Iran Freedom and Counter-Proliferation Act of 2012

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On January 2, 2013, President Obama signed into law the National Defense Authorization Act of 2013 (H.R. 4013) (NDAA 2013). The Act contains several new Iran sanctions that target Iran's energy, shipbuilding and shipping sectors, including its ports. The Act also imposes new obligations on insurers and underwriters providing services to those industries.

The new sanctions apply not only to U.S. persons, but to "any person" — including foreign persons — engaging in activities benefitting these industries. The Act thus continues efforts by the U.S. Congress and executive branch to tighten the stranglehold on Iran's nuclear program by expanding the extraterritorial scope of U.S. sanctions targeting Iran.

The maritime industry, in particular, should be aware of the provisions of the Act. Each of these provisions takes effect on July 1, 2013 (180 days after the date of the Act's enactment). Since it will be several months before these provisions take effect, in order to ensure compliance, industry participants should review their existing practices to identify and remediate any problematic relationships or policies.

SANCTIONS TARGETING IRAN'S ENERGY, SHIPBUILDING, SHIPPING AND PORT SECTORS

In general, the Act specifically identifies Iran's ports and entities in the Iranian energy, shipping and shipbuilding sectors as playing an important role in Iran's nuclear proliferation activities. As such, the Act authorizes the president to designate these entities on the Specially Designated Nationals and Blocked Persons list (the SDN list). This will result in the blocking of their property should it come within U.S. jurisdiction (i.e., if the property is located in or passes through the United States, or comes within the possession or control of a U.S. person wherever located).

Additionally, any person that provides significant financial, material, technological or other support, goods or services to an Iranian person on the SDN list or to one determined to be an Iranian port operator or otherwise part of Iran's energy, shipping or shipbuilding sectors, may likewise be designated as an SDN. The terms "significant," "energy sector," "shipbuilding sector," and "shipping sector" are not defined, but OFAC likely will broadly interpret them. The reach of the blocking provision is thus potentially quite broad and any non-U.S. persons providing goods or services to persons and entities in these sectors or to those already on the SDN list could be at risk.

The Act further authorizes the president to impose five or more of the 12 sanctions included in the Iran Sanctions Act, as amended[1], where a person (U.S. or foreign) on or after July 1, 2013, knowingly sells, supplies or transfers to or from Iran a precious metal or any graphite, raw or semi-finished metals, such as aluminum or steel, coal or software used for integrating industrial processes, if they are to be:

- used as a medium for barter, swap or any other exchange or transaction by Iran;
- transferred to or from an Iranian person on the SDN list;
- used in connection with Iran's energy, shipping or shipbuilding sectors;

1 The sanctions available under the Iran Sanctions Act include those set out in the Comprehensive Iran Sanctions Accountability and Divestment Act of 2010 (CISADA) and the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHRA). Among the available sanctions are the denial of Export-Import Bank assistance, denial of U.S. export licenses, the prohibition of U.S. procurement from a sanctioned party, restrictions on imports into the United States by a sanctioned party, the denial of certain U.S. banking and financial services and transactions, including the prohibition of foreign exchange transactions, prohibiting U.S. persons from investing in a sanctioned entity, and denying entry into the United States of corporate officers, principals or controlling shareholders of a sanctioned entity.

- used in connection with a sector of the Iranian economy controlled by Iran's Revolutionary Guard Corps (to be determined within 180 days); or
- used in connection with Iran's nuclear, military or ballistic missile programs.

In addition to targeting persons engaged in these activities, the Act would also bar or restrict foreign financial institutions from maintaining correspondent or payable through accounts in the United States if it is determined the financial institution knowingly facilitated any of the foregoing transactions. Given the importance of such correspondent banking relationships to international financial institutions, the imposition of this sanction could severely inhibit a foreign financial institution's ability to service clients and conduct certain categories of business.

SANCTIONS FOR PROVIDING UNDERWRITING SERVICES, INSURANCE OR REINSURANCE

The Act also tightens restrictions on the insurance industry, including non-U.S. underwriters by authorizing the imposition of five or more sanctions from the Iran Sanctions Act on any person who knowingly provides underwriting, insurance or reinsurance services for:

- any activity with respect to Iran for which sanctions have been imposed under the current or any prior Iran sanctions law;
- the benefit of any activity in the energy, shipping or shipbuilding sectors of Iran that is subject to sanctions under the Act;
- the sale, supply or transfer to or from Iran of graphite, raw or semi-finished metals, such as aluminum or steel, coal or software used for integrating industrial processes; or
- the benefit of any person sanctioned by the United States in connection with Iran's weapons of mass destruction programs or its support for international terrorism.

EXCEPTIONS

The Act contains several exceptions from the imposition of sanctions, many of which are highly technical and rely on further determinations. These include:

Humanitarian Assistance: Transactions for the sale of agricultural commodities, food, medicine or medical devices to Iran and for the provision of humanitarian assistance to the people of Iran. This exception is also available to those providing underwriting services, insurance or reinsurance for such transactions.

Petroleum and Petroleum Products: The purchase of petroleum and petroleum products from Iran where such transactions have previously been exempt from sanctions for supply reasons under the National Defense Authorization Act for 2012. Pursuant to current State Department designations, this includes oil purchases by China, India, the Republic of Korea and several other countries.

Natural Gas: In general, the Act does not apply to the sale, supply or transfer to or from Iran of natural gas, but may apply to foreign financial institutions conducting transactions related to natural gas.

Afghanistan Reconstruction: The president may also exempt from sanctions any assistance or economic development for reconstruction efforts in Afghanistan.

Due Diligence: A due diligence exception is available to persons trading in metals, coal, graphite and software, as described above, if it is determined the person exercised due diligence in establishing and enforcing official policies and controls to ensure the person did not violate the prohibitions under the Act. The due diligence exception is also available to persons providing underwriting services, insurance or reinsurance. Thus, in order to best defend against inadvertent violations, it is critical businesses intending to continue transactions with or relating to Iran in these areas develop and follow a comprehensive plan for complying with the Iran Sanctions regime.

Waiver: The president may waive the imposition of sanctions under the Act for a period of up to 180 days if such a waiver is deemed to be vital to national security. This waiver may be renewed for additional 180 day periods.

It should be noted that the above exceptions apply only to the provisions set forth in the NDAA of 2013. They do not extend to other U.S. sanctions laws. For example, while the Act contains an exception for petroleum and petroleum products, these are still controlled under the Iran Sanctions Act, as amended.

OTHER PROVISIONS

Of particular interest to the maritime industry, beginning July 1, 2013, the Act requires the president to annually provide Congress with a report on the names, owners and operators of large or "otherwise significant" vessels that have entered Iranian ports controlled by the Tidewater Middle East Company.

In addition to the provisions affecting the maritime industry, the Act imposes sanctions on the Islamic Republic of Iran Broadcasting Company, calls for sanctions on anyone engaged in the diversion of agricultural or medical commodities intended for the people of Iran, and increases the statute of limitations for civil actions resulting from international terrorism from four years to 10 years.

As U.S. and international pressure on Iran builds, companies transacting business related to Iran's energy, shipping, ship building or financial services sectors should pay close attention to the potential impact of these sanctions on their business activities and employees. Moreover, the application of U.S. economic sanctions is often heavily dependent on the facts of a particular transaction making it difficult to ascertain how the new prohibitions might impact a company or an individual without analyzing the details of each transaction on a case-by-case basis. As a first step, we encourage all our clients engaged in international trade to develop and maintain a comprehensive compliance program to ensure compliance with sanctions programs.

To discuss any questions you may have regarding the issues discussed in this Alert or any other sanctions program, how they may apply to your particular circumstances or economic sanctions in general, please contact:

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