circuit.
  - e. On 6 June 2016, the US District Court authorised the payment of the Blocked Assets to the US judgment creditors and closed the proceedings.<sup>38</sup>
28. Iran maintains that the assets of Iranian financial institutions and other Iranian companies have already been seized, or are in the process of being seized and transferred, or at risk of being seized and transferred, in a number of other proceedings. For example:
- a. On 22 February 2016, the US Court of Appeals for the Ninth Circuit held that the judgment creditors in *Bennett et al. v. Bank Melli* are entitled, pursuant to section 201(a) TRIA, to attach to approximately US\$ 17.6 million contractually owed to Bank Melli, an instrumentality of Iran and an Iranian State-owned company, by Visa Inc. and Franklin Resources Inc. in respect of the use of Visa credit cards in Iran.<sup>39</sup> If Bank Melli's pending petition for a rehearing is refused, the US District Court for the

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<sup>34</sup> *Deborah D. Peterson et al. v. Bank Markazi a/k/a Central Bank of Iran et al.*, US District Court for the Southern District of New York, Order dated 9 July 2013 entering partial final judgment and directing turnover of the blocked assets, at §§ 10 and 13.

<sup>35</sup> *Deborah D. Peterson et al v. Islamic Republic of Iran et al*, US Court of Appeals for the Second Circuit, Opinion dated 9 July 2014 at page 5.

<sup>36</sup> *Deborah D. Peterson et al v. Islamic Republic of Iran et al*, US Court of Appeals for the Second Circuit, Opinion dated 9 July 2014 at page 7.

<sup>37</sup> *Bank Markazi, a/k/a Central Bank of Iran v. Peterson et al*, US Supreme Court, Opinion dated 20 April 2016.

<sup>38</sup> *Deborah D. Peterson et al v. Bank Markazi a/k/a Central Bank of Iran et al*, US District Court for the Southern District of New York, Order authorizing distribution of funds dated 6 June 2016.

<sup>39</sup> *Bennett et al v. Bank Melli et al*, US Court of Appeals for the Ninth Circuit, Order and Opinion dated 22 February 2016.

Northern District of California is expected to order ‘turnover’ of the funds owed to Bank Melli to the judgment creditors.

- b. On 15 June 2010, in *Weinstein et al. v. Bank Melli et al.*, the US Court of Appeals for the Second Circuit held that the judgment creditors were entitled, pursuant to section 201(a) TRIA, to the attachment and sale of a building in New York owned by Bank Melli.<sup>40</sup> The US court appointed a receiver and the property was sold on 22 December 2010 for a sale price of approximately US\$ 1.6 million. On 19 December 2012, the US District Court for the Eastern District of New York ordered that the proceeds be disbursed to the judgment creditors.<sup>41</sup>
  - c. On 10 August 2011, in *Heiser et al. v. Iran*, the US District Court for the District of Columbia held that the sum of approximately US\$ 616,500 owed by the US telecommunications company Sprint to the Iranian Telecommunication Infrastructure Co, which the US District Court found was an Iranian State-owned company and an instrumentality of Iran, is subject to attachment and execution pursuant to section 1610(g) FSIA, and ordered that the funds be turned over to the judgment creditors.<sup>42</sup>
29. The effect of the enactments and decisions set out above is to confirm the USA’s unlawful removal of the jurisdictional immunities and immunities from enforcement to which Iran and Iranian State-owned companies are entitled under both customary international law and the Treaty of Amity.
30. Specifically, the various decisions of the US courts in the *Peterson* case (as referred to above) confirm that section 502 of the 2012 Act has been drafted precisely to secure enforcement against Bank Markazi’s interest in the security entitlements previously held by Clearstream. Pursuant to the US Supreme Court’s decision in *Bank Markazi v. Peterson et al.*, the US District Court has ordered that the Blocked Assets be paid out to the judgment creditors. As a result, there is a real and immediate risk that such funds will be dissipated.
31. As a result of the USA’s executive, legislative and judicial acts referred to above, Iran and Iranian entities are suffering ongoing harm, and face actual and imminent seizure of assets and interests and/or the enforcement of judgments against third parties (such as international central securities depositories holding funds or security entitlements in banks in the USA to the ultimate benefit of Iran and Iranian entities).

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<sup>40</sup> *Weinstein et al v. Bank Melli et al*, US Court of Appeals for the Second Circuit, Opinion dated 15 June 2010.

<sup>41</sup> *Weinstein et al v. Bank Melli et al*, US District Court for the Eastern District of New York, Order dated 19 December 2012.

<sup>42</sup> *Estate of Michael Heiser et al v. Islamic Republic of Iran*, US District Court for the District of Columbia, Opinion and Order dated 10 August 2011.

#### IV. BREACH OF THE TREATY OF AMITY

32. As will be more fully developed in a subsequent stage of the proceedings, the measures outlined above breach a number of provisions of the Treaty of Amity, including in particular those expressly referred to below.

a. Pursuant to Article III (1) of the Treaty of Amity:

“Companies constituted under the applicable laws and regulations of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party. It is understood, however, that recognition of juridical status does not of itself confer rights upon companies to engage in the activities for which they are organized. As used in the present Treaty, “companies” means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit.”

It follows that the USA is obliged to recognise the juridical status of Bank Markazi (which is a “company”, for the purposes of Article III (1) of the Treaty of Amity, constituted with its own legal personality pursuant to the Banking and Monetary Act of Iran 1960 as amended in 1972) and all other Iranian companies, including Iranian State-owned companies. The right to recognition of juridical status in Article III (1) is not qualified in any way; and yet the rights of Bank Markazi and other Iranian entities, as juridical persons distinct from Iran, have been or are being abrogated by section 1610(g)(1) FSIA, section 201(a) TRIA, Executive Order 13599 and section 502 of the 2012 Act, while as a practical matter the assets and interests of Bank Markazi and other Iranian financial institutions are under real threat of seizure and transfer by the US courts. Specifically, the Blocked Assets of Bank Markazi at issue in the *Peterson* proceedings (as referred to above) have been seized and transferred to the US judgment creditors by the US courts, and now face the real and imminent threat of being dissipated.

b. Pursuant to Article III (2) of the Treaty of Amity:

“Nationals and companies of either High Contracting Party shall have freedom of access to the courts of justice and administrative agencies within the territories of the other High Contracting Party, in all degrees of jurisdiction, both in defense and pursuit of their rights, to the end that prompt and impartial justice be done. Such access shall be allowed, in any event, upon terms no less favorable than those applicable to nationals and companies of such other High Contracting Party or of any third country. It is understood that companies not engaged in activities within the country shall enjoy the right of such access without any requirement of registration or domestication.”

In denying to Bank Markazi and other Iranian State-owned companies the immunities that they would otherwise enjoy as a matter of US and international law

(and that State-owned companies of third States, including central banks, enjoy), the USA violates their right of freedom of access to US courts with respect to their ability to defend proceedings brought against them and to pursue their right to immunity both from jurisdiction and enforcement, and thereby breaches Article III (2) of the Treaty of Amity. Article XI (4) confirms that “[n]o enterprise of either High Contracting Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.” This provision is aimed at judgments against enterprises, as opposed to a High Contracting Party, in respect of their commercial acts. It follows that Iran and Iranian State-owned companies are entitled to immunity in respect of acts *jure imperii*.

In addition, the enactment of section 502 of the 2012 Act during the course of the *Peterson* case retroactively changed the law by depriving Bank Markazi of defences upon which it had previously relied, including under US law, and preventing impartial justice being done.

c. Pursuant to Article IV (1) of the Treaty of Amity:

“Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws.”

The treatment currently being accorded to Bank Markazi and other Iranian companies, including Iranian financial institutions, and their respective assets and interests, is unfair and inequitable and also discriminatory and unreasonable, and impairs the legally acquired rights and interests of such entities including enforcement of their contractual rights, and thus is in breach of Article IV (1) of the Treaty of Amity. For example, section 502 of the 2012 Act effected a retroactive change of the law, which deprived Bank Markazi of defences upon which it had previously relied, including under US law, and which is explicitly limited to the *Peterson* proceedings against Iran (as referred to above).

d. Pursuant to Article IV (2) of the Treaty of Amity:

“Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case

less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.”

Article IV (2) establishes a right to most constant protection and security that is “in no case less than that required by international law”, thus incorporating relevant customary international law protections, including those pertaining to the immunity of State-owned companies and their property. In addition, Article IV (2) establishes a separate protection from takings (which is correctly interpreted to include takings consequential upon judicial acts). Both these elements of Article IV (2) have been, and are in the process of being, breached by the USA in respect of its treatment of Iranian companies, including Iranian State-owned companies such as Bank Markazi, and their property. As a practical matter the Blocked Assets of Bank Markazi at issue in the *Peterson* proceedings (as referred to above) have been seized and transferred to the US judgment creditors by the US courts, and now face the real and imminent threat of being dissipated.

e. Pursuant to Article V (1) of the Treaty of Amity:

“Nationals and companies of either High Contracting Party shall be permitted, within the territories of the other High Contracting Party: (a) to lease, for suitable periods of time, real property needed for their residence or for the conduct of activities pursuant to the present Treaty; (b) to purchase or otherwise acquire personal property of all kinds; and (c) to dispose of property of all kinds by sale, testament or otherwise. The treatment accorded in these respects shall in no event be less favorable than that accorded nationals and companies of any third country.”

The treatment currently being accorded to Bank Markazi and other Iranian companies, including Iranian financial institutions, and their respective property, interferes with their rights under Article V (1) of the Treaty of Amity.

f. Pursuant to Article VII (1) of the Treaty of Amity:

“Neither High Contracting Party shall apply restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other High Contracting Party, except (a) to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people, or (b) in the case of a member of the International Monetary Fund, restrictions specifically approved by the Fund.”

The treatment currently being accorded to Bank Markazi and other Iranian companies, including Iranian financial institutions, and their respective property, interferes with their rights under Article VII (1) of the Treaty of Amity.

g. Pursuant to Article X (1) of the Treaty of Amity:

“Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.”

The treatment currently being afforded to Iran, Bank Markazi and other Iranian companies, including Iranian financial institutions, and their respective property, interferes with the right to freedom of commerce between the territories of Iran and the USA under Article X (1) of the Treaty of Amity.

## **V. JUDGMENT REQUESTED**

33. On the basis of the foregoing, and while reserving the right to supplement, amend or modify the present Application in the course of further proceedings in the case, Iran respectfully requests the Court to adjudge, order and declare as follows:

- a. That the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by Iran;
- b. That by its acts, including the acts referred to above and in particular its (a) failure to recognise the separate juridical status (including the separate legal personality) of all Iranian companies including Bank Markazi, and (b) unfair and discriminatory treatment of such entities, and their property, which impairs the legally acquired rights and interests of such entities including enforcement of their contractual rights, and (c) failure to accord to such entities and their property the most constant protection and security that is in no case less than that required by international law, (d) expropriation of the property of such entities, and (e) failure to accord to such entities freedom of access to the US courts, including the abrogation of the immunities to which Iran and Iranian State-owned companies, including Bank Markazi, and their property, are entitled under customary international law and as required by the Treaty of Amity, and (f) failure to respect the right of such entities to acquire and dispose of property, and (g) application of restrictions to such entities on the making of payments and other transfers of funds to or from the USA, and (h) interference with the freedom of commerce, the USA has breached its obligations to Iran, *inter alia*, under Articles III (1), III (2), IV (1), IV (2), V (1), VII (1) and X (1) of the Treaty of Amity;
- c. That the USA shall ensure that no steps shall be taken based on the executive, legislative and judicial acts (as referred to above) at issue in this case which are, to the



extent determined by the Court, inconsistent with the obligations of the USA to Iran under the Treaty of Amity;

- d. That Iran and Iranian State-owned companies are entitled to immunity from the jurisdiction of the US courts and in respect of enforcement proceedings in the USA, and that such immunity must be respected by the USA (including US courts), to the extent established as a matter of customary international law and required by the Treaty of Amity;
  - e. That the USA (including the US courts) is obliged to respect the juridical status (including the separate legal personality), and to ensure freedom of access to the US courts, of all Iranian companies, including State-owned companies such as Bank Markazi, and that no steps based on the executive, legislative and judicial acts (as referred to above), which involve or imply the recognition or enforcement of such acts shall be taken against the assets or interests of Iran or any Iranian entity or national;
  - f. That the USA is under an obligation to make full reparations to Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. Iran reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the USA; and
  - g. Any other remedy the Court may deem appropriate.
34. For the purposes of Article 31(3) of the Statute and Article 35(1) of the Rules of Court, Iran declares its intention to exercise the right to designate a Judge *ad hoc*.

The Government of the Islamic Republic of Iran has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Agent Bureau of the Embassy of the Islamic Republic of Iran, De Werf 15, 4<sup>th</sup> Floor, 2544 EH, Den Haag.

Respectfully submitted,



M. H. Zahedin Labbaf  
Agent of the Government of the Islamic  
Republic of Iran

Date: 14 June 2016



# APPENDIX 1

Treaty of Amity, Economic Relations, and Consular Rights  
between  
Iran and the United States of America

15 August 1955

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**Attachment**

[The following texts are taken from the United Nations,  
*Treaty Series*, Vol. 284, pp. 93-137. *[Note by the Registry]*]

No. 4132

**UNITED STATES OF AMERICA AND IRAN  
TREATY OF AMITY, ECONOMIC RELATIONS,  
AND CONSULAR RIGHTS.  
SIGNED AT TEHRAN, ON 15 AUGUST 1955**

*Official texts: English and Persian\*.*

*[\*not reproduced on website]*

*Registered by the United States of America on 20 December 1957.*

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**No. 4132. TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR  
RIGHTS  
BETWEEN THE UNITED STATES OF AMERICA  
AND IRAN. SIGNED AT TEHRAN, ON 15 AUGUST 1955**

[Came into force on 16 June 1957, one month after the day of exchange of the instruments of  
ratification at Tehran on 16 May 1957, in accordance with article XXIII.]

The United States of America and Iran, desirous of emphasizing the friendly relations which have long prevailed between their peoples, of reaffirming the high principles in the regulation of human affairs to which they are committed, of encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples, and of regulating consular relations, have resolved to conclude, on the basis of reciprocal equality of treatment, a Treaty of Amity, Economic Relations, and Consular Rights, and have appointed as their Plenipotentiaries:

The President of the United States of America:

Mr. Selden Chapin, Ambassador Extraordinary and Plenipotentiary of the United States of America at Tehran; and

His Imperial Majesty, the Shah of Iran:

His Excellency Mr. Mostafa Samiy, Under Secretary of the Ministry of Foreign Affairs;

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following articles:

#### *Article I*

There shall be firm and enduring peace and sincere friendship between the United States of America and Iran.

#### *Article II*

1. Nationals of either High Contracting Party shall be permitted, upon terms no less favorable than those accorded to nationals of any third country, to enter and remain in the territories of the other High Contracting Party for the purpose of carrying on trade between their own country and the territories of such other High Contracting Party and engaging in related commercial activities, and for the purpose of developing and directing the operations of an enterprise in which they have invested, or in which they are actively in the process of investing, a substantial amount of capital.
2. Nationals of either High Contracting Party within the territories of the other High Contracting Party shall, either individually or through associations, and so long as their activities are not contrary to public order, safety or morals: (a) be permitted to travel therein freely and reside at places of their choice; (b) enjoy freedom of conscience and the right to hold religious services; (c) be permitted to engage in philanthropic, educational and scientific activities; and (d) have the right to gather and transmit information for dissemination to the public abroad, and otherwise to communicate with other persons inside and outside such territories. They shall also be permitted to engage in the practice of professions for which they have qualified under the applicable legal provisions governing admission to professions.
3. The provisions of paragraphs 1 and 2 of the present Article shall be subject to the right of either High Contracting Party to apply measures which are necessary to maintain public order, and to protect public health, morals and safety, including the right to expel, to exclude or to limit the movement of aliens on the said grounds.

4. Nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party. When any such national is in custody, he shall in every respect receive reasonable and humane treatment; and, on his demand, the diplomatic or consular representative of his country shall without unnecessary delay be notified and accorded full opportunity to safeguard his interests. He shall be promptly informed of the accusations against him, allowed all facilities reasonably necessary to his defense and given a prompt and impartial disposition of his case.

### *Article III*

1. Companies constituted under the applicable laws and regulations of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party. It is understood, however, that recognition of juridical status does not of itself confer rights upon companies to engage in the activities for which they are organized. As used in the present Treaty, "companies" means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit.

2. Nationals and companies of either High Contracting Party shall have freedom of access to the courts of justice and administrative agencies within the territories of the other High Contracting Party, in all degrees of jurisdiction, both in defense and pursuit of their rights, to the end that prompt and impartial justice be done. Such access shall be allowed, in any event, upon terms no less favorable than those applicable to nationals and companies of such other High Contracting Party or of any third country. It is understood that companies not engaged in activities within the country shall enjoy the right of such access without any requirement of registrar on or domestication.

3. The private settlement of disputes of a civil nature, involving nationals and companies of either High Contracting Party, shall not be discouraged within the territories of the other High Contracting Party; and, in cases of such settlement by arbitration, neither the alienage of the arbitrators nor the foreign situs of the arbitration proceedings shall of themselves be a bar to the enforceability of awards duly resulting therefrom.

### *Article IV*

1. Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws.

2. Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

3. The dwellings, ounces, warehouses, factories and other premises of nationals and companies of either High Contracting Party located within the territories of the other High Contracting Party shall not be subject to entry or molestation without just cause. Official searches and examinations of such premises and their contents, shall be made only according to law and with careful regard for the convenience of the occupants and the conduct of business.

4. Enterprises which nationals and companies of either High Contracting Party are permitted to establish or acquire, within the territories of the other High Contracting Party, shall be permitted freely to conduct their activities therein, upon terms no less favorable than other enterprises of whatever nationality engaged in similar activities. Such nationals and companies shall enjoy the right to continued control and management of such enterprises; to engage attorneys, agents, accountants and other technical experts, executive personnel, interpreters and other specialized employees of their choice; and to do all other things necessary or incidental to the effective conduct of their affairs.

#### *Article V*

1. Nationals and companies of either High Contracting Party snail be permitted, within the territories of the other High Contracting Party: (a) to lease, for suitable periods of time, real property needed for their residence or for the conduct of activities pursuant to the present Treaty; (b) to purchase or otherwise acquire personal property of all kinds; and (c) to dispose of property of all kinds by sale, testament or otherwise. The treatment accorded in these respects shall in no event be less favorable than that accorded nationals and companies of any third country.

2. Upon compliance with the applicable laws and regulations respecting registration and other formalities, nationals and companies of either High Contracting Party shall be accorded within the territories of the other High Contracting Party effective protection in the exclusive use of inventions, trade marks and trade names.

#### *Article VI*

1. Nationals and companies of either High Contracting Party shall not be subject to the payment of taxes, fees or charges within the territories of the other High Contracting Party, or to requirements with respect to the levy and collection thereof, more burdensome than those borne by nationals, residents and companies of any third country. In the case of nationals of either High Contracting Party residing within the territories of the other High Contracting Party, and of nationals and companies of either High Contracting Party engaged in trade or other gainful pursuit or in non-profit activities therein, such payments and requirements shall not be more burdensome than those borne by nationals and companies of such other High Contracting Party.

2. Each High Contracting Party, however, reserves the right to: (a) extend specific tax advantages only on the basis of reciprocity, or pursuant to agreements for the avoidance of double taxation or the mutual protection of revenue; and (b) apply special requirements as to the exemptions of a personal nature allowed to non-residents in connection with income and inheritance taxes.



3. Companies of either High Contracting Party shall not be subject, within the territories of the other High Contracting Party, to taxes upon any income, transactions or capital not attributable to the operations and investment thereof within such territories.

### *Article VII*

1. Neither High Contracting Party shall apply restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other High Contracting Party, except (a) to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people, or (b) in the case of a member of the International Monetary Fund, restrictions specifically approved by the Fund.

2. If either High Contracting Party applies exchange restrictions, it shall promptly make reasonable provision for the withdrawal, in foreign exchange in the currency of the other High Contracting Party, of: (a) the compensation referred to in Article 1 V, paragraph 2, of the present Treaty, (b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and (c) amounts for amortization of loans, depreciation of direct investments and capital transfers, giving consideration to special needs for other transactions. If more than one rate of exchange is in force, the rate applicable to such withdrawals shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of a rate so approved, an effective rate which, inclusive of any taxes or surcharges on exchange transfers, is just and reasonable.

3. Either High Contracting Party applying exchange restrictions shall in general administer them in a manner not to influence disadvantageously the competitive position of the commerce, transport or investment of capital of the other High Contracting Party in comparison with the commerce, transport or investment of capital of any third country; and shall afford such other High Contracting Party adequate opportunity for consultation at any time regarding the application of the present Article.

### *Article VIII*

1. Each High Contracting Party shall accord to products of the other High Contracting Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other High Contracting Party, by whatever route and by whatever type of carrier, treatment no less favorable than that accorded like products of or destined for exportation to any third country, in all matters relating to: (a) duties, other charges, regulations and formalities, on or in connection with importation and exportation; and (b) internal taxation, sale, distribution, storage and use. The same rule shall apply with respect to the international transfer of payments for imports and exports.

2. Neither High Contracting Party shall impose restrictions or prohibitions on the importation of any product of the other High Contracting Party or on the exportation of any product to the territories of the other High Contracting Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

3. If either High Contracting Party imposes quantitative restrictions on the importation or exportation of any product in which the other High Contracting Party has an important interest:

(a) It shall as a general rule give prior public notice of the total amount of the product, by quantity or value, that may be imported or exported during a specified period, and of any change in such amount or period; and

(b) If it makes allotments to any third country, it shall afford such other High Contracting Party a share proportionate to the amount of the product, by quantity or value, supplied by or to it during a previous representative period? due consideration being given to any special factors affecting the trade in such product.

4. Either High Contracting Party may impose prohibitions or restrictions on sanitary or other customary grounds of a non-commercial nature, or in the interest of preventing deceptive or unfair practices, provided such prohibitions or restrictions do not arbitrarily discriminate against the commerce of the other High Contracting Party.

5. Either High Contracting Party may adopt measures necessary to assure the utilization of accumulated inconvertible currencies or to deal with a stringency of foreign exchange. However, such measures shall deviate no more than necessary from a policy designed to promote the maximum development of non-discriminatory multilateral trade and to expedite the attainment of a balance-of-payments position which will obviate the necessity of such measures.

6. Each High Contracting Party reserves the right to accord special advantages: (a) to products of its national fisheries, (b) to adjacent countries in order to facilitate frontier traffic, or (c) by virtue of a customs union or free trade area of which either High Contracting Party, after consultation with the other High Contracting Party, may become a member. Each High Contracting Party, moreover, reserves rights and obligations it may have under the General Agreement on Tariffs and Trade [See United Nations, *Treaty Series*, Vol. 284, p. 76, footnote 2.], and special advantages it may accord pursuant thereto.

## Article IX

1. In the administration of its customs regulations and procedures, each High Contracting Party shall: (a) promptly publish all requirements of general application affecting importation and exportation; (b) apply such requirements in a uniform, impartial and reasonable manner; (c) refrain, as a general practice, from enforcing new or more burdensome requirements until after public notice thereof; (d) provide an appeals procedure by which prompt and impartial review of administrative action in customs matters can be obtained; and (e) not impose greater than nominal penalties for infractions resulting from clerical errors or from mistakes made in good faith.

2. Nationals and companies of either High Contracting Party shall be accorded treatment no less favorable than that accorded nationals and companies of the other High Contracting Party, or of any third country, with respect to all matters relating to importation and exportation.

3. Neither High Contracting Party shall impose any measure of a discriminatory nature that hinders or prevents the importer or exporter of products of either country from obtaining marine insurance on such products in companies of either High Contracting Party.

## *Article X*

1. Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.
2. Vessels under the flag of either High Contracting Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that High Contracting Party both on the high seas and within the ports, places and waters of the other High Contracting Party.
3. Vessels of either High Contracting Party shall have liberty, on equal terms with vessels of the other High Contracting Party and on equal terms with vessels of any third country, to come with their cargoes to all ports, places and waters of such other High Contracting Party open to foreign commerce and navigation. Such vessels and cargoes shall in all respects be accorded national treatment and most-favored-nation treatment within the ports, places and waters of such other High Contracting Party; but each High Contracting Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation and national fisheries.
4. Vessels of either High Contracting Party shall be accorded national treatment and most-favored-nation treatment by the other High Contracting Party with respect to the right to carry all products that may be carried by vessel to or from the territories of such other High Contracting Party; and such products shall be accorded treatment no less favorable than that accorded like products carried in vessels of such other High Contracting Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature.
5. Vessels of either High Contracting Party that are in distress shall be permitted to take refuge in the nearest port or haven of the other High Contracting Party, and shall receive friendly treatment and assistance.
6. The term "vessels", as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not, except with reference to paragraphs 2 and 5 of the present Article, include fishing vessels or vessels of war.

## *Article XI*

1. Each High Contracting Party undertakes (a) that enterprises owned or controlled by its Government, and that monopolies or agencies granted exclusive or special privileges within its territories, shall make their purchases and sales involving either imports or exports affecting the commerce of the other High Contracting Party solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale; and (b) that the nationals, companies and commerce of such other High Contracting Party shall be afforded adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases and sales.
2. Each High Contracting Party shall accord to the nationals, companies and commerce of the other High Contracting Party fair and equitable treatment, as compared with that accorded to the nationals, companies and commerce of any third country, with respect to: (a) the governmental purchase of supplies, (b) the awarding of government contracts, and (c) the sale

of any service sold by the Government or by any monopoly or agency granted exclusive or special privileges.

3. The High Contracting Parties recognize that conditions of competitive equality should be maintained in situations in which publicly owned or controlled trading or manufacturing enterprises of either High Contracting Party engage in competition, within the territories thereof, with privately owned and controlled enterprises of nationals and companies of the other High Contracting Party. Accordingly, such private enterprises shall, in such situations, be entitled to the benefit of any special advantages of an economic nature accorded such public enterprises, whether in the nature of subsidies, tax exemptions or otherwise. The foregoing rule shall not apply, however, to special advantages given in connection with: (a) manufacturing goods for government use, or supplying goods and services to the Government for government use; or (b) supplying at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practically obtainable by such groups.

4. No enterprise of either High Contracting Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

#### *Article XII*

Each High Contracting Party shall have the right to send to the other High Contracting Party consular representatives, who, having presented their credentials and having been recognized in a consular capacity, shall be provided, free of charge, with exequaturs or other authorization.

#### *Article XIII*

1. Consular representatives of each High Contracting Party shall be permitted to reside in the territory of the other High Contracting Party at the places where consular officers of any third country are permitted to reside and at other places by consent of the other High Contracting Party. Consular Officers and employees shall enjoy the privileges and immunities accorded to officers and employees of their rank or status by general international usage and shall be permitted to exercise all functions which are in accordance with such usage; in any event they shall be treated, subject to reciprocity, in a manner no less favorable than similar officers and employees of any third country.

2. The consular offices shall not be entered by the police or other local authorities without the consent of the consular officer, except that in the case of fire or other disaster, or if the local authorities have probable cause to believe that a crime of violence has been or is about to be committed in the consular office, consent to entry shall be presumed. In no case shall they examine or seize the papers there deposited.

#### *Article XIV*

1. All furniture, equipment and supplies consigned to or withdrawn from customs custody for a consular or diplomatic office of either High Contracting Party for official use shall be exempt within the territories of the other High Contracting Party from all customs duties and internal revenue or other taxes imposed upon or by reason of importation.

2. The baggage, effects and other articles imported exclusively for the personal use of consular officers and diplomatic and consular employees and members of their families residing with them, who are nationals of the sending state and are not engaged in any private occupation for gain in the territories of the receiving state, shall be exempt from all customs duties and internal revenue or other taxes imposed upon or by reason of importation. Such exemptions shall be granted with respect to the property accompanying the person entitled thereto on first arrival and on subsequent arrivals, and to that consigned to such officers and employees during the period in which they continue in status.

3. It is understood, however, that; (a) paragraph 2 of the present Article shall apply as to consular officers and diplomatic and consular employees only when their names have been communicated to the appropriate authorities of the receiving state and they have been duly recognized in their official capacity; (b) in the case of consignments, either High Contracting Party may, as a condition to the granting of exemption, require that a notification of any such consignment be given, in a prescribed manner; and (c) nothing herein authorizes importations specifically prohibited by law,

#### *Article XV*

1. The Government of either High Contracting Party may, in the territory of the other, acquire, own, lease for any period of time, or otherwise hold and occupy, such lands, buildings, and appurtenances as may be necessary and appropriate for governmental, other than military, purposes. If under the local law the permission of the local authorities must be obtained as a prerequisite to any such acquiring or holding, such permission shall be given on request.

2. Lands and buildings situated in the territories of either High Contracting Party, of which the other High Contracting Party is the legal or equitable owner and which are used exclusively for governmental purposes by that owner, shall be exempt from taxation of every kind, national, state, provincial and municipal, other than assessments levied for services or local public improvements by which the premises are benefited.

#### *Article XVI*

1. No tax or other similar charge of any kind, whether of a national, state, provincial, or municipal nature, shall be levied or collected the territories of the receiving state in respect of the official emoluments, salaries, wages or allowances received (a) by a consular officer of the sending state as compensation for his consular services, or (b) by a consular employee thereof as compensation for his services at a consulate. Likewise, consular officers and employees, who are permanent employees of the sending state and are not engaged in private occupation for gain within the territories of the receiving state, shall be exempt from all taxes or other similar charges, the legal incidence of which would otherwise fall upon such officers or employees.

2. The preceding paragraph shall not apply in respect of taxes and other similar charges upon: (a) the ownership or occupation of immovable property situated within the territories of the

receiving state; (b) income derived from sources within such territories (except the compensation mentioned in the preceding paragraph); or (e) the passing of property at death.

3. The provisions of the present Article shall have like application to diplomatic offers and employees, who shall in addition be accorded all exemptions allowed them under general international usage

#### *Article XVII*

The exemptions provided for in Articles XIV and XVI shall not apply to nationals of the sending state who are also nationals of the receiving state, or to any other person who is a national of the receiving state, nor to persons having immigrant status who have been lawfully admitted for permanent residence in the receiving state,

#### *Article XVIII*

Consular officers and employees are not subject to local jurisdiction for acts done in their official character and within the scope of their authority. No consular officer or employee shall be required to present his official files before the courts or to make declaration with respect to their contents.

#### *Article XIX*

A consular officer shall have the right within his district to: (a) interview, communicate with, assist and advise any national of the sending state; (b) inquire into any incidents which have occurred affecting the interests of any such national; and (c) assist any such national in proceedings before or in relations with the authorities of the receiving state and, where necessary, arrange for legal assistance to which he is entitled. A national of the sending state shall have the right at all times to communicate with a consular officer of his country and, unless subject to lawful detention, to visit him at the consular office.

#### *Article XX*

1. The present Treaty shall not preclude the application of measures:

- (a) regulating the importation or exportation of gold or silver;
- (b) relating to fissionable materials, the radio-active by-products thereof, or the sources thereof;
- (c) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment; and
- (d) necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests.

2. The present Treaty does not accord any rights to engage in political activities.

3. The stipulations of the present Treaty shall not extend to advantages accorded by the United States of America or its Territories and possessions, irrespective of any future change in their political status, to one another, to the Republic of Cuba, to the Republic of the Philippines, to the Trust Territory of the Pacific Islands or to the Panama Canal Zone.

4 The provisions of Article II, Paragraph 1, shall be construed as extending to nationals of either High Contracting Party seeking to enter the territories of the other High Contracting Party solely for the purpose of developing and directing the operations of an enterprise in the territories of such other High Contracting Party in which their employer has invested or is actively in the process of investing a substantial amount of capital: provided that such employer is a national or company of the same nationality as the applicant and that the applicant is employed by such national or company in a responsible capacity.

#### *Article XXI*

1. Each High Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other High Contracting Party may make with respect to any matter affecting the operation of the present Treaty.

2 Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means.

#### *Article XXII*

1. The present Treaty shall replace the following agreements between the United States of America and Iran:

(a) the provisional agreement relating to commercial and other relations, concluded at Tehran May 14, 1928, [De Martens, *Nouveau Recueil général de Traités*, troisième série, tome XXX, p. 885.] and

(b) the provisional agreement relating to personal status and family law, concluded at Tehran July 11, 1928. [De Martens, *Nouveau Recueil général de Traités*, troisième série, tome XXV, p. 58.]

2. Nothing in the present Treaty shall be construed to supersede any provision of the trade agreement and the supplementary exchange of notes between the United States of America and Iran, concluded at Washington April 8, 1943. [United Nations, Treaty Series, Vol. 106, p. 155.]

#### *Article XXIII*

1. The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Tehran as soon as possible.

2. The present Treaty shall enter into force one month after the day of exchange of ratifications. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein.

3. Either High Contracting Party may, by giving one year's written notice to the other High Contracting Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty and have affixed hereunto their seals.

DONE in duplicate, in the English and Persian languages, both equally authentic, at Tehran this fifteenth day of August one thousand nine hundred fifty-five, corresponding with the twenty-third day of Mordad one thousand three hundred and thirty four.

Selden Chapin

[seal]

Mostafa Samiy

[seal]

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## APPENDIX 2

**Table 1: Claims Pending Against I. R. Iran & Iranian State Entities**  
**As of 12 June 2016**

No.	Parties	Case No.	Relief Sought	
			Compensation	Punitive Damages
1	Baxter v. Iran	1:11-cv-02133	\$738,000,000	\$1,000,000,000
2	Bluth v. Iran	1:12-cv-00250	\$110,000,000	\$300,000,000.00
3	Boulos v. Iran	1:01-cv-02684	\$200,000,000	\$125,000,000
4	Cohen v. Iran	1:12-cv-01496	\$590,000,000.00	\$5,550,000,000.00
5	Freeman v. Bank Saderat PLC	1:14-cv-6601		
6	Fritz v. Iran	1:15-cv-00456	\$80,000,000	Equal to 3 times of compensation
7	Goldberg-Botvin v. Iran	1:12-cv-01292	\$54,000,000	\$300,000,000.
8	Hoglan v. Iran	1:11-cv-01634	\$2 billion compensation and punitive damages	
9	Hekmati v. Iran	1:16-cv-00875		
10	Kaplan v. Iran	1:10-cv-00483	\$1,000,000,000	To be determined by Court
11	Kinyua v. Iran	1:14-cv-02118	\$375,000,000	Compensation includes punitive damages
12	Lelchook	1:15-cv-13715	To be determined by Court	To be determined by Court
13	Mati Gill	1:15-cv-02272	\$10,000,000	\$30,000,000
14	Maalouf	1:16-cv-00280	\$17,930,824.00	To be determined by Court
15	Ndeda Chogo v. Iran	1:15-cv-00951	\$1,000,000,000	
16	Relvas v. Iran	1:14-cv-01752	\$1,720,000,000	\$9,000,000,000
17	Ron Fraenkel v. Iran	1:15-cv-01080		
18	Saleh Ali Alshaar	1:15-cv-23438	\$5,000,000	
19	Scharf	1:14-cv-06702		
20	Sheikh v. Iran	1:14-cv-02090	\$300,000,000	Compensation includes punitive damages
21	Shmuel Braun	1:15-cv-01136		
22	Shoham v. Iran	1:12-cv-00508	\$150,000,000	\$300,000,000
23	Strange	1:14-cv-00435	\$200,000,000	
24	Soto	1:15-cv-08410	To be determined by Court	To be determined by Court
25	Steven Bova	1:15-cv-01074	\$ 1,000,000,000 appx.	Several billions
26	Thomas Burnett	1:15-cv-09903	\$1,000,000,000	Compensation includes punitive damages
27	Timothy Karcher	1:16-cv-00232	To be determined by Court	To be determined by Court
28	Vaughn v. Iran	1:13-cv-00974	\$1,800,000,000	\$200,000,000
29	Yonadav Hirshfeld	1:15-cv-01082		

**Table 2: Judgments Issued Against I.R. Iran, Iranian State Entities & Iranian Officials**  
**As of 12 June 2016**

No.	Parties	Case No.	Compensation (US\$)	Punitive Damages (US\$)
1	Acosta v. Iran	1:06-cv-00745	\$50,172,000	\$300,000,000
2	Amduso v. Iran	1:08-cv-01361	\$877,939,215	\$877,939,215
3	Anderson v. Iran	1:99-cv-0698	\$41,200,000	\$300,000,000
4	Anderson v. Iran	1:08-cv-00535	\$7,500,000.	\$25,800,000.
5	Arnold v. Iran	1:06-cv-516	\$19,023,602.00	\$20,000,000.00
6	Ashton v. Iran	1:02-CV-06977	\$1,718,000,000	5,841,880,000
7	Baiani v. Iran	1:04-cv-01712	\$66,331,500	\$400,000,000
8	Bakhtiar v. Iran	1:10-7030	\$12,000,000	
9	Beer v. Iran	1:08-cv-01807	\$13,000,000.	\$300,000,000
10	Ben Haim v. Iran	1:08-cv-00520	\$300,000,000	\$300,000,000
11	Bennet v. Iran	1:03-cv-1486	\$12,904,548	
12	Ben-Rafael v. Iran	1:06-cv-00721	\$62,441 ,839	
13	Blais v. Iran	1:02-cv-285	\$28,801,792	
14	Bland v. Iran	1:05-cv-02124	\$227,805,908	\$955,652,324
15	Boddof v. Iran	1:02-cv-1991	\$16,988,300	\$300,000,000
16	Bonk v. Iran	1:08-cv-1237	\$158,750,000	\$170,000,000
17	Botvin v. Iran	1:05-cv-220	\$1,704,457	
18	Brewer v. Iran	1:08-cv-00534	\$9,500,000	
19	Brown v. Iran	1:08-cv-531	\$183,281,294	\$630487651
20	Campuzano v. Iran	1:00-cv-2328	\$112,463,608	\$300,000,000
21	Carlson v. Iran	1:00-cv-01309	\$7,800,000	\$300,000,000
22	Cicippio v. Iran	1:96-cv-01805	\$65,000,000	
23	Cicippio Puelo	1:01-cv-0496	\$91,000,000	
24	Cronin v. Iran	1:99-cv-2890	\$1,200,000	\$300,000,000
25	Dammarell v. Iran	1:01-cv-2224	\$316,919,657	
26	Davis v. Iran	1:07-cv-1302	\$486,918,005	\$1,674,997,973
27	Dodge v. Iran	1:03-cv-00252	\$5,670,000	
27	Eisenfeld v. Iran	1:98-1945	\$27,161,002	\$300,000,000
28	Elahi v. Iran	1:99-cv-02802	\$11,740,035	\$300,000,000
29	Fain v. Iran	1:10-cv-00628	\$15,268,703	\$52,524,338
30	Federal Insurance v. Iran	1:03-cv-06978	\$3,040,998,426	
31	Flatow v. Iran	1:97-cv-396	\$22,500,000	\$225,000,000
32	Flanagan v. Iran	1:10-cv-01643	\$18,750,000	\$56,250,000
33	Greenbaum v. Iran	1:02-cv-02148	\$19,879,023	
34	Havlish v. Iran	1:03-cv-09848	\$1,362,277,884	\$4,686,235,921
35	Hegna v. Iran	1:00-cv-00716	\$42,000,000	\$333,000,000
36	Heiser & Campbell v. Iran	1:01-cv-2104, 1:00-cv-2329	\$291,089,966	\$300,000,000
37	Higgins v. Iran	1:99-cv-00377	\$55,431,937	\$300,000,000
38	Holland v. Iran	1:01-cv-01924	\$25,241,486	
39	Jacobson v. Iran	1:02-cv-01365	\$6,400,000	
40	John Doe v. Iran	1:08-cv-00540	\$8,111,899,100	\$299,999,998.08
41	Jenco v. Iran	1:00-cv-00549	\$14,640,000	\$300,000,000
42	Kapar v. Iran	1:02-cv-00078	\$13,500,000	
43	Kerr v. Iran	1:01-cv-01994	\$33,025,296	

44	Khaliq v. Iran	1:10-cv-00356	\$49,761,544	
45	Kilburn	1:01-cv-01301	\$11,030,000	
46	Kirschenbaum v. Iran	1:08-cv-01814	\$13,750,000.4	\$300,000,000
47	Lawrence Belkin	1:06-cv-0711	\$18,525,763,	
48	Leah S. Mcusa v. Iran	1:00-cv-0296	\$12,000,000	\$120,000,000
49	Leibovitch v. Iran	1:08-cv-1939	\$17,500,000 + \$14,500,000	\$35,000,000
50	Levin v. Iran	1:05-cv-02494	\$28,807,719	
51	Moradi v. Iran	1:13-cv-00599	\$10,168,000	\$10,168,000
52	Murphy v. Iran	1:06-cv-00596	\$31,865,570	\$61,302,571
53	Mwila v. Iran	1:08-cv-01377	\$233,757,712.49	\$185,994,928
54	Nikbin v. Iran	1:04-cv-00008	\$2,600,000	
55	O'Brien v. Iran	1:06-cv-00690	\$10,050,000	\$34,572,000
56	Oveissi v. Iran	1:11-cv-00849	\$7,500,000	\$300,000,000
57	Owen & Aliganga v. Iran	1:01-cv-02244	\$283,809,867	\$338,491,262
58	Opati V. Iran	1:12-cv-01224	\$1,581,716,936	\$1,581,716,936
59	Onosongo v. Iran	1:08-cv-01380	\$99,553,289	\$99,553,289
60	Peterson v. Iran	1:01-cv-2094	\$2,656,944,877	
61	Polhill v. Iran	1:00-cv-01798	\$31,500,000	\$300,000,000
62	Prevatt v. Iran	1:02-cv-01775	\$2,500,000\$	
63	R. Stethem v. Iran	1:00-cv-159	\$21,200,000	\$300,000,000
64	Rafii v. Iran	1:01-cv-00850	\$5,000,000	\$300,000,000
65	Reiger v. Iran	1:01-cv--1302	\$5,321,520	
66	Rimkus v. Iran	1:08-cv-01615	\$5,000,000	\$5,150,000
67	Roth v. Iran	1:11-cv-01377	\$18,691,019	\$112,500,000
68	Salazar v. Iran	1:02-cv-00558	\$18,297,000	
69	Sisso v. Iran	1:05-cv-00394	\$5,000,000	
70	Spencer v. Iran	1:06-cv-00750	\$12,565,922	\$12,500,000
71	Spencer v. Iran	1:12-cv-00042	\$102,161,376	\$351,435,133
72	Steen v. Iran	1:00-cv-03037	\$42,750,000	\$300,000,000
73	Stern v. Iran	1:00-cv-02602	\$13,000,000	\$300,000,000
74	Surette v. Iran	1:01-cv-00570	\$18,961,284	\$300,000,000
75	Sutherland v. Iran	1:99-cv-3279	\$53,400,000	\$300,000,000
76	Tarek A. Reed	1:03-cv-02657	\$4,535,000	
77	Taylor v. Iran	1:10-cv-00844	\$148,000,000	\$509,120,000
78	Tracy v. Iran	1:01-cv-02517	\$18,509,999	
79	Turner v. Iran	1:01-cv-01981	\$27,310,000	\$300,000,000
80	Valencia v. Iran	1:08-cv-00533	\$15,500,000	\$15,965,000
81	Valore v. Iran	1:03-cv-01959	\$290,291,092	\$798,000,000
82	Wachman v. Iran	1:06-cv-00351	\$25,040,289	
83	Wagner v. Iran	1:00-cv-01799	\$16,280,000	\$300,000,000
84	Wamai v. Iran	1:08-cv-01349	\$1,783,052,244	\$1,783,052,244
85	Weinstein v. Iran	1:00-cv-02601	\$33, 248,164	\$150,000,000
86	Weir v. Iran	1:01-cv-01303	\$11,450,000	\$300,000,000
87	Welch v. Iran	1:01-cv-00863	\$32,698,304	
88	Worley	1:12-cv-02069	\$58,580,424	\$201,516,659
89	Wultz v. Iran	1:08-cv-01460	\$32,068,634	\$300,000,000
<b>TOTAL</b>			<b>\$25,936,220,131</b>	<b>\$30,155,905,442</b>

**Table 3: Enforcement Proceedings  
As of 12 June 2016**

No.	Main Case				Execution Case			
	Parties	Date of Judgment	Amount of Judgment		Court, Date, Case Number	Entity Against Which Execution Sought	Assets Subject of Execution	Date of Court Decision on Execution
			Compensation	Punitive Damages				
1	Bennet v. Iran	30.8.2007	\$12,904,548		N. California 2.12.2011 3-11-cv-5807 13-16100	Bank Melli Iran	\$ 17.6 million Visa Corp. debt to Bank Melli Iran	28.2.2013: District Court judgment 22.2.2016: Court of Appeals judgment, Case is now pending in <i>En banc</i>
	Greenbaum v. Iran	31.8.2006	\$19,879,023					
	Acosta v. Iran	28.8.2008	\$50,172,000	\$300,000,000				
	Heiser v. Iran	22.12.2006	\$291,089,966					
	Heiser v. Iran	30.9.2009		\$300,000,000				
2	Peterson v. Iran	7.9.2007	\$2,656,944,877		South New York 8.6.2010 1:10-cv-4518 13-2952 14-770	Bank Markazi Iran	\$1.895,600,513 interests of Bank Markazi Iran in securities	9.7.2013: District Court judgment 9.7.2014: Court of Appeals judgment 20.4.2016: Supreme Court judgment 6. 6.2016: District Court authorized payment of the funds to judgment creditors
	Greenbaum v. Iran	See No.1 above	See No.1 above					
	Acosta v. Iran	See No.1 above	See No.1 above	See No.1 above				
	Heiser v. Iran	See No.1 above	See No.1 above	See No.1 above				
	Rubin v. Iran	10.9.2003	\$71,000,000	\$37,500,000				
	Levin v. Iran	14.1.2008	\$28,807,719					
	Valore v. Iran	31.3.2010	\$290,291,092	\$798,000,000				
	Bonk v. Iran	31.3.2010	\$158,750,000	\$170,000,000				
	Silvia v. Iran	31.3.2010	\$1,440,922					
	Brown v. Iran	3.7.2012	\$183,281,294	\$630487651				
	Bland v. Iran	21.12.2011	\$227,805,908	\$955,652,324				
	Beer v. Iran	19.5.2011	\$13,000,000	\$300,000,000				

3	Peterson et al v. Iran See No. 2 above	See No. 2 above	See No. 2 above	See No. 2 above	South New York 30.12.2013 1:13-cv-9195 15-0690	Bank Markazi Iran	\$ 1.424 billion & € 214 million interests of Bank Markazi in securities in Europe	19.2. 2015: District Court judgment, Case is now pending before Court of Appeals
4	Rubin v. Iran	10.9.2003	\$71,000,000	\$37,500,000	District of Illinois 29.12.2003 1:03-cv-9370 14-1935	Iranian Cultural Heritage Organization	Iranian historical Persepolis tablets	27.3.2014: Iran's motion for summary judgment granted, Case is now pending before the Court of Appeals
5	Frym v. Iran	10.9.2003	\$6000,000		District of South California 16.5.2012 3:98-cv-01165 13-57182	Iranian Ministry of Defense	\$9,462,750 amount of an ICC award issued in favor of the Ministry against Cubic	27.11.2013: District Court judgment 2.2016: Court of Appeals judgment 29.4.2016: Order to release the funds to plaintiffs
	Rafii v. Iran	2.12.2002	\$5,000,000	\$300,000,000				
	Rozenman v. Iran	10.9.2003	\$15,000,000	\$37,500,000				
	Mendelson v. Iran	10.9.2003	\$12,000,000	\$37,500,000				
	Miller v. Iran	10.9.2003	\$12,000,000	\$37,500,000				
	J. Rubin v. Iran	10.9.2003	\$12,000,00	\$37,500,000				
	D. Rubin v. Iran	10.9.2003	\$2,500,000	\$37,500,000				
6	Weinstein v. Iran	6.2.2002	\$33, 248,164	\$150,000,000	District of New York 12.7.2012 2:12-cv-03445 09-3034	Bank Melli Iran	Sale proceeds of Bank Melli Iran's building in New York in the amount of \$1,607,000	5.6.2009: District Court judgment 15.6.2010: Court of Appeals judgment 19.12.2012: Order to turn over sale proceeds of the building to plaintiffs
	Heiser v. Iran	See No. 1 above	See No. 1 above	See No. 1 above				
7	Heiser v. Iran	See No. 1 above	See No. 1 above	See No. 1 above	District of Columbia 21.5.2010 1:00-cv-02329	Iranian Telecommunication Infrastructure Co. (ITIC)	Garnishment of Sprint debts to ITIC in the amount of \$613,587	10.8.2011: Judgement for turnover of the funds to plaintiffs





## APPENDIX 3

**US Foreign Sovereign Immunity Act of 1976**

**(as originally enacted)**

## U.S. FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976

### An Act

To define the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit and in which execution may not be levied on their property, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Sovereign Immunities Act of 1976".*

SEC. 2. (a) That chapter 85 of title 28, United States Code, is amended by inserting immediately before section 1331 the following new section:

#### "§ 1330. Actions against foreign states

"(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

"(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

"(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title."

(b) By inserting in the chapter analysis of that chapter before—

"1331. Federal question; amount in controversy; costs."

the following new item:

"1330. Action against foreign states."

SEC. 3. That section 1332 of title 28, United States Code, is amended by striking subsections (a)(2) and (3) and substituting in their place the following:

"(2) citizens of a State and citizens or subjects of a foreign state;

"(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

"(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States."

SEC. 4. (a) That title 28, United States Code, is amended by inserting after chapter 95 the following new chapter:

**"Chapter 97.—JURISDICTIONAL IMMUNITIES  
OF FOREIGN STATES**

"Sec.

"1602. Findings and declaration of purpose.

"1603. Definitions.

"1604. Immunity of a foreign state from jurisdiction.

"1605. General exceptions to the jurisdictional immunity of a foreign state.

"1606. Extent of liability.

"1607. Counterclaims.

"1608. Service; time to answer default.

"1609. Immunity from attachment and execution of property of a foreign state.

"1610. Exceptions to the immunity from attachment or execution.

"1611. Certain types of property immune from execution.

**"§ 1602. Findings and declaration of purpose**

"The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

**"§ 1603. Definitions**

"For purposes of this chapter—

"(a) A 'foreign state', except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

"(b) An 'agency or instrumentality of a foreign state' means any entity—

"(1) which is a separate legal person, corporate or otherwise, and

"(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other owner-

ship interest is owned by a foreign state or political subdivision thereof, and

"(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title, nor created under the laws of any third country.

"(c) The 'United States' includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

"(d) A 'commercial activity' means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

"(e) A 'commercial activity carried on in the United States by a foreign state' means commercial activity carried on by such state and having substantial contact with the United States.

**"§ 1604. Immunity of a foreign state from jurisdiction**

"Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

**"§ 1605. General exceptions to the jurisdictional immunity of a foreign state**

"(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

"(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

"(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

"(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

"(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue; or

"(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

"(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

"(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

"(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided, That—*

"(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit—unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice; and

"(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in subsection (b)(1) of this section or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

Whenever notice is delivered under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: *Provided, That* a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section.

**"§ 1606. Extent of liability**

"As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

**"§ 1607. Counterclaims**

"In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

"(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

"(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

"(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

**"§ 1608. Service; time to answer; default**

"(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

"(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

"(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

"(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

"(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official

language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a 'notice of suit' shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

"(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

"(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

"(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

"(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

"(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

"(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

"(C) as directed by order of the court consistent with the law of the place where service is to be made.

"(c) Service shall be deemed to have been made—

"(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

"(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

"(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other



responsive pleading to the complaint within sixty days after service has been made under this section.

"(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

**"§ 1609. Immunity from attachment and execution of property of a foreign state**

"Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

**"§ 1610. Exceptions to the immunity from attachment or execution**

"(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

"(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

"(2) the property is or was used for the commercial activity upon which the claim is based, or

"(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

"(4) the execution relates to a judgment establishing rights in property—

"(A) which is acquired by succession or gift, or

"(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

"(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of

automobile or other liability or casualty insurance covering the claim which merged into the judgment.

"(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

"(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

"(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5), or 1605(b) of this chapter, regardless of whether the property is or was used for the activity upon which the claim is based.

"(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

"(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

"(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

"(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

**"§ 1611. Certain types of property immune from execution**

"(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

"(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

"(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

"(2) the property is, or is intended to be, used in connection with a military activity and

"(A) is of a military character, or

"(B) is under the control of a military authority or defense agency."

**U.S. FOREIGN SOVEREIGN IMMUNITIES ACT****1988 Amendments**

SEC. 2. Section 1605(a) of title 28, United States Code, is amended by—

- (1) striking out “or” at the end of paragraph (4);
- (2) striking out the period at the end of paragraph (5) and inserting in lieu thereof “; or”; and
- (3) adding at the end thereof the following:

“(6) in which the action is brought, either to enforce an agreement made by the foreign State with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.”.

SEC. 3. Section 1610(a) of title 28, United States Code, is amended by—

- (1) striking out the period at the end of paragraph (5) and inserting in lieu thereof “; or”; and
- (2) adding at the end thereof the following:

“(6) the judgment is based on an order confirming an arbitral award rendered against the foreign State, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement.”.

Public Law 100-669 [S. 2204]; November 16, 1988.

**Anti-terrorism and Effective Death Penalty Act 1996**  
**(introducing §1605(a)(7) FSIA)**

**April 24, 1996**

[104th Congress Public Law 132]  
[From the U.S. Government Printing Office]

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[DOCID: f:publ132.104]

[[Page 1213]]

## ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

[[Page 110 STAT. 1214]]

Public Law 104-132  
104th Congress

### An Act

To deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes. <<NOTE: Apr. 24, 1996 - [S. 735]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Antiterrorism and Effective Death Penalty Act of 1996.>>

SECTION 1. <<NOTE: 18 USC 1 note.>> SHORT TITLE.

This Act may be cited as the ``Antiterrorism and Effective Death Penalty Act of 1996''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.  
Sec. 2. Table of contents.

### TITLE I--HABEAS CORPUS REFORM

Sec. 101. Filing deadlines.  
Sec. 102. Appeal.  
Sec. 103. Amendment of Federal Rules of Appellate Procedure.  
Sec. 104. Section 2254 amendments.  
Sec. 105. Section 2255 amendments.  
Sec. 106. Limits on second or successive applications.  
Sec. 107. Death penalty litigation procedures.  
Sec. 108. Technical amendment.

### TITLE II--JUSTICE FOR VICTIMS

#### Subtitle A--Mandatory Victim Restitution

Sec. 201. Short title.  
Sec. 202. Order of restitution.  
Sec. 203. Conditions of probation.  
Sec. 204. Mandatory restitution.  
Sec. 205. Order of restitution to victims of other crimes.  
Sec. 206. Procedure for issuance of restitution order.  
Sec. 207. Procedure for enforcement of fine or restitution order.  
Sec. 208. Instruction to Sentencing Commission.

- Sec. 209. Justice Department regulations.
- Sec. 210. Special assessments on convicted persons.
- Sec. 211. Effective date.

Subtitle B--Jurisdiction for Lawsuits Against Terrorist States

- Sec. 221. Jurisdiction for lawsuits against terrorist states.

## Subtitle B--Jurisdiction for Lawsuits Against Terrorist States

### SEC. 221. JURISDICTION FOR LAWSUITS AGAINST TERRORIST STATES.

(a) Exception to Foreign Sovereign Immunity for Certain Cases.--  
Section 1605 of title 28, United States Code, is amended--

(1) in subsection (a)--

(A) by striking ``or'' at the end of paragraph (5);

(B) by striking the period at the end of paragraph

(6) and inserting ``; or''; and

(C) by adding at the end the following new paragraph:

``(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that the court shall decline to hear a claim under this paragraph--

``(A) if the foreign state was not designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) at the time the act occurred, unless later so designated as a result of such act; and

``(B) even if the foreign state is or was so designated, if--

``(i) the act occurred in the foreign state against which the claim has been brought and the claimant has not afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration; or

``(ii) the claimant or victim was not a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred.''; and

(2) by adding at the end the following:

``(e) For purposes of paragraph (7) of subsection (a)--

``(1) the terms `torture' and `extrajudicial killing' have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991;

``(2) the term `hostage taking' has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages; and

[[Page 110 STAT. 1242]]

``(3) the term `aircraft sabotage' has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

``(f) No action shall be maintained under subsection (a)(7) unless the action is commenced not later than 10 years after the date on which the cause of action arose. All principles of equitable tolling, including the period during which the foreign state was immune from suit, shall apply in calculating this limitation period.



“(g) Limitation on Discovery.--

“(1) In general.--(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for subsection (a)(7), the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

“(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

“(2) Sunset.--(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

“(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would--

“(i) create a serious threat of death or serious bodily injury to any person;

“(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

“(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

“(3) Evaluation of evidence.--The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

“(4) Bar on motions to dismiss.--A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

“(5) Construction.--Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.”.

(b) Exception to Immunity From Attachment.--

(1) Foreign state.--Section 1610(a) of title 28, United States Code, is amended--

[[Page 110 STAT. 1243]]

(A) by striking the period at the end of paragraph (6) and inserting “, or”; and

(B) by adding at the end the following new paragraph:

“(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.”.

(2) Agency or instrumentality.--Section 1610(b)(2) of title 28, United States Code, is amended--

(A) by striking “or (5)” and inserting “(5), or

(7)''; and

(B) by striking ``used for the activity'' and inserting ``involved in the act''.

(c) <<NOTE: 28 USC 1605 note.>> Applicability.--The amendments made by this subtitle shall apply to any cause of action arising before, on, or after the date of the enactment of this Act.

Subtitle C <<NOTE: Justice for Victims of Terrorism Act of 1996.>> -- Assistance to Victims of Terrorism

SEC. 231. <<NOTE: 42 USC 10601 note.>> SHORT TITLE.

This subtitle may be cited as the ``Justice for Victims of Terrorism Act of 1996''

**Foreign Operations, Export Financing, and Related Programs Appropriations  
Act 1997**

**(Civil liability for acts of state sponsored terrorism)**

**30 April 1996**

PUBLIC LAW 104-208—SEPT. 30, 1996

110 STAT. 3009

\*Public Law 104-208  
104th Congress

An Act

Making omnibus consolidated appropriations for the fiscal year ending September 30, 1997, and for other purposes.

Sept. 30, 1996  
[H.R. 3610]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Omnibus  
Consolidated  
Appropriations  
Act, 1997.

DIVISION A

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the several departments, agencies, corporations and other organizational units of the Government for the fiscal year 1997, and for other purposes, namely:

TITLE I—OMNIBUS APPROPRIATIONS

Sec. 101. (a) For programs, projects or activities in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

AN ACT

Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1997, and for other purposes.

Departments of  
Commerce,  
Justice, and  
State, the  
Judiciary, and  
Related Agencies  
Appropriations  
Act, 1997.  
Department of  
Justice  
Appropriations  
Act, 1997.

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, \$75,773,000 of which not to exceed \$3,317,000 is for the Facilities Program 2000, to remain available until expended: *Provided*, That not to exceed 43 permanent positions and 44 full-time equivalent workyears and \$7,477,000 shall be expended for the Department Leadership Program exclusive of augmentation that occurred in these offices in fiscal year 1996: *Provided further*, That not to exceed 41 permanent positions and 48 full-time equivalent workyears and \$4,660,000 shall be expended for the Offices of Legislative Affairs and Public Affairs:

\*Note: This is a typeset print of the original hand enrollment as signed by the President on September 30, 1996. The text is printed without corrections. Missing text in the original is indicated by a footnote.

supporting the development or deployment of a ballistic missile capability.

LIMITATION ON ASSISTANCE TO MEXICO

SEC. 587. Not less than \$2,500,000 of the funds appropriated or otherwise made available by this Act for the Government of Mexico shall be withheld from obligation until the President has determined and reported to Congress that—

(1) the Government of Mexico is taking actions to reduce the amount of illegal drugs entering the United States from Mexico; and

(2) the Government of Mexico—

(A) is taking effective actions to apply vigorously all law enforcement resources to investigate, track, capture, incarcerate, and prosecute individuals controlling, supervising, or managing international narcotics cartels or other similar entities and the accomplices of such individuals, individuals responsible for, or otherwise involved in, corruption, and individuals involved in money-laundering;

(B) is pursuing international anti-drug trafficking initiatives;

(C) is cooperating fully with international efforts at narcotics interdiction; and

(D) is cooperating fully with requests by the United States for assistance in investigations of money-laundering violations and is making progress toward implementation of effective laws to prohibit money-laundering.

LIMITATION OF ASSISTANCE TO TURKEY

SEC. 588. Not more than \$22,000,000 of the funds appropriated in this Act under the heading “Economic Support Fund” may be made available to the Government of Turkey.

CIVIL LIABILITY FOR ACTS OF STATE SPONSORED TERRORISM

SEC. 589. (a) an official, employee, or agent of a foreign state designated as a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 while acting within the scope of his or her office, employment, or agency shall be liable to a United States national or the national’s legal representative for personal injury or death caused by acts of that official, employee, or agent for which the courts of the United States may maintain jurisdiction under section 1605(a)(7) of title 28, United States Code, for money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in section 1605(a)(7).

28 USC 1605  
note.

(b) Provisions related to statute of limitations and limitations on discovery that would apply to an action brought under 28 U.S.C. 1605(f) and (g) shall also apply to actions brought under this section. No action shall be maintained under this action if an official, employee, or agent of the United States, while acting within the scope of his or her office, employment, or agency would not be liable for such acts if carried out within the United States.

Titles I through V of this Act may be cited as the “Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997”.

Short title.

## **Terrorism Risk Insurance Act of 2002**

[107th Congress Public Law 297]  
[From the U.S. Government Printing Office]

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[DOCID: f:publ297.107]

[[Page 2321]]

## TERRORISM RISK INSURANCE ACT OF 2002

[[Page 116 STAT. 2322]]

Public Law 107-297  
107th Congress

### An Act

To ensure the continued financial capacity of insurers to provide coverage for risks from terrorism. <<NOTE: Nov. 26, 2002 - [H.R. 3210]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress <<NOTE: Terrorism Risk Insurance Act of 2002.>> assembled,

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short <<NOTE: 15 USC 6701 note.>> Title.--This Act may be cited as the ``Terrorism Risk Insurance Act of 2002''.

(b) Table of Contents.--The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I--TERRORISM INSURANCE PROGRAM

- Sec. 101. Congressional findings and purpose.
- Sec. 102. Definitions.
- Sec. 103. Terrorism Insurance Program.
- Sec. 104. General authority and administration of claims.
- Sec. 105. Preemption and nullification of pre-existing terrorism exclusions.
- Sec. 106. Preservation provisions.
- Sec. 107. Litigation management.
- Sec. 108. Termination of Program.

#### TITLE II--TREATMENT OF TERRORIST ASSETS

- Sec. 201. Satisfaction of judgments from blocked assets of terrorists, terrorist organizations, and State sponsors of terrorism.

#### TITLE III--FEDERAL RESERVE BOARD PROVISIONS

- Sec. 301. Certain authority of the Board of Governors of the Federal Reserve System.

#### TITLE I--TERRORISM <<NOTE: 15 USC 6701 note.>> INSURANCE PROGRAM

#### SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

## TITLE II--TREATMENT OF TERRORIST ASSETS

## SEC. 201. SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM.

(a) In <<NOTE: 28 USC 1610 note.>> General.--Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

(b) Presidential <<NOTE: 28 USC 1610 note.>> Waiver.--

(1) In general.--Subject to paragraph (2), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive the requirements of subsection (a) in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(2) Exception.--A waiver under this subsection shall not apply to--

(A) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used by the United States for any nondiplomatic purpose (including use as rental property), or the proceeds of such use; or

(B) the proceeds of any sale or transfer for value to a third party of any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(c) Special Rule for Cases Against Iran.--Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386; 114 Stat. 1542), as amended by section 686 of Public Law 107-228, <<NOTE: Ante, p. 1411.>> is further amended--

(1) in subsection (a)(2)(A)(ii), by striking ``July 27, 2000, or January 16, 2002'' and inserting ``July 27, 2000, any other date before October 28, 2000, or January 16, 2002'';

(2) in subsection (b)(2)(B), by inserting after ``the date of enactment of this Act'' the following: ``(less amounts therein as to which the United States has an interest in subrogation pursuant to subsection (c) arising prior to the date of entry of the judgment or judgments to be satisfied in whole or in part hereunder)'';

(3) <<NOTE: 28 USC 1606, 1610 and note.>> by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(4) by inserting after subsection (c) the following new subsection (d):

``(d) Distribution of Account Balances and Proceeds Inadequate to Satisfy Full Amount of Compensatory Awards Against Iran.--

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((1) Prior judgments.--

((A) In general.--In the event that the Secretary determines that 90 percent of the amounts available to be paid under subsection (b)(2) are inadequate to pay the total amount of compensatory damages awarded in judgments issued as of the date of the enactment of this subsection in cases identified in subsection (a)(2)(A) with respect to Iran, the Secretary shall, not later than 60 days after such date, make payment from such amounts available to be paid under subsection (b)(2) to each party to which such a judgment has been issued in an amount equal to a share, calculated under subparagraph (B), of 90 percent of the amounts available to be paid under subsection (b)(2) that have not been subrogated to the United States under this Act as of the date of enactment of this subsection.

((B) Calculation of payments.--The share that is payable to a person under subparagraph (A), including any person issued a final judgment as of the date of enactment of this subsection in a suit filed on a date added by the amendment made by section 686 of Public Law 107-228, shall be equal to the proportion that the amount of unpaid compensatory damages awarded in a final judgment issued to that person bears to the total amount of all unpaid compensatory damages awarded to all persons to whom such judgments have been issued as of the date of enactment of this subsection in cases identified in subsection (a)(2)(A) with respect to Iran.

((2) Subsequent judgment.--

((A) In general.--The Secretary shall pay to any person awarded a final judgment after the date of enactment of this subsection, in the case filed on January 16, 2002, and identified in subsection (a)(2)(A) with respect to Iran, an amount equal to a share, calculated under subparagraph (B), of the balance of the amounts available to be paid under subsection (b)(2) that remain following the disbursement of all payments as provided by paragraph (1). The Secretary shall make such payment not later than 30 days after such judgment is awarded.

((B) Calculation of payments.--To the extent that funds are available, the amount paid under subparagraph (A) to such person shall be the amount the person would have been paid under paragraph (1) if the person had been awarded the judgment prior to the date of enactment of this subsection.

((3) Additional payments.--

((A) In <<NOTE: Deadline.>> general.--Not later than 30 days after the disbursement of all payments under paragraphs (1) and (2), the Secretary shall make an additional payment to each person who received a payment under paragraph (1) or (2) in an amount equal to a share, calculated under subparagraph (B), of the balance of the amounts available to be paid under subsection (b)(2) that remain following the disbursement of all payments as provided by paragraphs (1) and (2).

((B) Calculation of payments.--The share payable under subparagraph (A) to each such person shall be equal

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to the proportion that the amount of compensatory damages awarded that person bears to the total amount of all compensatory damages awarded to all persons who

received a payment under paragraph (1) or (2).

((4) Statutory construction.--Nothing in this subsection shall bar, or require delay in, enforcement of any judgment to which this subsection applies under any procedure or against assets otherwise available under this section or under any other provision of law.

((5) Certain rights and claims not relinquished.--Any person receiving less than the full amount of compensatory damages awarded to that party in a judgment to which this subsection applies shall not be required to make the election set forth in subsection (a)(2)(B) or, with respect to subsection (a)(2)(D), the election relating to relinquishment of any right to execute or attach property that is subject to section 1610(f)(1)(A) of title 28, United States Code, except that such person shall be required to relinquish rights set forth--

((A) in subsection (a)(2)(C); and

((B) in subsection (a)(2)(D) with respect to enforcement against property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

((6) Guidelines for establishing claims of a right to payment.--The Secretary may promulgate reasonable guidelines through which any person claiming a right to payment under this section may inform the Secretary of the basis for such claim, including by submitting a certified copy of the final judgment under which such right is claimed and by providing commercially reasonable payment instructions. The Secretary shall take all reasonable steps necessary to ensure, to the maximum extent practicable, that such guidelines shall not operate to delay or interfere with payment under this section.''.

(d) Definitions.--In <<NOTE: 28 USC 1610 note.>> this section, the following definitions shall apply:

(1) Act of terrorism.--The term "act of terrorism" means--

(A) any act or event certified under section 102(1); or

(B) to the extent not covered by subparagraph (A), any terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii))).

(2) Blocked asset.--The term "blocked asset" means--

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

(B) does not include property that--

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International

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Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under

the law of the United States, is being used exclusively for diplomatic or consular purposes.

(3) Certain property.--The term ``property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations'' and the term ``asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations'' mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

(4) Terrorist party.--The term ``terrorist party'' means a terrorist, a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))), or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

#### TITLE III--FEDERAL RESERVE BOARD PROVISIONS

**National Defense Authorization Act for Fiscal Year 2008**  
**(introducing §1605A FSIA)**

**January 28, 2008**

Public Law 110-181  
110th Congress

An Act

To provide for the enactment of the National Defense Authorization Act for Fiscal Year 2008, as previously enrolled, with certain modifications to address the foreign sovereign immunities provisions of title 28, United States Code, with respect to the attachment of property in certain judgments against Iraq, the lapse of statutory authorities for the payment of bonuses, special pays, and similar benefits for members of the uniformed services, and for other purposes.

Jan. 28, 2008  
[H.R. 4986]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TREATMENT OF EXPLANATORY STATEMENT.**

(a) **SHORT TITLE.**—This Act may be cited as the “National Defense Authorization Act for Fiscal Year 2008”.

(b) **EXPLANATORY STATEMENT.**—The Joint Explanatory Statement submitted by the Committee of Conference for the conference report to accompany H.R. 1585 of the 110th Congress (Report 110-477) shall be deemed to be part of the legislative history of this Act and shall have the same effect with respect to the implementation of this Act as it would have had with respect to the implementation of H.R. 1585, if such bill had been enacted.

**SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.**

(a) **DIVISIONS.**—This Act is organized into three divisions as follows:

- (1) Division A—Department of Defense Authorizations.
- (2) Division B—Military Construction Authorizations.
- (3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; treatment of explanatory statement.  
Sec. 2. Organization of Act into divisions; table of contents.  
Sec. 3. Congressional defense committees.

**DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS**

**TITLE I—PROCUREMENT**

**Subtitle A—Authorization of Appropriations**

- Sec. 101. Army.  
Sec. 102. Navy and Marine Corps.  
Sec. 103. Air Force.  
Sec. 104. Defense-wide activities.  
Sec. 105. National Guard and Reserve equipment.

**Subtitle B—Army Programs**

- Sec. 111. Multiyear procurement authority for M1A2 Abrams System Enhancement Package upgrades.  
Sec. 112. Multiyear procurement authority for M2A3/M3A3 Bradley fighting vehicle upgrades.

National Defense  
Authorization  
Act for Fiscal  
Year 2008.

(B) what criteria and considerations are appropriate to determine whether additional Civil Support Teams are needed and, if so, where they should be located.

(e) COOPERATION OF OTHER AGENCIES.—

(1) IN GENERAL.—The advisory panel required by subsection (a) may secure directly from the Department of Defense, the Department of Homeland Security, the Department of Energy, the Department of Justice, the Department of Health and Human Services, and any other department or agency of the Federal Government information that the panel considers necessary for the panel to carry out its duties.

(2) COOPERATION.—The Secretary of Defense, the Secretary of Homeland Security, the Secretary of Energy, the Attorney General, the Secretary of Health and Human Services, and any other official of the United States shall provide the advisory panel with full and timely cooperation in carrying out its duties under this section.

(f) REPORT.—Not later than 12 months after the date of the initial meeting of the advisory panel required by subsection (a), the advisory panel shall submit to the Secretary of Defense, and to the Committees on Armed Services of the Senate and the House of Representatives, a report on activities under this section. The report shall set forth—

(1) the findings, conclusions, and recommendations of the advisory panel for improving the capabilities of the Department of Defense to provide support to United States civil authorities in the event of a chemical, biological, radiological, nuclear, or high-yield explosive incident; and

(2) such other findings, conclusions, and recommendations for improving the capabilities of the Department for homeland defense as the advisory panel considers appropriate.

**SEC. 1083. TERRORISM EXCEPTION TO IMMUNITY.**

(a) TERRORISM EXCEPTION TO IMMUNITY.—

(1) IN GENERAL.—Chapter 97 of title 28, United States Code, is amended by inserting after section 1605 the following:

**“§ 1605A. Terrorism exception to the jurisdictional immunity of a foreign state**

**“(a) IN GENERAL.—**

**“(1) NO IMMUNITY.—**A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

**“(2) CLAIM HEARD.—**The court shall hear a claim under this section if—

**“(A)(i)(I)** the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains

so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

“(II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1605(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) was filed;

“(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

“(I) a national of the United States;

“(II) a member of the armed forces; or

“(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee’s employment; and

“(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

“(B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia.

“(b) LIMITATIONS.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) not later than the latter of—

“(1) 10 years after April 24, 1996; or

“(2) 10 years after the date on which the cause of action arose.

“(c) PRIVATE RIGHT OF ACTION.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

“(1) a national of the United States,

“(2) a member of the armed forces,

“(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee’s employment, or

“(4) the legal representative of a person described in paragraph (1), (2), or (3),

for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States

may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

“(d) ADDITIONAL DAMAGES.—After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

“(e) SPECIAL MASTERS.—

“(1) IN GENERAL.—The courts of the United States may appoint special masters to hear damage claims brought under this section.

“(2) TRANSFER OF FUNDS.—The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

“(f) APPEAL.—In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

“(g) PROPERTY DISPOSITION.—

“(1) IN GENERAL.—In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of *lis pendens* upon any real property or tangible personal property that is—

“(A) subject to attachment in aid of execution, or execution, under section 1610;

“(B) located within that judicial district; and

“(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

“(2) NOTICE.—A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

“(3) ENFORCEABILITY.—Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

“(h) DEFINITIONS.—For purposes of this section—

“(1) the term ‘aircraft sabotage’ has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

“(2) the term ‘hostage taking’ has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;



“(3) the term ‘material support or resources’ has the meaning given that term in section 2339A of title 18;

“(4) the term ‘armed forces’ has the meaning given that term in section 101 of title 10;

“(5) the term ‘national of the United States’ has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

“(6) the term ‘state sponsor of terrorism’ means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

“(7) the terms ‘torture’ and ‘extrajudicial killing’ have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).”.

(2) AMENDMENT TO CHAPTER ANALYSIS.—The table of sections at the beginning of chapter 97 of title 28, United States Code, is amended by inserting after the item relating to section 1605 the following:

“1605A. Terrorism exception to the jurisdictional immunity of a foreign state.”.

(b) CONFORMING AMENDMENTS.—

(1) GENERAL EXCEPTION.—Section 1605 of title 28, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (5)(B), by inserting “or” after the semicolon;

(ii) in paragraph (6)(D), by striking “; or” and inserting a period; and

(iii) by striking paragraph (7);

(B) by repealing subsections (e) and (f); and

(C) in subsection (g)(1)(A), by striking “but for subsection (a)(7)” and inserting “but for section 1605A”.

(2) COUNTERCLAIMS.—Section 1607(a) of title 28, United States Code, is amended by inserting “or 1605A” after “1605”.

(3) PROPERTY.—Section 1610 of title 28, United States Code, is amended—

(A) in subsection (a)(7), by striking “1605(a)(7)” and inserting “1605A”;

(B) in subsection (b)(2), by striking “(5), or (7), or 1605(b)” and inserting “or (5), 1605(b), or 1605A”;

(C) in subsection (f), in paragraphs (1)(A) and (2)(A), by inserting “(as in effect before the enactment of section 1605A) or section 1605A” after “1605(a)(7)”; and

(D) by adding at the end the following:

“(g) PROPERTY IN CERTAIN ACTIONS.—

“(1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

“(A) the level of economic control over the property by the government of the foreign state;

“(B) whether the profits of the property go to that government;

“(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

“(D) whether that government is the sole beneficiary in interest of the property; or

“(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

“(2) UNITED STATES SOVEREIGN IMMUNITY INAPPLICABLE.—

Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

“(3) THIRD-PARTY JOINT PROPERTY HOLDERS.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.”

(4) VICTIMS OF CRIME ACT.—Section 1404C(a)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603c(a)(3)) is amended by striking “December 21, 1988 with respect to which an investigation or” and inserting “October 23, 1983, with respect to which an investigation or civil or criminal”.

(c) APPLICATION TO PENDING CASES.—

(1) IN GENERAL.—The amendments made by this section shall apply to any claim arising under section 1605A of title 28, United States Code.

(2) PRIOR ACTIONS.—

(A) IN GENERAL.—With respect to any action that—

(i) was brought under section 1605(a)(7) of title 28, United States Code, or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208), before the date of the enactment of this Act,

(ii) relied upon either such provision as creating a cause of action,

(iii) has been adversely affected on the grounds that either or both of these provisions fail to create a cause of action against the state, and

(iv) as of such date of enactment, is before the courts in any form, including on appeal or motion under rule 60(b) of the Federal Rules of Civil Procedure,

that action, and any judgment in the action shall, on motion made by plaintiffs to the United States district court where the action was initially brought, or judgment in the action was initially entered, be given effect as if the action had

originally been filed under section 1605A(c) of title 28, United States Code.

(B) DEFENSES WAIVED.—The defenses of res judicata, collateral estoppel, and limitation period are waived—

- (i) in any action with respect to which a motion is made under subparagraph (A), or
- (ii) in any action that was originally brought, before the date of the enactment of this Act, under section 1605(a)(7) of title 28, United States Code, or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208), and is refiled under section 1605A(c) of title 28, United States Code, to the extent such defenses are based on the claim in the action.

(C) TIME LIMITATIONS.—A motion may be made or an action may be refiled under subparagraph (A) only—

- (i) if the original action was commenced not later than the latter of—
  - (I) 10 years after April 24, 1996; or
  - (II) 10 years after the cause of action arose;
- and
- (ii) within the 60-day period beginning on the date of the enactment of this Act.

(3) RELATED ACTIONS.—If an action arising out of an act or incident has been timely commenced under section 1605(a)(7) of title 28, United States Code, or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208), any other action arising out of the same act or incident may be brought under section 1605A of title 28, United States Code, if the action is commenced not later than the latter of 60 days after—

- (A) the date of the entry of judgment in the original action; or
- (B) the date of the enactment of this Act.

(4) PRESERVING THE JURISDICTION OF THE COURTS.—Nothing in section 1503 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11, 117 Stat. 579) has ever authorized, directly or indirectly, the making inapplicable of any provision of chapter 97 of title 28, United States Code, or the removal of the jurisdiction of any court of the United States.

(d) APPLICABILITY TO IRAQ.—

(1) APPLICABILITY.—The President may waive any provision of this section with respect to Iraq, insofar as that provision may, in the President's determination, affect Iraq or any agency or instrumentality thereof, if the President determines that—

- (A) the waiver is in the national security interest of the United States;

(B) the waiver will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq; and

(C) Iraq continues to be a reliable ally of the United States and partner in combating acts of international terrorism.

Deadline.

President.  
Waiver authority.

Applicability.

(2) TEMPORAL SCOPE.—The authority under paragraph (1) shall apply—

(A) with respect to any conduct or event occurring before or on the date of the enactment of this Act;

(B) with respect to any conduct or event occurring before or on the date of the exercise of that authority; and

(C) regardless of whether, or the extent to which, the exercise of that authority affects any action filed before, on, or after the date of the exercise of that authority or of the enactment of this Act.

President.

(3) NOTIFICATION TO CONGRESS.—A waiver by the President under paragraph (1) shall cease to be effective 30 days after it is made unless the President has notified Congress in writing of the basis for the waiver as determined by the President under paragraph (1).

(4) SENSE OF CONGRESS.—It is the sense of the Congress that the President, acting through the Secretary of State, should work with the Government of Iraq on a state-to-state basis to ensure compensation for any meritorious claims based on terrorist acts committed by the Saddam Hussein regime against individuals who were United States nationals or members of the United States Armed Forces at the time of those terrorist acts and whose claims cannot be addressed in courts in the United States due to the exercise of the waiver authority under paragraph (1).

(e) SEVERABILITY.—If any provision of this section or the amendments made by this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section and such amendments, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

## TITLE XI—CIVILIAN PERSONNEL MATTERS

- Sec. 1101. Extension of authority to waive annual limitation on total compensation paid to Federal civilian employees working overseas under areas of United States Central Command.
- Sec. 1102. Continuation of life insurance coverage for Federal employees called to active duty.
- Sec. 1103. Transportation of dependents, household effects, and personal property to former home following death of Federal employee where death resulted from disease or injury incurred in the Central Command area of responsibility.
- Sec. 1104. Special benefits for civilian employees assigned on deployment temporary change of station.
- Sec. 1105. Death gratuity authorized for Federal employees.
- Sec. 1106. Modifications to the National Security Personnel System.
- Sec. 1107. Requirement for full implementation of personnel demonstration project.
- Sec. 1108. Authority for inclusion of certain Office of Defense Research and Engineering positions in experimental personnel program for scientific and technical personnel.
- Sec. 1109. Pilot program for the temporary assignment of information technology personnel to private sector organizations.
- Sec. 1110. Compensation for Federal wage system employees for certain travel hours.
- Sec. 1111. Travel compensation for wage grade personnel.
- Sec. 1112. Accumulation of annual leave by senior level employees.
- Sec. 1113. Uniform allowances for civilian employees.

**Section 1245 (c) of National Defense Authorization Act for Fiscal Year 2012**

# One Hundred Twelfth Congress of the United States of America

## AT THE FIRST SESSION

*Begun and held at the City of Washington on Wednesday,  
the fifth day of January, two thousand and eleven*

## An Act

To authorize appropriations for fiscal year 2012 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 2012".

### SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into five divisions as follows:

- (1) Division A—Department of Defense Authorizations.
- (2) Division B—Military Construction Authorizations.
- (3) Division C—Department of Energy National Security Authorizations and Other Authorizations.
- (4) Division D—Funding Tables.
- (5) Division E—SBIR and STTR Reauthorization.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title.  
Sec. 2. Organization of Act into divisions; table of contents.  
Sec. 3. Congressional defense committees.

#### DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

##### TITLE I—PROCUREMENT

##### Subtitle A—Authorization of Appropriations

Sec. 101. Authorization of appropriations.

##### Subtitle B—Army Programs

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Sec. 112. Limitation on retirement of C-23 aircraft.  
Sec. 113. Multiyear procurement authority for airframes for Army UH-60M/HH-60M helicopters and Navy MH-60R/MH-60S helicopters.

##### Subtitle C—Navy Programs

- Sec. 121. Multiyear procurement authority for mission avionics and common cockpits for Navy MH-60R/S helicopters.  
Sec. 122. Separate procurement line item for certain Littoral Combat Ship mission modules.  
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Sec. 124. Extension of Ford-class aircraft carrier construction authority.

##### Subtitle D—Air Force Programs

Sec. 131. Strategic airlift aircraft force structure.

defenses that is classified as of, or after, the date of enactment of this Act.

**SEC. 1245. IMPOSITION OF SANCTIONS WITH RESPECT TO THE FINANCIAL SECTOR OF IRAN.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) On November 21, 2011, the Secretary of the Treasury issued a finding under section 5318A of title 31, United States Code, that identified Iran as a jurisdiction of primary money laundering concern.

(2) In that finding, the Financial Crimes Enforcement Network of the Department of the Treasury wrote, “The Central Bank of Iran, which regulates Iranian banks, has assisted designated Iranian banks by transferring billions of dollars to these banks in 2011. In mid-2011, the CBI transferred several billion dollars to designated banks, including Saderat, Mellat, EDBI and Melli, through a variety of payment schemes. In making these transfers, the CBI attempted to evade sanctions by minimizing the direct involvement of large international banks with both CBI and designated Iranian banks.”.

(3) On November 22, 2011, the Under Secretary of the Treasury for Terrorism and Financial Intelligence, David Cohen, wrote, “Treasury is calling out the entire Iranian banking sector, including the Central Bank of Iran, as posing terrorist financing, proliferation financing, and money laundering risks for the global financial system.”.

(b) **DESIGNATION OF FINANCIAL SECTOR OF IRAN AS OF PRIMARY MONEY LAUNDERING CONCERN.**—The financial sector of Iran, including the Central Bank of Iran, is designated as a primary money laundering concern for purposes of section 5318A of title 31, United States Code, because of the threat to government and financial institutions resulting from the illicit activities of the Government of Iran, including its pursuit of nuclear weapons, support for international terrorism, and efforts to deceive responsible financial institutions and evade sanctions.

(c) **FREEZING OF ASSETS OF IRANIAN FINANCIAL INSTITUTIONS.**—The President shall, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block and prohibit all transactions in all property and interests in property of an Iranian financial institution if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(d) **IMPOSITION OF SANCTIONS WITH RESPECT TO THE CENTRAL BANK OF IRAN AND OTHER IRANIAN FINANCIAL INSTITUTIONS.**—

(1) **IN GENERAL.**—Except as specifically provided in this subsection, beginning on the date that is 60 days after the date of the enactment of this Act, the President—

(A) shall prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a 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 the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); and

(B) may impose sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) with respect to the Central Bank of Iran.

(2) EXCEPTION FOR SALES OF FOOD, MEDICINE, AND MEDICAL DEVICES.—The President may not impose sanctions under paragraph (1) with respect to any person for conducting or facilitating a transaction for the sale of food, medicine, or medical devices to Iran.

(3) APPLICABILITY OF SANCTIONS WITH RESPECT TO FOREIGN CENTRAL BANKS.—Except as provided in paragraph (4), sanctions imposed under paragraph (1)(A) shall apply with respect to a foreign financial institution owned or controlled by the government of a foreign country, including a central bank of a foreign country, only insofar as it engages in a financial transaction for the sale or purchase of petroleum or petroleum products to or from Iran conducted or facilitated on or after that date that is 180 days after the date of the enactment of this Act.

(4) APPLICABILITY OF SANCTIONS WITH RESPECT TO PETROLEUM TRANSACTIONS.—

(A) REPORT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, and every 60 days thereafter, the Administrator of the Energy Information Administration, in consultation with the Secretary of the Treasury, the Secretary of State, and the Director of National Intelligence, shall submit to Congress a report on the availability and price of petroleum and petroleum products produced in countries other than Iran in the 60-day period preceding the submission of the report.

(B) DETERMINATION REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall make a determination, based on the reports required by subparagraph (A), of 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.

(C) APPLICATION OF SANCTIONS.—Except as provided in subparagraph (D), sanctions imposed under paragraph (1)(A) shall apply with respect to a financial transaction conducted or facilitated by a foreign financial institution on or after the date that is 180 days after the date of the enactment of this Act for the purchase of petroleum or petroleum products from Iran if the President determines pursuant to subparagraph (B) 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.

(D) EXCEPTION.—Sanctions imposed pursuant to paragraph (1) shall not apply with respect to a foreign financial institution if the President determines and reports to Congress, not later than 90 days after the date on which



## Executive Order 13599



# FEDERAL REGISTER

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## Part III

### The President

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Executive Order 13599—Blocking Property of the Government of Iran and Iranian Financial Institutions

# Presidential Documents

Title 3—

Executive Order 13599 of February 5, 2012

The President

## Blocking Property of the Government of Iran and Iranian Financial Institutions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81) (NDAA), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995, particularly in light of the deceptive practices of the Central Bank of Iran and other Iranian banks to conceal transactions of sanctioned parties, the deficiencies in Iran's anti-money laundering regime and the weaknesses in its implementation, and the continuing and unacceptable risk posed to the international financial system by Iran's activities, hereby order:

**Section 1.** (a) All property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(b) All property and interests in property of any Iranian financial institution, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

**Sec. 2.** I hereby determine that the making of donations of the type of ~~articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2))~~ by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by section 1 of this order.

**Sec. 3.** The prohibitions in section 1 of this order include but are not limited to: (a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. (a) The prohibitions in section 1 of this order apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

(b) The prohibitions in section 1 of this order do not apply to property and interests in property of the Government of Iran that were blocked pursuant to Executive Order 12170 of November 14, 1979, and thereafter made subject to the transfer directives set forth in Executive Order 12281 of January 19, 1981, and implementing regulations thereunder.

Sec. 5. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. Nothing in section 1 of this order shall prohibit transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof.

Sec. 7. For the purposes of this order: (a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term "Government of Iran" means the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(e) the term "Iran" means the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements; and

(f) the term "Iranian financial institution" means a financial institution organized under the laws of Iran or any jurisdiction within Iran (including foreign branches), any financial institution in Iran, any financial institution, wherever located, owned or controlled by the Government of Iran, and any financial institution, wherever located, owned or controlled by any of the foregoing.

Sec. 8. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order, other than the purposes described in section 11. The Secretary of the Treasury may redelegate any of these functions and authorities to other officers and agencies of the United States Government consistent with applicable law.

All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

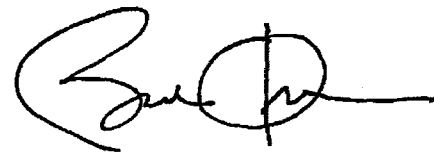
**Sec. 10.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to exercise the functions and authorities conferred upon the President by section 1245(d)(1)(A) of the NDAA and to redelegate these functions and authorities consistent with applicable law. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby further authorized to exercise the functions and authorities conferred upon the President by section 1245(g)(1) of the NDAA to the extent necessary to exercise the other functions and authorities delegated in this section and may redelegate these functions and authorities consistent with applicable law.

**Sec. 11.** The Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Energy, and the Director of National Intelligence, is hereby authorized to exercise the functions and authorities conferred upon the President by section 1245(d)(4)(D) of the NDAA and to redelegate these functions and authorities consistent with applicable law. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby further authorized to exercise the functions and authorities conferred upon the President by sections 1245(e)(1) and 1245(e)(2) of the NDAA and to redelegate these functions and authorities consistent with applicable law. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby further authorized to exercise the functions and authorities conferred upon the President by section 1245(g)(1) of the NDAA to the extent necessary to exercise the other functions and authorities delegated in this section and may redelegate these functions and authorities consistent with applicable law.

**Sec. 12.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**Sec. 13.** The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 14. This order is effective at 12:01 a.m. eastern standard time on February 6, 2012.



THE WHITE HOUSE,  
February 5, 2012.

[FR Doc. 2012-3097

Filed 2-7-12; 11:15 am]

Billing code 3295-F2-P

## **Iran Threat Reduction and Syria Human Rights Act of 2012**

**10 August 2012**

# One Hundred Twelfth Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,  
the third day of January, two thousand and twelve*

### An Act

To strengthen Iran sanctions laws for the purpose of compelling Iran to abandon its pursuit of nuclear weapons and other threatening activities, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Iran Threat Reduction and Syria Human Rights Act of 2012”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

#### TITLE I—EXPANSION OF MULTILATERAL SANCTIONS REGIME WITH RESPECT TO IRAN

- Sec. 101. Sense of Congress on enforcement of multilateral sanctions regime and expansion and implementation of sanctions laws.
- Sec. 102. Diplomatic efforts to expand multilateral sanctions regime.

#### TITLE II—EXPANSION OF SANCTIONS RELATING TO THE ENERGY SECTOR OF IRAN AND PROLIFERATION OF WEAPONS OF MASS DESTRUCTION BY IRAN

##### Subtitle A—Expansion of the Iran Sanctions Act of 1996

- Sec. 201. Expansion of sanctions with respect to the energy sector of Iran.
- Sec. 202. Imposition of sanctions with respect to transportation of crude oil from Iran and evasion of sanctions by shipping companies.
- Sec. 203. Expansion of sanctions with respect to development by Iran of weapons of mass destruction.
- Sec. 204. Expansion of sanctions available under the Iran Sanctions Act of 1996.
- Sec. 205. Modification of waiver standard under the Iran Sanctions Act of 1996.
- Sec. 206. Briefings on implementation of the Iran Sanctions Act of 1996.
- Sec. 207. Expansion of definitions under the Iran Sanctions Act of 1996.
- Sec. 208. Sense of Congress on energy sector of Iran.

##### Subtitle B—Additional Measures Relating to Sanctions Against Iran

- Sec. 211. Imposition of sanctions with respect to the provision of vessels or shipping services to transport certain goods related to proliferation or terrorism activities to Iran.
- Sec. 212. Imposition of sanctions with respect to provision of underwriting services or insurance or reinsurance for the National Iranian Oil Company or the National Iranian Tanker Company.
- Sec. 213. Imposition of sanctions with respect to purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt.
- Sec. 214. Imposition of sanctions with respect to subsidiaries and agents of persons sanctioned by United Nations Security Council resolutions.
- Sec. 215. Imposition of sanctions with respect to transactions with persons sanctioned for certain activities relating to terrorism or proliferation of weapons of mass destruction.



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- Sec. 216. Expansion of, and reports on, mandatory sanctions with respect to financial institutions that engage in certain activities relating to Iran.
- Sec. 217. Continuation in effect of sanctions with respect to the Government of Iran, the Central Bank of Iran, and sanctions evaders.
- Sec. 218. Liability of parent companies for violations of sanctions by foreign subsidiaries.
- Sec. 219. Disclosures to the Securities and Exchange Commission relating to sanctionable activities.
- Sec. 220. Reports on, and authorization of imposition of sanctions with respect to, the provision of specialized financial messaging services to the Central Bank of Iran and other sanctioned Iranian financial institutions.
- Sec. 221. Identification of, and immigration restrictions on, senior officials of the Government of Iran and their family members.
- Sec. 222. Sense of Congress and rule of construction relating to certain authorities of State and local governments.
- Sec. 223. Government Accountability Office report on foreign entities that invest in the energy sector of Iran or export refined petroleum products to Iran.
- Sec. 224. Reporting on the importation to and exportation from Iran of crude oil and refined petroleum products.

### TITLE III—SANCTIONS WITH RESPECT TO IRAN'S REVOLUTIONARY GUARD CORPS

#### Subtitle A—Identification of, and Sanctions With Respect to, Officials, Agents, Affiliates, and Supporters of Iran's Revolutionary Guard Corps and Other Sanctioned Persons

- Sec. 301. Identification of, and imposition of sanctions with respect to, officials, agents, and affiliates of Iran's Revolutionary Guard Corps.
- Sec. 302. Identification of, and imposition of sanctions with respect to, persons that support or conduct certain transactions with Iran's Revolutionary Guard Corps or other sanctioned persons.
- Sec. 303. Identification of, and imposition of measures with respect to, foreign government agencies carrying out activities or transactions with certain Iran-affiliated persons.
- Sec. 304. Rule of construction.

#### Subtitle B—Additional Measures Relating to Iran's Revolutionary Guard Corps

- Sec. 311. Expansion of procurement prohibition to foreign persons that engage in certain transactions with Iran's Revolutionary Guard Corps.
- Sec. 312. Determinations of whether the National Iranian Oil Company and the National Iranian Tanker Company are agents or affiliates of Iran's Revolutionary Guard Corps.

### TITLE IV—MEASURES RELATING TO HUMAN RIGHTS ABUSES IN IRAN

#### Subtitle A—Expansion of Sanctions Relating to Human Rights Abuses in Iran

- Sec. 401. Imposition of sanctions on certain persons responsible for or complicit in human rights abuses committed against citizens of Iran or their family members after the June 12, 2009, elections in Iran.
- Sec. 402. Imposition of sanctions with respect to the transfer of goods or technologies to Iran that are likely to be used to commit human rights abuses.
- Sec. 403. Imposition of sanctions with respect to persons who engage in censorship or other related activities against citizens of Iran.

#### Subtitle B—Additional Measures to Promote Human Rights

- Sec. 411. Codification of sanctions with respect to grave human rights abuses by the governments of Iran and Syria using information technology.
- Sec. 412. Clarification of sensitive technologies for purposes of procurement ban under Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.
- Sec. 413. Expedited consideration of requests for authorization of certain human rights-, humanitarian-, and democracy-related activities with respect to Iran.
- Sec. 414. Comprehensive strategy to promote Internet freedom and access to information in Iran.
- Sec. 415. Statement of policy on political prisoners.

### TITLE V—MISCELLANEOUS

- Sec. 501. Exclusion of citizens of Iran seeking education relating to the nuclear and energy sectors of Iran.

## H. R. 1905—3

- Sec. 502. Interests in certain financial assets of Iran.
- Sec. 503. Technical correction to section 1245 of the National Defense Authorization Act for Fiscal Year 2012.
- Sec. 504. Expansion of sanctions under section 1245 of the National Defense Authorization Act for Fiscal Year 2012.
- Sec. 505. Reports on natural gas exports from Iran.
- Sec. 506. Report on membership of Iran in international organizations.
- Sec. 507. Sense of Congress on exportation of goods, services, and technologies for aircraft produced in the United States.

### TITLE VI—GENERAL PROVISIONS

- Sec. 601. Implementation; penalties.
- Sec. 602. Applicability to certain intelligence activities.
- Sec. 603. Applicability to certain natural gas projects.
- Sec. 604. Rule of construction with respect to use of force against Iran and Syria.
- Sec. 605. Termination.

### TITLE VII—SANCTIONS WITH RESPECT TO HUMAN RIGHTS ABUSES IN SYRIA

- Sec. 701. Short title.
- Sec. 702. Imposition of sanctions with respect to certain persons who are responsible for or complicit in human rights abuses committed against citizens of Syria or their family members.
- Sec. 703. Imposition of sanctions with respect to the transfer of goods or technologies to Syria that are likely to be used to commit human rights abuses.
- Sec. 704. Imposition of sanctions with respect to persons who engage in censorship or other forms of repression in Syria.
- Sec. 705. Waiver.
- Sec. 706. Termination.

### SEC. 2. DEFINITIONS.

Except as otherwise specifically provided, in this Act:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” has the meaning given that term in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(2) **FINANCIAL TRANSACTION.**—The term “financial transaction” means any transfer of value involving a financial institution, including the transfer of forwards, futures, options, swaps, or precious metals, including gold, silver, platinum, and palladium.

(3) **KNOWINGLY.**—The term “knowingly” has the meaning given that term in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(4) **UNITED STATES PERSON.**—The term “United States person” has the meaning given that term in section 101 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8511).

## TITLE I—EXPANSION OF MULTILATERAL SANCTIONS REGIME WITH RESPECT TO IRAN

### SEC. 101. SENSE OF CONGRESS ON ENFORCEMENT OF MULTILATERAL SANCTIONS REGIME AND EXPANSION AND IMPLEMENTATION OF SANCTIONS LAWS.

It is the sense of Congress that the goal of compelling Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities can be effectively achieved through a comprehensive policy that includes economic sanctions, diplomacy,

with appropriate consideration for the national security interests of the United States; and

(4) to publicly call for the release of Iranian dissidents by name and raise awareness with respect to individual cases of Iranian dissidents and prisoners of conscience, as appropriate and if requested by the dissidents or prisoners themselves or their families.

## **TITLE V—MISCELLANEOUS**

### **SEC. 501. EXCLUSION OF CITIZENS OF IRAN SEEKING EDUCATION RELATING TO THE NUCLEAR AND ENERGY SECTORS OF IRAN.**

(a) **IN GENERAL.**—The Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien who is a citizen of Iran that the Secretary of State determines seeks to enter the United States to participate in coursework at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) to prepare the alien for a career in the energy sector of Iran or in nuclear science or nuclear engineering or a related field in Iran.

(b) **APPLICABILITY.**—Subsection (a) applies with respect to visa applications filed on or after the date of the enactment of this Act.

### **SEC. 502. INTERESTS IN CERTAIN FINANCIAL ASSETS OF IRAN.**

(a) **INTERESTS IN BLOCKED ASSETS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of State law, a financial asset that is—

(A) held in the United States for a foreign securities intermediary doing business in the United States;

(B) a blocked asset (whether or not subsequently unblocked) that is property described in subsection (b); and

(C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities intermediary or a related intermediary holds abroad, shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage, or hostage-taking, or the provision of material support or resources for such an act.

(2) **COURT DETERMINATION REQUIRED.**—In order to ensure that Iran is held accountable for paying the judgments described in paragraph (1) and in furtherance of the broader goals of this Act to sanction Iran, prior to an award turning over any asset pursuant to execution or attachment in aid of execution with respect to any judgments against Iran described in paragraph (1), the court shall determine whether Iran holds equitable title to, or the beneficial interest in, the

assets described in subsection (b) and that no other person possesses a constitutionally protected interest in the assets described in subsection (b) under the Fifth Amendment to the Constitution of the United States. To the extent the court determines that a person other than Iran holds—

(A) equitable title to, or a beneficial interest in, the assets described in subsection (b) (excluding a custodial interest of a foreign securities intermediary or a related intermediary that holds the assets abroad for the benefit of Iran); or

(B) a constitutionally protected interest in the assets described in subsection (b),  
such assets shall be available only for execution or attachment in aid of execution to the extent of Iran's equitable title or beneficial interest therein and to the extent such execution or attachment does not infringe upon such constitutionally protected interest.

(b) **FINANCIAL ASSETS DESCRIBED.**—The financial assets described in this section are the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in *Peterson et al. v. Islamic Republic of Iran et al.*, Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings, as modified by court order dated June 27, 2008, and extended by court orders dated June 23, 2009, May 10, 2010, and June 11, 2010, so long as such assets remain restrained by court order.

(c) **RULES OF CONSTRUCTION.**—Nothing in this section shall be construed—

(1) to affect the availability, or lack thereof, of a right to satisfy a judgment in any other action against a terrorist party in any proceedings other than proceedings referred to in subsection (b); or

(2) to apply to assets other than the assets described in subsection (b), or to preempt State law, including the Uniform Commercial Code, except as expressly provided in subsection (a)(1).

(d) **DEFINITIONS.**—In this section:

(1) **BLOCKED ASSET.**—The term “blocked asset”—

(A) means any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under section 202 or 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701 and 1702); and

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of the license has been specifically required by a provision of law other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

(ii) is property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges

and immunities under the laws of the United States, and is being used exclusively for diplomatic or consular purposes.

(2) **FINANCIAL ASSET; SECURITIES INTERMEDIARY.**—The terms “financial asset” and “securities intermediary” have the meanings given those terms in the Uniform Commercial Code, but the former includes cash.

(3) **IRAN.**—The term “Iran” means the Government of Iran, including the central bank or monetary authority of that Government and any agency or instrumentality of that Government.

(4) **PERSON.**—

(A) **IN GENERAL.**—The term “person” means an individual or entity.

(B) **ENTITY.**—The term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

(5) **TERRORIST PARTY.**—The term “terrorist party” has the meaning given that term in section 201(d) of the Terrorism Risk Insurance Act of 2002 (28 U.S.C. 1610 note).

(6) **UNITED STATES.**—The term “United States” includes all territory and waters, continental, or insular, subject to the jurisdiction of the United States.

(e) **TECHNICAL CHANGES TO THE FOREIGN SOVEREIGN IMMUNITIES ACT.**—

(1) **TITLE 28, UNITED STATES CODE.**—Section 1610 of title 28, United States Code, is amended—

(A) in subsection (a)(7), by inserting after “section 1605A” the following: “or section 1605(a)(7) (as such section was in effect on January 27, 2008)”; and

(B) in subsection (b)—

(i) in paragraph (2)—

(I) by striking “(5), 1605(b), or 1605A” and inserting “(5) or 1605(b)”; and

(II) by striking the period at the end and inserting “, or”; and

(ii) by adding after paragraph (2) the following:

“(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.”.

(2) **TERRORISM RISK INSURANCE ACT OF 2002.**—Section 201(a) of the Terrorism Risk Insurance Act of 2002 (28 U.S.C. 1610 note) is amended by striking “section 1605(a)(7)” and inserting “section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008)”.

**SEC. 503. TECHNICAL CORRECTIONS TO SECTION 1245 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012.**

(a) **EXCEPTION FOR SALES OF AGRICULTURAL COMMODITIES.**—

(1) **IN GENERAL.**—Section 1245(d)(2) of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 8513a(d)(2)) is amended—

## 28 U.S. Code Chapter 97

United States Code Annotated Title 28. Judiciary and Judicial Procedure (Refs & Annos) Part IV. Jurisdiction and Venue (Refs & Annos) Chapter 97. Jurisdictional Immunities of Foreign States
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28 U.S.C.A. § 1602

§ 1602. Findings and declaration of purpose

Currentness

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2892.)

Notes of Decisions (107)

28 U.S.C.A. § 1602, 28 USCA § 1602

Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, 114-148, and 114-151 to 114-154.

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United States Code Annotated Title 28. Judiciary and Judicial Procedure (Refs & Annos) Part IV. Jurisdiction and Venue (Refs & Annos) Chapter 97. Jurisdictional Immunities of Foreign States
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28 U.S.C.A. § 1603

§ 1603. Definitions

Effective: February 18, 2005

Currentness

For purposes of this chapter--

(a) A “foreign state”, except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An “agency or instrumentality of a foreign state” means any entity--

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

(c) The “United States” includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A “commercial activity” means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A “commercial activity carried on in the United States by a foreign state” means commercial activity carried on by such state and having substantial contact with the United States.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2892; amended Pub.L. 109-2, § 4(b)(2), Feb. 18, 2005, 119 Stat. 12.)

Notes of Decisions (375)



United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 97. Jurisdictional Immunities of Foreign States

28 U.S.C.A. § 1604

§ 1604. Immunity of a foreign state from jurisdiction

Currentness

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2892.)

Notes of Decisions (156)


28 U.S.C.A. § 1604, 28 USCA § 1604

Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, 114-148, and 114-151 to 114-154.

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United States Code Annotated Title 28. Judiciary and Judicial Procedure (Refs & Annos) Part IV. Jurisdiction and Venue (Refs & Annos) Chapter 97. Jurisdictional Immunities of Foreign States
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28 U.S.C.A. § 1605

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

Effective: January 28, 2008  
Currentness

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case--

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to--

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(7) Repealed. Pub.L. 110-181, Div. A, § 1083(b)(1)(A)(iii), Jan. 28, 2008, 122 Stat. 341

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided, That--*

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

(e), (f) Repealed. Pub.L. 110-181, Div. A, Title X, § 1083(b)(1)(B), Jan. 28, 2008, 122 Stat. 341

**(g) Limitation on discovery.--**

**(1) In general.--**(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

**(B)** A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

**(2) Sunset.--**(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

**(B)** After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would--

**(i)** create a serious threat of death or serious bodily injury to any person;

**(ii)** adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

**(iii)** obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

**(3) Evaluation of evidence.--**The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

**(4) Bar on motions to dismiss.--**A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

**(5) Construction.--**Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2892; amended Pub.L. 100-640, § 1, Nov. 9, 1988, 102 Stat. 3333; Pub.L. 100-669, § 2, Nov. 16, 1988, 102 Stat. 3969; Pub.L. 101-650, Title III, § 325(b)(8), Dec. 1, 1990, 104 Stat. 5121; Pub.L. 104-132, Title II, § 221(a), Apr. 24, 1996, 110 Stat. 1241; Pub.L. 105-11, Apr. 25, 1997, 111 Stat. 22; Pub.L. 107-77, Title VI,

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United States Code Annotated  
Title 28. Judiciary and Judicial Procedure (Refs & Annos)  
Part IV. Jurisdiction and Venue (Refs & Annos)  
Chapter 97. Jurisdictional Immunities of Foreign States

28 U.S.C.A. § 1605A

§ 1605A. Terrorism exception to the jurisdictional immunity of a foreign state

Effective: January 28, 2008  
Currentness

**(a) In general.--**

**(1) No immunity.--**A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

**(2) Claim heard.--**The court shall hear a claim under this section if--

**(A)(i)(I)** the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

**(II)** in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1605(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) was filed;

**(ii)** the claimant or the victim was, at the time the act described in paragraph (1) occurred--

**(I)** a national of the United States;

**(II)** a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia.

**(b) Limitations.**--An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) not later than the latter of--

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

**(c) Private right of action.**--A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A) (i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to--

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3),

for personal injury or death caused by acts described in subsection (a) (1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

**(d) Additional damages.**--After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

**(e) Special masters.--**

**(1) In general.--**The courts of the United States may appoint special masters to hear damage claims brought under this section.

**(2) Transfer of funds.--**The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

**(f) Appeal.--**In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

**(g) Property disposition.--**

**(1) In general.--**In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of *lis pendens* upon any real property or tangible personal property that is--

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

**(2) Notice.--**A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

**(3) Enforceability.--**Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

**(h) Definitions.--**For purposes of this section--

**(1)** the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

**(2)** the term "hostage taking" has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;

(3) the term “material support or resources” has the meaning given that term in section 2339A of title 18;

(4) the term “armed forces” has the meaning given that term in section 101 of title 10;

(5) the term “national of the United States” has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term “state sponsor of terrorism” means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms “torture” and “extrajudicial killing” have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

**CREDIT(S)**

(Added Pub.L. 110-181, Div. A, Title X, § 1083(a)(1), Jan. 28, 2008, 122 Stat. 338.)

Notes of Decisions (280)

28 U.S.C.A. § 1605A, 28 USCA § 1605A

Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, 114-148, and 114-151 to 114-154.



United States Code Annotated Title 28. Judiciary and Judicial Procedure (Refs & Annos) Part IV. Jurisdiction and Venue (Refs & Annos) Chapter 97. Jurisdictional Immunities of Foreign States
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28 U.S.C.A. § 1606

§ 1606. Extent of liability

Effective: November 26, 2002

Currentness

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2894; amended Pub.L. 105-277, Div. A, § 101(h) [Title I, § 117(b)], Oct. 21, 1998, 112 Stat. 2681-491; Pub.L. 106-386, Div. C, § 2002(f)(2), Oct. 28, 2000, 114 Stat. 1543; Pub.L. 107-297, Title II, § 201(c)(3), Nov. 26, 2002, 116 Stat. 2337.)

Notes of Decisions (105)

28 U.S.C.A. § 1606, 28 USCA § 1606

Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, 114-148, and 114-151 to 114-154.

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28 U.S.C.A. § 1607

§ 1607. Counterclaims

Effective: January 28, 2008

Currentness

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim--

(a) for which a foreign state would not be entitled to immunity under section 1605 or 1605A of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2894; amended Pub.L. 110-181, Div. A, Title X, § 1083(b)(2), Jan. 28, 2008, 122 Stat. 341.)

Notes of Decisions (12)

28 U.S.C.A. § 1607, 28 USCA § 1607

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28 U.S.C.A. § 1608

§ 1608. Service; time to answer; default

Currentness

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services--and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state--

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made--

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2894.)

Notes of Decisions (252)

28 U.S.C.A. § 1608, 28 USCA § 1608

Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, 114-148, and 114-151 to 114-154.

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28 U.S.C.A. § 1609

§ 1609. Immunity from attachment and execution of property of a foreign state

Currentness

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2895.)

Notes of Decisions (14)


28 U.S.C.A. § 1609, 28 USCA § 1609

Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, 114-148, and 114-151 to 114-154.

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United States Code Annotated Title 28. Judiciary and Judicial Procedure (Refs & Annos) Part IV. Jurisdiction and Venue (Refs & Annos) Chapter 97. Jurisdictional Immunities of Foreign States
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28 U.S.C.A. § 1610

§ 1610. Exceptions to the immunity from attachment or execution

Effective: August 10, 2012  
Currentness

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if--

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property--

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if--

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a) (2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if--

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers

**§ 1610. Exceptions to the immunity from attachment or execution, 28 USCA § 1610**

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Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

**(B)** Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

**(2)(A)** At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

**(B)** In providing such assistance, the Secretaries--

**(i)** may provide such information to the court under seal; and

**(ii)** should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

**(3) Waiver.**--The President may waive any provision of paragraph (1) in the interest of national security.

**(g) Property in certain actions.**--

**(1) In general.**--Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of--

**(A)** the level of economic control over the property by the government of the foreign state;

**(B)** whether the profits of the property go to that government;

**(C)** the degree to which officials of that government manage the property or otherwise control its daily affairs;

**(D)** whether that government is the sole beneficiary in interest of the property; or

**(E)** whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.



**(2) United States sovereign immunity inapplicable.**--Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

**(3) Third-party joint property holders.**--Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2896; amended Pub.L. 100-640, § 2, Nov. 9, 1988, 102 Stat. 3333; Pub.L. 100-669, § 3, Nov. 16, 1988, 102 Stat. 3969; Pub.L. 101-650, Title III, § 325(b)(9), Dec. 1, 1990, 104 Stat. 5121; Pub.L. 104-132, Title II, § 221(b), Apr. 24, 1996, 110 Stat. 1243; Pub.L. 105-277, Div. A, § 101(h) [Title I, § 117(a)], Oct. 21, 1998, 112 Stat. 2681-491; Pub.L. 106-386, Div. C, § 2002(g)(1), Oct. 28, 2000, 114 Stat. 1543; Pub.L. 107-297, Title II, § 201(c)(3), Nov. 26, 2002, 116 Stat. 2337; Pub.L. 110-181, Div. A, Title X, § 1083(b)(3), Jan. 28, 2008, 122 Stat. 341; Pub.L. 112-158, Title V, § 502(e)(1), Aug. 10, 2012, 126 Stat. 1260.)

Notes of Decisions (180)

28 U.S.C.A. § 1610, 28 USCA § 1610

Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, 114-148, and 114-151 to 114-154.



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**§ 1611. Certain types of property immune from execution, 28 USCA § 1611**

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 KeyCite Red Flag - Severe Negative Treatment  
Unconstitutional or Preempted **Recognized as Repealed by Implication** Weininger v. Castro, S.D.N.Y., Nov. 17, 2006  
 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

United States Code Annotated  
Title 28. Judiciary and Judicial Procedure (Refs & Annos)  
Part IV. Jurisdiction and Venue (Refs & Annos)  
Chapter 97. Jurisdictional Immunities of Foreign States

**28 U.S.C.A. § 1611**

**§ 1611. Certain types of property immune from execution**

Effective: August 1, 1996  
Currentness

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if--

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

**CREDIT(S)**

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2897; amended Pub.L. 104-114, Title III, § 302(e), Mar. 12, 1996, 110 Stat. 818.)

**§ 1611. Certain types of property immune from execution, 28 USCA § 1611**

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Notes of Decisions (16)

28 U.S.C.A. § 1611, 28 USCA § 1611

Current through P.L. 114-143. Also includes P.L. 114-145, 114-146, 114-148, and 114-151 to 114-154.

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