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New Sanctions Imposed Against Iran

On January 2, 2013, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2013 (NDAA 2013), which expands the scope of U.S. sanctions against Iran.¹ The NDAA 2013 contains the following key sanctions provisions:

- **Sanctions Relating to Energy, Shipping and Shipbuilding Sectors.** The NDAA 2013 requires the President to block all transactions of, and impose sanctions on, any person he determines is part of, or provides significant support to, these Iranian sectors.
- **Sanctions Relating to the Transfer of Precious Metals and Other Materials.** The NDAA 2013 requires the President to impose sanctions on persons who transfer, and on financial institutions that conduct financial transactions relating to the transfer of, certain precious metals and materials to or from Iran.
- **Sanctions Relating to Underwriting, Insurance and Reinsurance Services.** The NDAA 2013 requires the President to impose sanctions on persons who provide these services for a currently sanctionable activity or to certain sanctioned persons.
- **Sanctions on Foreign Financial Institutions that Facilitate Transactions for Iranian Specially Designated Nationals (SDNs).** The NDAA 2013 imposes sanctions on foreign financial institutions that knowingly facilitate transactions on behalf of specific Iranian SDNs. It also applies to petroleum- and natural gas- related transactions, with some exceptions, on behalf of specific Iranian SDNs.
- **Sanctions Relating to Human Rights Violations.** The NDAA 2013 imposes sanctions on certain persons involved in diverting resources intended for the Iranian people and other human rights violators.

The Iran-related provisions of the NDAA 2013 will take effect as of the start of July 2013, and they will enlarge significantly the extra-territorial application of the U.S. sanctions program directed against Iran. As described below, the NDAA 2013 expands the President's authority to punish, and thus presumably to affect the behavior of, non-U.S. persons and entities (including, but not limited to, banks and insurance companies) engaging in business activities with Iran that do not involve U.S. persons, entities or items and that otherwise would not be subject to U.S. jurisdiction. Note that since October 2012 non-U.S. entities that are owned or controlled by U.S. persons already are subject to the full range of Iran sanctions applicable to U.S. persons, so the measures described herein are of greatest import to non-U.S. entities whose involvement with Iran otherwise would have no U.S. nexus.

Sanctions Relating to Iran's Energy, Shipping, and Shipbuilding Sectors

Blocking Provisions

Section 1244 of the NDAA 2013 designates as "entities of proliferation concern" Iranian organizations that operate ports in Iran and that are involved in the energy, shipping, and shipbuilding sectors of Iran. Specifically, Section 1244 requires the President to block and prohibit all transactions in respect of property of any person he determines:

- Is part of the energy, shipping, or shipbuilding sectors of Iran;
- Operates a port in Iran; or
- Knowingly provides significant support—including financial, material, or technical support, or goods or services—for the benefit of such persons, or for Iranian persons that have been designated as SDNs.

Specific entities that the statute designates as covered by this blocking provision include the National Iranian Oil Company (NIOC), National Iranian Tanker Company (NITC), the Islamic Republic of Iran Shipping Lines (IRISL), and their affiliates. While property and interests in property of these entities already have been blocked by other Executive Branch action, Section 1244 is notable in that it also authorizes the President to block the property of non-U.S. persons that engage in certain transactions with these entities. An exception provides that the President is not authorized to block the importation of goods into the United States.²

The prohibition on providing support to Iranian SDNs, as applied to Iranian financial institutions, applies only to dealings with those Iranian financial institutions that have been designated based on their WMD proliferation activities, support for terrorism, or involvement in human rights abuses. Because this prohibition, and others described below that relate to Iranian SDNs, does not extend to dealings with other Iranian financial institutions that were designated as SDNs under Executive Order 13599 (February 5, 2012), non-U.S. persons that are engaged in financial transactions with Iranian banks will not face the prospect of sanctions under Section 1244 as long as they avoid dealing with certain (but not all) Iranian banks.

Imposition of ISA Sanctions

Section 1244 of the NDAA 2013 also requires the President to impose sanctions on persons that knowingly sell, supply, or transfer to or from Iran “significant” goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran, including the NIOC, NITC, and IRISL.³ Specifically, the President must impose five of the twelve sanctions available under the Iran Sanctions Act of 1996 (ISA),⁴ except for those restricting the importation of goods from certain sanctioned persons. Moreover, the President is required to impose sanctions on foreign financial institutions that knowingly conduct or facilitate significant financial transactions relating to significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran.

Section 1244 provides for certain important limitations and exceptions relating to the activities that can trigger sanctions involving the energy, shipping, and shipbuilding sectors of Iran. First, activities related to the provision of certain humanitarian assistance, food, agricultural products, medicine and medical devices do not trigger sanctions under this provision, whether or not specifically authorized by the Treasury Department’s Office of Foreign Assets Control (OFAC). Second, activities related to reconstruction assistance or economic development of Afghanistan may be excepted from sanctions under certain conditions. Third, the sanctions under Section 1244 can be applied to transactions relating to exports of Iranian petroleum or petroleum products only if the President has found there to be sufficient supply of non-Iranian petroleum and petroleum products in the global market to permit buyers to reduce their purchases from Iran.⁵

A foreign financial institution providing financial services for goods or services trade relating to the energy, shipbuilding and shipping sectors of Iran will not be subject to sanctions under Section 1244 if: (a) the country with primary jurisdiction over the foreign financial institution has an exception under the NDAA 2012; (b) the trade transaction for which financial services are provided is otherwise not subject to U.S. sanctions; (c) the trade transaction is between Iran and the country with primary jurisdiction over the foreign financial institution; and (d) any funds owed to Iran (e.g., a purchase from Iran) are credited to an account within the country having primary jurisdiction over the foreign financial institution (this appears to be a requirement similar to establishing a blocked account under U.S. law). It is not clear if condition (b) above only relates to trade transactions subject to the prohibitions of the Iranian Transactions and Sanctions Regulations (ITSR), or if it is intended also to include trade transactions otherwise subject to the various extraterritorial sanctions of the ISA, CISADA, NDAA 2013, Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA), and related Executive Orders (e.g., the supply of non-U.S. goods or services to Iran by a non-U.S. person that would significantly enhance Iran’s petroleum refining capability).

Section 1244 does not apply to the sale, supply, or transfer of natural gas to or from Iran. However, foreign financial institutions that conduct or facilitate financial transactions for the sale, supply, or transfer of natural gas may be subject to sanctions, unless: (a) the financial transaction is for trade in goods or services not otherwise subject to U.S. sanctions; (b) the financial transaction is between Iran and the country with

primary jurisdiction over the foreign financial institution; and (c) any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

Sanctions Relating to the Transfer of Certain Materials to or from Iran

Section 1245 of the NDAA 2013 requires the President to impose at least five of the twelve sanctions available under the ISA (except for import-related sanctions) on persons that sell, supply, or transfer, directly or indirectly, the following materials to or from Iran:

- Precious metals; or
- Graphite, raw or semi-finished metals (such as aluminum and steel), coal, and software for integrating industrial processes, to the extent such materials are:
 - Used by Iran for barter transactions or listed on the “national balance sheet of Iran” (defined as “the ratio of the assets of the Government of Iran to the liabilities of that Government”), as determined by the President;
 - To be used in connection with the energy, shipping, or shipbuilding sectors of Iran, or any sector that the President determines to be controlled by Iran’s Revolutionary Guard Corps;
 - Transferred to or from an Iranian person designated as an SDN; or
 - To be used in connection with Iran’s nuclear, military, or ballistic missile programs, as determined by the President.

Foreign financial institutions that conduct or facilitate significant financial transactions for the sale, supply, or transfer of the above materials are subject to sanctions. These sanctions include the prohibition on the opening of, and imposition of “strict conditions” on the maintenance of, U.S.-based payable-through and correspondent accounts for the sanctioned institution. There is an exception for all persons that exercise due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not transfer covered materials, or conduct or facilitate related financial transactions. It is unclear how much diligence is sufficient to qualify for the exception. In fact, on January 10, 2013, OFAC urged U.S. financial institutions to improve their due diligence when dealing with foreign trading and exchange companies, indicating that Iranian banks and financial institutions have increasingly attempted to evade U.S. sanctions by using these firms to transact their business.⁶

Sanctions Relating to the Provision of Underwriting, Insurance, and Reinsurance Services

Section 1246 of the NDAA 2013 requires the President to impose at least five ISA sanctions (except for import-related sanctions) on persons that knowingly provide underwriting services, insurance, or reinsurance services:

- For any activity with respect to Iran for which sanctions have been imposed under any relevant provision of U.S. law, including the International Economic Emergency Powers Act (IEEPA), ISA, CISADA, ITRA, the NDAA 2013, the Iran, North Korea, and Syria Nonproliferation Act, and other related laws;
- To or for any person:
 - With respect to, or for the benefit of, any activity in the energy, shipping, or shipbuilding sectors of Iran for which sanctions have been imposed under the NDAA 2013;
 - For the sale, supply, or transfer to or from Iran of graphite, raw or semi-finished metals (such as aluminum and steel), coal, and software for integrating industrial processes, if such materials are subject to sanctions under the NDAA 2013;
 - That has been designated for sanctions under IEEPA in connection with Iran’s WMD proliferation activities or support for terrorism; or
- To or for any Iranian SDN (except for Iranian financial institutions designated for a reason other than proliferation activities, support for terrorism, or involvement in human rights abuses).

There is an exception for persons that exercise due diligence, as well for transactions relating to the provision of agricultural commodities, food, medicine, medical devices, or humanitarian assistance.

Sanctions on Foreign Financial Institutions That Facilitate Certain Transactions

Section 1247 of the NDAA 2013 imposes sanctions on foreign financial institutions that knowingly facilitate transactions on behalf of specified Iranian SDNs. Again, this prohibition does not extend to facilitation of transactions with Iranian financial institutions generally, but extends only to dealings with those financial institutions that have been designated based on WMD proliferation, support for terrorism, or human rights abuses. Sanctioned institutions are subject to prohibition on the opening of, and imposition of “strict conditions” on the maintenance of, U.S.-based payable-through and correspondent accounts.

Section 1247 applies to petroleum-related transactions to the extent that the President has determined under the NDAA 2012 that there is a sufficient global supply of non-Iranian petroleum. There is an exception where the country with primary jurisdiction over the financial institution is entitled to an exception under the NDAA 2012, and where:

- The financial transaction is for trade in goods or services:
 - not otherwise subject to U.S. sanctions;
 - between Iran and the country with primary jurisdiction over the foreign financial institution; and
- Any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

Finally, Section 1247 applies to natural gas-related transactions, unless:

- The financial transaction is for trade in goods or services:
 - not otherwise subject to U.S. sanctions;
 - between Iran and the country with primary jurisdiction over the foreign financial institution; and
- Any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

Human Rights-Related Sanctions

Section 1248 of the NDAA 2013 imposes sanctions on Islamic Republic of Iran Broadcasting and its president, while Section 1249 sanctions persons involved in the diversion of goods intended for the people of Iran, including agricultural commodities, foods, medicine, and medical devices. Each section requires the imposition of sanctions provided under section 105(c) of CISADA, which include sanctions under IEEPA, such as blocking of property, and ineligibility of sanctioned persons for visas to enter the United States.

NDAA 2012 Presidential Waiver

There are several waiver provisions within the NDAA 2013 to allow the President to refrain from imposing sanctions. Section 1250 of the NDAA 2013 affords the President greater flexibility in issuing a waiver for sanctions imposed on foreign financial institutions than under the NDAA 2012. The section authorizes the President, in issuing a waiver, to certify to Congress that the country with primary jurisdiction over a covered foreign financial institution “faced exceptional circumstances that prevented the country from being able to reduce significantly its purchases of petroleum and petroleum products from Iran.”

Presidential Reports

Section 1252 of the NDAA 2013 requires the President, within 180 days of the enactment of the statute, and annually thereafter through 2016, to issue a report to Congress listing:

- “Large or otherwise significant” vessels that have entered seaports in Iran controlled by the Tidewater Middle East Company; and
- All airports at which aircraft owned or controlled by sanctioned Iranian air carriers have landed.

The first report must cover the 180-day period preceding submission of the report, while the subsequent annual reports must cover the year preceding submission.

Authorization of IEEPA Penalties

Section 1253 of the NDAA 2013 authorizes the President to impose IEEPA penalties on any person that “violates, attempts to violate, conspires to violate, or causes a violation” of the Iran sanctions provisions contained in the statute. These include civil penalties of \$250,000 per violation or twice the value of the

transaction at issue, and criminal penalties of \$1 million per violation and/or imprisonment of up to 20 years.

It is anticipated that OFAC will issue guidance regarding the Iran-related provisions of the NDAA 2013. Please let us know if you have any questions regarding these developments.

Footnotes

1. Iran Freedom and Counter-Proliferation Act of 2012, National Defense Authorization Act for Fiscal Year 2013 (H.R. 4310).
2. The NDAA 2013 does not define the terms “energy sector,” “shipping sector,” or “shipbuilding sector.” While Section 201 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) defined “energy sector of Iran” as “activities to develop petroleum or natural gas resources or nuclear power in Iran,” it is unclear whether that same definition would be used here.
3. Section 1242(b) states that in determining what constitutes a “significant” financial transaction or “significant” financial services, the President should refer to the criteria set forth in the Iranian Financial Sanctions Regulations or any similar regulation or ruling.
4. For an overview of the ISA and its companion statute, CISADA, see the [DechertOnPoint, “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 Signed Into Law.”](#)
5. This finding is required pursuant to Section 1245(d)(4)(B) of the National Defense Authorization Act for Fiscal Year 2012 (NDAA 2012). On June 11, 2012 and December 7, 2012, under Section 1245(d)(4)(B), President Obama made the requisite finding that there was 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.
6. The Use of Exchange Houses and Trading Companies to Evade U.S. Economic Sanctions Against Iran, Iranian Transactions and Sanctions Regulations, U.S. Office of Foreign Assets Control (Jan. 13, 2013).

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