



STEAMSHIP MUTUAL

To the Members

June 2013

Dear Sirs,

IFCPA / NDAA 2013: EXPANSION OF U.S. SANCTIONS AGAINST IRAN AS OF 1 JULY 2013

On 2 January, 2013, President Obama signed into law the **Iran Freedom and Counter-Proliferation Act of 2012 ("IFCPA")**, as part of the implementation of certain provisions of the National Defence Authorization Act for 2013 ("NDAA"). IFCPA is to come into law with effect from 1 July 2013. It will expand the category of activities by non-US persons involving Iran that could result in the imposition of sanctions against such non-US persons, and it provides for the blocking of the property of additional Iran sanctions targets. The Act specifically targets Iran's Energy, Shipping and Shipbuilding Sectors, as well as insurers such as P&I Clubs.

The key sections of the Act are summarised below:

Transactions involving Iran's Energy, Shipping and Shipbuilding Sectors, Iranian Ports, or Iranians on the Specially Designated Nationals ("SDN") List.

Section 1244 provides for the designation of, and imposition of an asset freeze with respect to, the energy, shipping, and shipbuilding sectors of Iran, based on findings made by Congress that those sectors are providing revenue to the Government of Iran to support its nuclear proliferation activities. This section also provides for the imposition of sanctions against or with respect to persons that sell, supply or transfer significant goods and services used in connection with the energy, shipping, or shipbuilding sectors of Iran, including the National Iranian Oil Company, the National Iranian Tanker Company, and the Islamic Republic of Iran Shipping Lines. All entities that operate ports in Iran are designated as entities of proliferation concern.

Sanctions will not be imposed in connection with transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran. Nor does this Section apply with respect to the exportation from Iran of petroleum or petroleum products to a country to which the President has granted an NDAA waiver on the basis of that country having significantly reduced its imports of Iranian crude oil. Sanctions will also be imposed on any person who provides significant goods and services to or for the benefit of any Iranian person on the SDN List. The SDN List is an illustrative list of entities and individuals published by the US Treasury Department's Office of Foreign Assets Control (OFAC) to assist in identifying the targets of US sanctions against Iran. In a related Guidance Note, OFAC has provided guidance in determining what conduct would be considered "significant". It also confirms that regulations will be enacted to define terms such as "energy sector", "shipping sector", "shipbuilding sector".

Transactions Involving Precious Metals and Raw Materials

Section 1245 provides for the imposition of sanctions with respect to a person who knowingly sells, supplies, or transfers, directly or indirectly to or from Iran:

- a precious metal;
- materials described in **Section 1245(d)**, including graphite, raw or semi-finished metals such as aluminium and steel, coal, and software for integrating industrial processes, to/for:

L.215

STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority
(Registered in England and Wales – Registration number 105461. PRA and FCA registration number 202548)

MANAGERS: STEAMSHIP P&I MANAGEMENT LLP

SPIM is an appointed representative of Steamship Insurance Management Services Limited which is authorised and regulated by the Financial Conduct Authority
(Registered in England and Wales – Registration Number OC376859. FCA registration number 597046)
AQUATICAL HOUSE 39 BELL LANE LONDON E1 7LU
Tel: +44 20 7247 5490 Website: www.steamshipmutual.com

- the energy, shipping or shipbuilding sectors of Iran or sectors of the Iranian economy controlled directly or indirectly by the Iranian Revolutionary Guard Corps;
- any Iranian person listed on the OFAC SDN List;
- use in connection with the nuclear, military, or ballistic missile programmes of Iran.

Sanctions may be imposed even if the materials are resold, retransferred or otherwise supplied to/for the persons, or programmes or to an end-user in the sectors described above. Therefore where shipment or transport of these materials is contemplated, careful due diligence will be needed in relation to their end use.

Insurance, Reinsurance and Underwriting Activities

Section 1246 provides for the imposition of sanctions against persons who knowingly provide underwriting services or insurance or reinsurance to or for:

- (i) any activity with respect to Iran for which sanctions have been imposed under the various Iran sanctions laws of the United States, including IFCPA, the Iran Sanctions Act 1996, the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 ("CISADA"), and the Iran Threat Reduction and Syrian Human Rights Act 2012;
- (ii) any activity in the energy, shipping or shipbuilding sectors of Iran for which sanctions are imposed under IFCPA;
- (iii) the sale, supply or transfer to or from Iran of the materials described in **Section 1245 (d)**;
- (iv) any person designated for the imposition of sanctions in connection with Iran's proliferation of WMD including WMD delivery systems; or
- (v) any Iranian person listed on the OFAC SDN List (with few exceptions).

Sanctions will not be imposed in connection with the provision of underwriting services or insurance or reinsurance for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran.

Sanctions will also not be imposed with respect to a person that provides underwriting services or insurance or reinsurance if such a person has exercised due diligence and established and enforced official policies, procedures and controls to ensure the person does not underwrite or enter into a contract to provide insurance or reinsurance for any activity which could lead to the imposition of sanctions under IFCPA. Provisions of the Club Rules and clauses endorsed on Certificates of Entry are designed to ensure that the Club does not provide cover for any prohibited or sanctionable activity.

Penalties

Section 1246 provides for the imposition of 5 or more sanctions (from a list of 12) against foreign insurers that engage in sanctionable conduct under IFCPA.

Section 1253 provides that persons who violate or conspire to violate IFCPA could face penalties pursuant to Section 206(b) of the International Emergency Economic Powers Act ("IEEPA"). This Act provides for imposition of criminal fines of up to US\$1 million and imprisonment for up to 20 years, and civil penalties, currently set at the greater of US\$ 250,000 or twice the amount of the prohibited transaction. Other serious sanctions measures which can be imposed include denying foreign persons / entities access to the US banking system and processing of US Dollar payments; and blocking of other property within US jurisdiction, including US Dollar wire transfers. Insurers and Club Members held to be in breach of IFCPA are therefore exposed to significant penalties.

STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority
(Registered in England and Wales – Registration number 105461. PRA and FCA registration number 202548)

MANAGERS: STEAMSHIP P&I MANAGEMENT LLP

SPIM is an appointed representative of Steamship Insurance Management Services Limited which is authorised and regulated by the Financial Conduct Authority
(Registered in England and Wales – Registration Number OC376859. FCA registration number 597046)
AQUATICAL HOUSE 39 BELL LANE LONDON E1 7LU
Tel: +44 20 7247 5490 Website: www.steamshipmutual.com

Vessel Reporting

Section 1252 provides that from 1 July 2013 and annually thereafter through to 2016, the US administration will submit to Congress reports that contain:

- a list of large or otherwise significant vessels that have entered seaports in Iran controlled by Tidewater Middle East Company and information regarding the owners and operators of such vessels; and
- a list of all airports at which aircraft owned or controlled by an Iranian carrier on which sanctions have been imposed by the United States have landed.

The implementation of IFCPA represents a significant expansion of sanctions in respect of activities relating to Iran for the maritime industry as a whole.

Restrictions on Club Cover

Members are reminded of restrictions on Club cover set out in the Club Rules and Certificates of Entry.

Trading to or from Iran (unless absolutely certain that the cargo, activity or engagement with any Iranian counterparty is not prohibited under any potentially applicable law or regulation) does potentially expose the Member to the risk of sanctions. It also potentially exposes the Club to the risk of sanctions to the extent that the Club is deemed, by the provision of P&I insurance, to be facilitating or supporting an embargoed trade or activity. However provisions in the Club rules, including automatic cessation of cover where insurance is prohibited or where the member engages in any activity which may expose the Club to the risk of sanctions, are designed to ensure that the Club does not knowingly or inadvertently provide insurance for any prohibited or sanctionable activity. This is supported by a sanctions screening programme initiated by the Club Managers, designed to ensure that the Club does not provide insurance, nor make payments, in breach of sanctions regulations.

P&I cover is unlikely to be available for liabilities arising out of trade or contracts involving designated parties or vessels, and will not be available where the employment of vessels contravenes sanctions laws and regulations. See in particular Rules 17ii, 24ic, 32iv and Rule 35if, 35 ii, iii and proviso (c). Equivalent provisions appear in Charterers' Clauses 13ii, 19ic, 30iv and 32if, 32ii,iii and proviso (c). Restrictions on cover are also set out in certificate endorsements notified to Members in Circular B519 (SSM Bermuda) and L 129 (SSM London). In addition, contracts of insurance may be voided or frustrated where the liability potentially covered involves illegality, and under the Club Rules cover may be terminated on notice or automatically cease.

Members are warned that with respect to voyages to and from Iran, there will be no P&I cover for any sanctionable activity, nor where vessels are chartered out to or from targets of the EU or US sanctions against Iran, or for purposes prohibited by such sanctions. In order for Members to mitigate the risk that P&I cover will be unavailable, they are advised to carry out proper due diligence on their business partners, including charterers, disponent owners and service providers/suppliers. Members should also ascertain for themselves the full particulars of any cargo to be carried to or from Iran, its type, grade, value and end use, and details of the identity of any Iranian counterparty, including port and terminal operators, exporters, suppliers, consignees and receivers of cargo, and the nature of their business in connection with the intended use or purpose of the cargo. Members should also ascertain whether the activity of transportation to and from Iran by the Member is prohibited under sanctions laws (such as those of the EU) directly applicable to the Member, and/or whether the transportation constitutes activity that could lead to the imposition of US sanctions against the Member, either because of a direct nexus subjecting them to US jurisdiction, or by virtue of the extra-territorial reach of US legislation and regulations, such as IFCPA.

STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority
(Registered in England and Wales – Registration number 105461. PRA and FCA registration number 202548)

MANAGERS: STEAMSHIP P&I MANAGEMENT LLP

SPIM is an appointed representative of Steamship Insurance Management Services Limited which is authorised and regulated by the Financial Conduct Authority
(Registered in England and Wales – Registration Number OC376859. FCA registration number 597046)
AQUATICAL HOUSE 39 BELL LANE LONDON E1 7LU
Tel: +44 20 7247 5490 Website: www.steamshipmutual.com

Members are also referred to Risk Alert 21 which warns that it may not be possible for the Club or a bank to provide security for any claim involving an incident at an Iranian port, an Iranian entity or liabilities arising from a sanctionable trade or activity. Vessels arrested at Iranian ports in respect of such claims or liabilities could therefore face substantial delays.

It should be noted that because the sanctions regime is in a state of constant flux and the rules and universe of sanctionable activities are numerous and complex, the Club cannot provide definitive assurances that cover will be available in any event for activities undertaken by Members involving Iran or Iranian counterparties.

Copies of Risk Alert 21, Freehill Hogan & Mahars' Client Briefing, and the OFAC Guidance Sheet on IFCPA are attached hereto.

Yours faithfully,

THE STEAMSHIP MUTUAL UNDERWRITING
ASSOCIATION LIMITED

STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority
(Registered in England and Wales – Registration number 105461. PRA and FCA registration number 202548)

MANAGERS: STEAMSHIP P&I MANAGEMENT LLP

SPIM is an appointed representative of Steamship Insurance Management Services Limited which is authorised and regulated by the Financial Conduct Authority
(Registered in England and Wales – Registration Number OC376859. FCA registration number 597046)
AQUATICAL HOUSE 39 BELL LANE LONDON E1 7LU
Tel: +44 20 7247 5490 Website: www.steamshipmutual.com

Iran, Sanctions and the Provision of Security

EU Regulation 961/2010 came into force following its publication on 27 October 2010. It is binding and directly applicable in all EU Member States with immediate effect.

The new regulation provides for restrictive measures against Iran further to the European Council approved decision of 26th July 2010 implementing UNSCR 1929.

A summary of the principal provisions of the Regulation appears on the Steamship Mutual website at:

<http://www.simsl.com/Liabilities-and-Claims/eu-regulation-in-force-wef-from-27th-october-2010.htm>

In accordance with Article 39, the Regulation applies:

- within the territory of the EU, including its air space;
- on board any aircraft or any vessel under the jurisdiction of an EU Member State.
- to any person inside or outside the territory of the European Union who is a National of a Member State;
- to any legal person, entity or body which is incorporated or constituted under the law of a Member State;
- to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Members' attention is drawn in particular to Article 21, which imposes restrictions on transfers of funds to and from an Iranian person, entity or body. This would include payments and claims settlements.

"Funds" are defined in Article 1(j)(v) as including "guarantees, performance bonds or other financial commitments". Whilst the drafting of the Regulation is not entirely clear, it appears that Article 21 encompasses the provision of security and thus applies when;

- the Club is asked to provide security on behalf of an Iranian Member; or
- the intended recipient of security is an Iranian entity, irrespective of where the Member is based.

Article 21 requires prior notice of transactions over Euro 10,000 or equivalent to be given to the competent authority of an EU Member state (in the case of the UK this is HM Treasury), and



prior authorisation must be received for transactions of or over Euro 40,000 or equivalent in another currency. Authorisation shall be deemed granted if a competent authority does not notify an objection within 4 weeks of the written request for authorisation.

Members may be required to call at an Iranian port in compliance with an existing contract of carriage contained in a charterparty or bill of lading. The provision of security by the Club is always discretionary in accordance with the Club Rules. The purpose of this Risk Alert is to warn Members that if they are involved in an incident at an Iranian port requiring the provision of security, or if the Club is asked to provide security for an Iranian Member, the Club is likely to have to seek formal prior authorisation from a relevant EU Member State if the amount is over Euro 40,000. Obtaining the requisite authorisation will probably involve a delay of some weeks. It will be refused if the provision of security is for the benefit of a sanctioned entity, or is considered to contribute to prohibited activities, such as nuclear proliferation by Iran, development of WMD or prohibited activities related to the exploration, production, refining or liquefaction of crude oil and natural gas.

In the event, therefore, that a Member's vessel were to be in arrested in an Iranian port, there could well be difficulty in securing its release, not only in respect of Club security but also because any provision of security (or indeed payment) to an Iranian entity may involve a breach of sanctions regulations which are applicable in the Member's own jurisdiction.

The risk that security for any claim involving an Iranian entity may not be readily available, and in particular to permit the release of an arrested ship, is one which Members should consider in the light of their trading contracts and obligations under any financing documents, such as ship mortgages.

For further information on this topic please refer to your relevant Syndicate contact or the Head of Loss Prevention at Steamship Insurance Management Services Ltd

T: +44 20 7247 5490

E: loss.prevention@simsl.com



CLIENT ALERT:
**NDAA 2013: A POTENTIAL EXPANSION OF
U.S. SANCTIONS AGAINST IRAN AS OF JULY 1, 2013**

June 10, 2013

The National Defense Authorization Act for Fiscal Year 2013 (“NDAA 2013”) was enacted on January 2, 2013, and contains a subtitle, the “Iran Freedom and Counter-Proliferation Act of 2012” (“IFCA”), that sets out additional sanctions against foreign persons engaged in trade with Iran. IFCA takes effect on July 1, 2013, and has potentially far-reaching impact as it targets a wider range of activities than current sanction programs which are largely directed to Iran’s petroleum and petrochemical industries. To provide further clarification on how IFCA might be applied, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued guidance on June 3, 2013, regarding the implementation of IFCA. Additionally, on June 3, 2013, President Obama signed an Executive Order (“E.O.”) which clarifies the types of penalties that can be imposed for violations of IFCA.¹

Insofar as those involved in marine transportation and insurance are concerned, the more salient aspects of IFCA, as clarified by OFAC and the June 3, 2013 E.O., include the following.

IFCA §1244: Transactions Involving Iran’s Energy, Shipping & Shipbuilding Sectors, Iranian Ports, or Iranians on the Specially Designed Nationals (“SDN”) List

Transactions with Iran’s Energy, Shipping and Shipbuilding Sectors and its Ports

Declaring that Iran’s “energy, shipping, and shipbuilding sectors” and its ports are facilitating Iran’s nuclear proliferation activities, IFCA imposes sanctions directed against transactions benefitting those industries. This section presents perhaps the most significant aspect of IFCA insofar as marine transportation is concerned.

¹ The June 3, 2013, E.O. is entitled “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran.” In addition to clarifying the penalties under IFCA, the E.O. imposes new sanctions against anyone (including foreign persons) who (after July 1, 2013) knowingly engage in a “significant” transaction for the sale, supply, or transfer to Iran of “significant” goods or services used in connection with the “automotive sector of Iran” defined to mean “the manufacturing or assembling in Iran of light and heavy vehicles ...as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles.” Given the definition of “automotive sector, it is believed that the transport of fully-assembled automobiles to Iran would not violate the E.O.

The June 3, 2013, E.O. also revises E.O. 13622 that was signed in July 2012 and imposed sanctions with respect to Iran’s petroleum and petrochemical industries. (See prior published FAQ #14). In its current wording, E.O. 13622 imposed sanctions for anyone who knowingly engaged in a “significant transaction for the purchase or acquisition” from Iran of petroleum, petroleum products, or petrochemical products. While the E.O. did not specifically refer to transportation or shipping services, it was believed that the E.O. would be interpreted to capture such activities within its scope. The revision to this E.O. announced on June 3, 2013, now makes that interpretation clear as it expands the reference to “purchase or acquisition” to include “purchase, acquisition, sale, transport or marketing.”

Specifically, IFCA imposes sanctions against any person who “sells, supplies, or transfers” to Iran “significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran”, which is defined to include NIOC, NITC, and IRISL.² Persons are also subject to having their property in the U.S. blocked (which includes wire transfers in U.S. dollars) if they provide “significant” financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of any person determined to be a part of the energy, shipping, or shipbuilding sectors of Iran or determined to operate a port in Iran.³

In its recent guidance, OFAC confirmed that in determining whether conduct is “significant” as described in IFCA,⁴ a number of factors will be considered including size, number and frequency; type, complexity and commercial purpose; the level of awareness of management and whether such conduct is part of a pattern of conduct; the ultimate economic benefit conferred upon the sanctions target, and other relevant factors. The inquiry will thus be factually-driven, which gives the authorities wide latitude in determining when conduct is “significant.”

At first blush, these sanctions appear to be quite broad as the references to Iran’s “energy, shipping or shipbuilding sectors” and its “ports” are not defined and, at least with respect to the “shipping sector” and “ports” references, they can conceivably capture all manner of maritime activity into and from Iran including transactions with agents, terminals, and the like. However, in its recent guidance, OFAC indicated that it anticipates regulations will be enacted defining those sectors as follows and also describing the types of goods and services that will be deemed “in connection” with these sectors.⁵

- **“Energy sector”**
 - Anticipated to be defined to “include activities involving the exploration, extraction, production, refinement, or liquefaction of petroleum, natural gas, or petroleum products in Iran.”
 - Anticipated to describe prohibited goods and services as those that contribute to (i) Iran’s ability to develop its domestic petroleum resources; (ii) the maintenance or expansion of Iran’s domestic production of petroleum products; and (iii) Iran’s ability to import or export petroleum or petroleum products.

- **“Shipping sector”**
 - Anticipated to be defined to “include activities involving the transportation of goods by seagoing vessels, including oil tankers and cargo vessels, flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by the Government of Iran.”
 - Anticipated to describe prohibited goods and services as (i) the provision of crude and product tankers to Iran; (ii) the provision of registry, flagging or classification services of any kind; (iii) supervision of and participation in the repair of ships and their parts; (iv) inspection, testing, and certification of marine equipment materials and components; (v)

² IFCA §1244(d).

³ IFCA §1244(c).

⁴ Notably, unlike other sanction programs, IFCA does not specify monetary thresholds before conduct gives rise to sanctions, using instead the more amorphous phrase “significant.”

⁵ OFAC further advised that it will identify on the SDN list those persons determined to be part of Iran’s energy, shipping or shipbuilding sectors, or a port operator in Iran, for purposes of §1244. **However, this list will not be exclusive, and a person still may be subject to sanctions regardless of whether an entity is specifically identified on the SDN list.**

carrying out of surveys,⁶ inspections, audits and visits, and the issuance, renewal or endorsement of the relevant certificates and documents of compliance; and (vi) any other goods or services relating to the maintenance, supply, bunkering, and docking of vessels flying the flag of Iran, or owned, controlled, chartered, or operated directly or indirectly by, or for or on behalf of Iran or an Iranian person.

- ***“Shipbuilding sector”***

- Anticipated to “include activities involving the construction of seagoing vessels, including oil tankers and cargo vessels, in Iran.”
- Anticipated to describe prohibited goods and services as (i) the building and refit of vessels; (ii) the provision or refit of items such as steam turbines, gas turbines, and engines and their parts; propellers and blades, and direction finding compasses and other navigational instructions and appliances solely for the maritime industry; (iii) other goods used in connection with building and propulsion of vessels; and (iv) technical assistance and training relating to, and financing of, the building, maintenance or re-fitting of vessels.

Given this guidance, it appears that the “shipping sector” aspect of §1244 is designed to target activities that relate to Iran’s ability to engage in ocean transportation itself. The anticipated regulation defining the “shipping sector” is not limited exclusively to such activities by Iran, as the intended definition speaks in terms of “including” these activities. Nonetheless, the definition gives insight into how the “shipping sector” aspects of §1244 will be interpreted, and based on this guidance, it would seem that §1244 is not intended to sweep as broadly as may appear on its face and instead is designed to hamper Iran’s ability to transport goods on ships owned, chartered, operated or controlled by it in any manner. Extreme caution should therefore be exercised in chartering out vessels to insure that Iran is not behind a layer of companies.

With respect to the §1244 sanctions for significant transactions on behalf of or for the benefit of any port operator in Iran, the recent guidance from OFAC provides little clarification as to how that provision will be implemented. The provision can, on its face, be broadly construed to encompass a wide range of transactions with a port. However, the State Department and OFAC have advised informally that, at this time, routine calls to Iranian ports with non-sanctionable cargo would generally not fall within the scope of providing significant support to an operator of an Iranian port.

Transactions with Those on the Specially Designated Nationals (“SDN”) List

In addition to the above, §1244 imposes sanctions on any person who provides “significant” goods and services to or for the benefit of any Iranian person on the SDN list.⁷ OFAC has advised that it anticipates publishing on its website a list to assist in identifying Iranian persons included on the SDN list. Therefore, it would be advisable for those engaged in international commercial activities to check this list on a regular basis to ensure that parties with whom they are contracting, or the parties who are benefiting from the goods and services provided, are not listed on the SDN list as an Iranian entity/person.

Exceptions to the §1244 Sanctions

IFCA contains a number of exceptions from the scope of its sanctions targeting the energy, shipping and shipbuilding sectors, Iranian ports, and Iranian SDNs, including the following:

⁶ Given the context in which “surveys” is mentioned, it seems that these prohibitions would not encompass P&I surveys related to an insured event, although those types of surveys are not specifically excluded. Nevertheless, caution should be exercised to ensure any P&I surveys conducted do not relate to an underlying transaction that otherwise violates any sanctions program directed at Iran.

⁷ IFCA §1244(c).

- Humanitarian assistance: transactions for the sale of agricultural commodities, food, medicine or medical devices to Iran or for the provision of humanitarian assistance.⁸
- Petroleum and petroleum products: the export of petroleum (*i.e.*, crude) or petroleum products from Iran to a country which holds an NDAA waiver (currently 20 countries).⁹
- Natural gas: transactions for the sale, supply or transfer to or from Iran of natural gas.¹⁰
- Pipeline activities: certain activities relating to the pipeline project to supply natural gas from the Shah Deniz gas field in Azerbaijan to Europe and Turkey.

IFCA §1245: Transactions Involving Precious Metals and Raw Materials

Section 1245 of IFCA provides¹¹ for sanctions for a person who knowingly “sells, supplies, or transfers [including transshipment], directly or indirectly to or from Iran” the following:

- A precious metal; or
- Graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrated industrial processes¹² if:
 - Iran is using those materials as a medium for barter, swap, or any other exchange or transaction, or listing those materials as assets of Iran for purposes of its national balance sheet; or
 - The material is (i) to be used in connection with the energy, shipping or shipbuilding sectors of Iran or any sector of Iran’s economy determined to be controlled directly or indirectly by Iran’s Revolutionary Guard Corps; (ii) sold, supplied or transferred to or from an Iranian person on the SDN list; or (iii) to be used in connection with Iran’s nuclear, military or ballistic missile programs, as determined by the President.

This provision poses a potential risk of sanctions with respect to any carriage of such materials as this section does not use “significant” as the applicable standard for assessing whether a transaction is sanctionable. Accordingly, caution should be exercised in any transactions involving the carriage or transport of these materials.

Further, caution should be exercised in any transaction involving these materials because it may not be readily apparent whether the materials are intended for use in the “energy, shipping or shipbuilding sectors of Iran,” although OFAC’s June 3, 2013, guidance on the anticipated meaning of these terms provides some clarification that will be useful in evaluating whether a contemplated transaction might run afoul of §1245. Similarly, OFAC has indicated that a report will be published in the Federal Register by July 1, 2013, discussing which sectors of the Iranian economy are controlled directly or indirectly by Iran’s Revolutionary Guard. This report should provide further guidance to assessing whether a transaction might give rise to sanctions under §1245.

⁸ IFCA §1244(e).

⁹ IFCA §1244(g).

¹⁰ IFCA §1244(h). Section 1244, however, does set out sanctions that may apply to “foreign financial institutions” (which generally does not include an insurance company or underwriter) under certain circumstances.

¹¹ See IFCA §1245.

¹² In its June 3, 2013, guidance, OFAC stated that it anticipates regulations to be promulgated defining the materials within the scope of §1245 as including a vast array of metals and their alloys such as steels, aluminum, cobalt, copper, graphite, magnesium, nickel, plutonium, silver, titanium, uranium, and several others. The regulations are also anticipated to define “precious metals” as including silver, gold, platinum, and others, as well as waste and scrap containing precious metal or precious-metal compounds, of a kind use principally for the recovery of precious metals.

Persons will not be subject to sanctions under §1245 if they exercise “due diligence” in establishing and enforcing policies, procedures and controls to ensure that they do not engage in the prohibited activities.¹³ The statute does not further clarify what level or type of diligence will satisfy the exception, and OFAC has only confirmed that due diligence will be determined on a “case-by-case basis as part of an investigation or enforcement action.”

IFCA §1246: Insurance, Reinsurance & Underwriting Activities

A number of insurance activities are subject to sanctions under IFCA, and while previous sanctions have certainly had some bearing on the marine insurance industry, IFCA represents what may prove, in its effect, to be a rather dramatic expansion of U.S. sanctions as they pertain to marine insurers and underwriters.

IFCA imposes sanctions on persons that “knowingly” provide underwriting, insurance or reinsurance services:¹⁴

- For any Iran-related activity for which sanctions have been imposed under any U.S. law which would include any of the sanctions imposed under CISADA, ITRASHA, IFCA, or any other provision whether implemented by legislative statute, regulation, or Executive Order;
- To or for any person with respect to, or for the benefit of any activity in the energy, shipping or shipbuilding sectors for which sanctions can be imposed under IFCA;
- To or for any person for the sale, supply, or transfer to or from Iran of the precious metals and raw materials for which sanctions can be imposed under IFCA; or
- To or for any person designated for the imposition of sanctions under the International Emergency Economic Powers Act in connection with Iran’s proliferation of weapons of mass destruction or support for international terrorism
- To or for any Iranian person on the SDN list.

On their face, these provisions appear to impose a far greater burden on marine insurers and P&I Clubs to be aware of their insureds’ activities. Nevertheless, as with other sanction programs, there is an exception to the imposition of sanctions for insurers, reinsurers, or underwriters who exercise due diligence in establishing and enforcing “official policies, procedures, and controls” to ensure that the person does not underwrite or enter into a contract to provide insurance or insurance or reinsurance for the proscribed activities.¹⁵ “Due diligence” is not defined and OFAC confirmed in its recent published guidance only that the determination will be made on a case-by-case basis.

It seems apparent however that U.S. authorities will expect marine insurers, reinsurers and underwriters to be proactive in analyzing the activities of their insureds, lest they be held in violation of U.S. sanctions for having insured a sanctionable activity by one of their Members. Certainly, at a minimum any P&I Club confronted by a Member’s inquiry regarding whether a particular shipment or trade violates U.S. sanctions needs to undertake a very careful review to attempt to satisfy its due diligence obligation. Nevertheless, based on prior communications with the State Department (but note that the Treasury Department is

¹³ IFCA §1245(f).

¹⁴ It bears mentioning that the term “significant” is not used to define the level of underwriting, insurance or reinsurance services that might trigger the imposition of sanctions. Therefore, the provision of such services might lead to the imposition of sanctions regardless of the value of those services if the underlying transaction violates one or more of the various sanctions directed at Iran.

¹⁵ IFCA §1246(d). IFCA also confirms that transactions for the sale of agricultural commodities, food, medicine or medical devices to Iran or for the provision of humanitarian assistance can be insured, reinsured or underwritten and are not subject to sanctions. IFCA §1246(c).

charged with implementing IFCA), it is believed that the authorities will take into account practicality in assessing whether a Club's policies and procedures and implementation of same are sufficient.

IFCA §1252: Vessel Reports

While §1252 does not set forth any sanctions, it directs 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. It is not clear exactly to what purposes these reports will be used. The provision is nonetheless of particular interest for those engaged in maritime transportation for obvious reasons.

IFCA §1253: Potential Penalties Authorized by IFCA

IFCA authorizes the imposition of many of the same types of penalties authorized under other sanction programs. Some of the more significant sanctions that might be imposed include the following:

- (i) denying the foreign person access to the U.S. banking system, which would include the inability to effect any transaction anywhere in the world in U.S. dollars regardless of whether that transaction has anything to do with sanctionable conduct;
- (ii) blocking property of the foreign person that comes within the jurisdiction of the U.S., including U.S. dollar wire transfers;
- (iii) imposing any of the same sanctions on the principal executive officers of the foreign person; and
- (iv) preventing the corporate officers, principals or controlling shareholders of the foreign person from entering the U.S.;

Furthermore, unlike other sanction programs, IFCA provides that the civil and criminal penalties described in the International Emergency Economic Powers Act (IEEPA) shall apply to a person who "violates, attempts to violate, conspires to violate, or causes a violation" of IFCA or any regulations enacted thereunder.¹⁶ Those civil penalties are currently set at the greater of \$250,000 or twice the amount of the prohibited transaction, and the criminal penalties include a fine of \$1 million, or if a natural person, imprisonment of 20 years, or both.¹⁷

Conclusion

The most notable provision of IFAC is §1246 which specifically imposes sanctions on insurers who insure any Iran-related activity for which sanctions have been imposed under any U.S. law. There is a statutory exception for insurers who have exercised due diligence in an effort to avoid providing insurance for prohibited activities. However, given the broad scope of the new provision it is expected that the authorities will expect insurers to be proactive in exercising due diligence.

Unlike prior U.S. sanctions, the sections of IFCA which prohibit the provision of "significant goods or services" to the energy, shipping or shipbuilding sectors or Iran, to a port operator, or to any Iranian party

¹⁶ See IFCA §1253.

¹⁷ 50 U.S.C. §1705.

on the U.S. SDN list, do not have any monetary thresholds. Instead, the standard for a violation is “significant.” While there is a definition of “significant” in the Guidance issued by OFAC with respect to IFCA, it seems clear that determinations will be made on a case by case basis. The Guidance also defines the shipping sector of Iran, and that definition is somewhat narrower than it might have been, and appears to be focused on Iran’s own ability to engage in ocean transportation.

Finally, the amendment of Executive Order 13622 is important, as there is now no doubt that transporting petroleum (crude oil), petroleum products or petrochemical products from Iran constitutes a violation of EO 13622.

FREEHILL HOGAN & MAHAR LLP

80 Pine Street

New York, NY 10036

www.freehill.com

William L. Juska, Jr.

juska@freehill.com

Gina M. Venezia

venezia@freehill.com

Willam J. Pallas

pallas@freehill.com

Guidance Related to the Issuance of the Executive Order “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran” and the Implementation of Certain Provisions of the Iran Freedom And Counter-Proliferation Act of 2012 (IFCA)

On June 3, 2013, the President signed an Executive Order (E.O.) “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran.” The E.O. implements certain statutory provisions of the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA) and authorizes the imposition of additional sanctions with respect to Iran. Most of the IFCA provisions target conduct occurring on or after July 1, 2013. The E.O. becomes effective on July 1, 2013. [06-03-13]

General Questions

313. What is the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA)?

IFCA was signed into law on January 2, 2013, as a part of the National Defense Authorization Act for Fiscal Year 2013, and provides for several new sanctions related to Iran. IFCA authorizes broad sanctions on: certain activities related to Iran’s energy, shipping, and shipbuilding sectors; the sale, supply, or transfer to or from Iran of precious and certain other metals, graphite, coal, and industrial software; the provision of underwriting services, insurance, or reinsurance to activities and persons targeted by U.S. sanctions against Iran; financial transactions involving sanctioned Iranian individuals and entities; and persons involved in the diversion of goods intended for the Iranian people. Most of the IFCA provisions target conduct occurring on or after July 1, 2013.

The U.S. Department of the Treasury will be issuing regulations to implement certain provisions in IFCA. In addition, the U.S. Department of State expects to adopt an interpretation of IFCA similar to that set forth below. [06-03-13]

288. What is the purpose of the Executive Order of June 3, 2013 entitled “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran” (E.O.)?

The E.O. implements certain statutory provisions of IFCA. The E.O. also authorizes the imposition of additional sanctions with respect to Iran, targeting certain transactions and other activity related to the Iranian rial, Iran’s automotive sector, and persons that materially assist Iranian persons on the list of Specially Designated Nationals and Blocked Persons (SDN List) as well as certain persons whose property and interests in property are blocked under the E.O. or Executive Order 13599. The

E.O. becomes effective at 12:01 a.m. eastern daylight time on July 1, 2013. Questions and Answers (Q&As) 20-26 below provide guidance regarding the E.O.

The Department of the Treasury will be issuing regulations to implement certain provisions in the E.O. In addition, the Department of State expects to adopt an interpretation of the E.O. similar to that set forth below [06-03-13]

Iran Freedom and Counter-Proliferation Act of 2012

289. How will the following IFCA terms be interpreted: “Iran,” “knowingly,” “significant,” “transfer,” “Iranian person included on the SDN List”?

As a general matter, we intend to rely, where applicable, on definitions of terms previously included in Treasury regulations.

“Iran”

The Iranian Financial Sanctions Regulations (31 CFR part 561) (IFSR) define “Iran” as the Government of Iran and 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. (31 CFR § 561.329)

“Iranian person included on the SDN List”

OFAC anticipates publishing on its website a list to assist in identifying Iranian persons included on the SDN List for purposes of IFCA and the E.O.

“knowingly”

The IFSR define “knowingly” with respect to conduct, a circumstance, or a result, to mean that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result. (31 CFR § 561.314)

“significant”

As a general matter, in determining for purposes of IFCA and the E.O. whether transactions, financial transactions, or financial services are significant, the Department of the Treasury will rely on the interpretation set out in §561.404 of the IFSR. The IFSR provide a list of broad factors that can play a role in the determination whether transactions, financial services, and financial transactions are significant, including: (a) the size, number, and frequency of the transactions, financial services, or financial transactions; (b) the type, complexity, and commercial purpose of the transactions, financial services, or financial transactions; (c) the level of awareness of management and whether the transactions are part of a pattern of conduct; (d) the nexus of the transactions, financial services, and financial transactions and blocked persons; (e) the impact of the transactions, financial services,

and financial transactions on statutory objectives; (f) whether the transactions, financial services, and financial transactions involve deceptive practices; (g) whether the transactions solely involve the passive holdings of Central Bank of Iran (CBI) reserves or repayment by the CBI of official development assistance or the transfer of funds required as a condition of Iran’s membership in an international financial institution; and (h) other relevant factors that the Secretary of the Treasury deems relevant. We anticipate adopting a similar approach to interpreting the term “significant” as it applies to goods or services.

“transfer”

“Transfer” includes import, transshipment, export, or re-export, whether direct or indirect. [06-03-13]

[^ TOP](#)

290. Are payments or deliveries that are made on or after July 1, 2013, for contracts that existed prior to July 1, 2013, exempted from IFCA provisions?

There is no general exception for payments, sales, deliveries, or transfers arising out of contracts entered into prior to July 1, 2013, on or after which date certain activities become sanctionable under IFCA. The assessment of whether such payments are “significant” or result in the transfer of “significant goods or services” or “significant financial support” will be done on a case-by-case basis in line with the criteria discussed above. [06-03-13]

291. How does the Executive Order relate to the IFCA provisions?

The E.O. implements and builds upon certain provisions of IFCA as set out in more detail in Q&As 306 and 312 below. [06-03-13]

292. What are the implications of IFCA on the provision of humanitarian goods to the people of Iran?

IFCA generally excepts from sanctions transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran, as set out in more detail in Q&As 297 and 304. (See Q&A 312 for a similar exception in the E.O.) [06-03-13]

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

IFCA provides for sanctions involving activities or transactions related to Iran’s energy, shipping, and shipbuilding sectors.

293. What will the “energy, shipping, and shipbuilding sectors of Iran” mean for the purposes of IFCA?

We anticipate that regulations to be promulgated will define “energy sector of Iran” to include activities involving the exploration, extraction, production, refinement, or liquefaction of petroleum, natural gas, or petroleum products in Iran. (See also discussion of activities involving natural gas in Q&A 297.)

We anticipate that regulations to be promulgated will define “shipping sector of Iran” to include activities involving the transportation of goods by seagoing vessels, including oil tankers and cargo vessels, flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by the Government of Iran. Two entities previously identified or designated under Treasury authorities that are part of the shipping sector of Iran are the National Iranian Tanker Company and the Islamic Republic of Iran Shipping Lines.

We anticipate that regulations to be promulgated will define “shipbuilding sector of Iran” to include activities involving the construction of seagoing vessels, including oil tankers and cargo vessels, in Iran. [06-03-13]

294. How will I know if someone is part of Iran’s energy, shipping, or shipbuilding sectors or is a port operator in Iran?

Persons determined to be part of Iran’s energy, shipping, or shipbuilding sectors, or a port operator in Iran for purposes of section 1244(c) will be identified as such on the SDN List. Knowingly providing certain significant support to persons determined to be part of Iran’s energy, shipping, or shipbuilding sectors, or a port operator in Iran will have exposure to sanctions, unless the transaction is excepted (see also Q&A 297). [06-03-13]

[^ TOP](#)

295. What are or goods or services used in connection with Iran’s energy, shipping, or shipbuilding sectors for purposes of section 1244(d)(3)?

We anticipate that regulations to be promulgated will define goods and services used in connection with Iran’s energy, shipping and shipbuilding sectors to include:

- a. Energy Sector: In the case of Iran’s energy sector, goods or services that contribute to,
 - Iran’s ability to develop its domestic petroleum resources;
 - The maintenance or expansion of Iran’s domestic production of petroleum products; and
 - Iran’s ability to import or export petroleum or petroleum products.
- b. Shipping Sector: In the case of Iran’s shipping sector,
 - The provision of crude and product tankers to Iran;
 - The provision of registry, flagging, or classification services of any kind;
 - The supervision of and participation in the repair of ships and their parts;

- The inspection, testing, and certification of marine equipment materials and components;
- The carrying out of surveys, inspections, audits and visits, and the issuance, renewal or endorsement of the relevant certificates and documents of compliance, as they relate to ships and shipping; and
- Any other goods or services relating to the maintenance, supply, bunkering, and docking of vessels flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by, or for or on behalf of the Government of Iran (GOI) or an Iranian person.

- c. Shipbuilding Sector: In the case of Iran's shipbuilding sector,
- The building and refit of vessels;
 - The provision or refit of items such as (i) steam turbines and their parts for marine propulsions, (ii) marine propulsion engines and parts used solely or principally with them, (iii) other gas turbines for marine propulsion, (iv) ship or boat propellers and blades, and (v) direction finding compasses and other navigational instruments and appliances solely for the maritime industry;
 - Other goods used in connection with building and propulsion of vessels; and
 - Technical assistance and training relating to, and financing of, the building, maintenance or re-fitting of vessels.

Sections 1244(d)(1) and (2) of IFCA make sanctionable certain transactions for the sale, supply, or transfer to or from Iran of such goods and services if they are significant goods or services used in connection with Iran's energy, shipping, or shipbuilding sectors. (See Q&A 289 above for an interpretation of "significant.") The provision of goods or services identified above could be sanctionable regardless of whether any person involved in the transaction has been determined to be part of Iran's energy, shipping, or shipbuilding sectors. [06-03-13]

296. Will payment for bunkering of third-country ships carrying non-sanctionable goods to or from Iran be subject to sanctions?

If a non-Iranian vessel is transporting non-sanctionable goods to or from Iran, bunkering in a third country will not be subject to sanctions provided that no other sanctionable activity is involved. [06-03-13]

297. Are there any exceptions to the sanctions provisions of section 1244 of IFCA?

The following transactions are excepted from the provisions of section 1244 of IFCA.

- Transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran.
- The export of petroleum or petroleum products from Iran to a country with a significant reduction exception under section 1245(d)(4)(D)(i) of the National Defense Authorization Act for Fiscal Year 2012.
- A significant financial transaction conducted or facilitated by a foreign financial institution (FFI), provided that a significant reduction exception under 1245(d)(4)(D)(i) of the National Defense Authorization Act For Fiscal Year 2012 (NDAA) applies to the country with primary jurisdiction over

the FFI and the financial transaction is for trade in goods or services (i) between Iran and the country with primary jurisdiction over the FFI and (ii) not otherwise subject to sanctions under the law of the United States, and any funds owed to Iran as a result of the trade are credited to an account located in the country with primary jurisdiction over the FFI. We anticipate the implementation of these trade requirements to be similar to the trade requirements set forth in the IFSR, in particular 31 CFR §561.203(j) and 31 CFR §561.203(k).

d. The sale, supply, or transfer of natural gas to or from Iran. Section 1244, however, does set out sanctions that may apply to FFIs that conduct or facilitate a transaction for the sale, supply, or transfer of natural gas to or from Iran unless the financial transaction is for trade in goods or services (i) between Iran and the country with primary jurisdiction over the FFI and (ii) not otherwise subject to sanctions under the law of the United States, and any funds owed to Iran as a result of the trade are credited to an account located in the country with primary jurisdiction over the FFI. We anticipate the implementation of these trade requirements to be similar to the trade requirements set forth in the IFSR, in particular 31 CFR §561.203(j) and 31 CFR §561.203(k).

e. Certain activities relating to the pipeline project to supply natural gas from the Shah Deniz gas field in Azerbaijan to Europe and Turkey. [06-03-13]

Sanctions Relating to the Sale, Supply, or Transfer of Certain Materials to or from Iran

IFCA provides for sanctions involving the sale, supply, or transfer of certain materials to or from Iran.

298. What materials are considered graphite, raw or semi-finished metals?

For purposes of IFCA, we anticipate that regulations to be promulgated will define graphite, raw or semi-finished metals described in section 1245(d) of IFCA to include steels; aluminum metal and its alloys; base metals of single or complex borides of titanium; beryllium metal and its alloys; boron metal and its alloys; cobalt metal and its alloys; copper infiltrated tungsten metal; copper-beryllium metal; germanium metal and its alloys; graphites; hastelloy; inconel; magnesium metal and its alloys; molybdenum metal and its alloys; neptunium-237 metal and its alloys; nickel metal and its alloys; nickel aluminide metals; niobium metal and its alloys; niobium-titanium filaments; plutonium metal and its alloys; porous nickel metal; silver infiltrated tungsten metal; tantalum metal and its alloys; tellurium metal and its alloys; titanium aluminide metals; titanium metal and its alloys; tungsten metal, tungsten carbide metal, and their alloys; uranium titanium alloy metals; and zirconium metal and its alloys and compounds. [06-03-13]

299. What are considered precious metals?

For purposes of IFCA, we anticipate that regulations to be promulgated will define the term “precious metals” to include silver (including silver plated with gold or platinum) unwrought or in semi-manufactured forms or in powder form; gold (including gold plated with platinum) unwrought or in semi-manufactured forms or in powder form; base metals or silver, clad with gold, not further worked than semi-manufactured; platinum, unwrought or in semi-manufactured forms, or in

powder form; iridium; osmium; palladium; rhodium; ruthenium; base metals, silver or gold, clad with platinum, not further worked than semi-manufactured; waste and scrap of precious metal or of metal clad with precious metals, other waste and scrap containing precious metal or precious-metal compounds, of a kind used principally for the recovery of precious metal. [06-03-13]

[^ TOP](#)

300. For purposes of sanctions under section 1245, how will I know which sectors are controlled by Iran’s Islamic Revolutionary Guard Corps?

By July 1, 2013, a report will be published in the Federal Register with respect to which sectors of the Iranian economy are controlled directly or indirectly by Iran’s Islamic Revolutionary Guard Corps. [06-03-13]

301. How will the determination be made as to whether materials are used in a manner that would make them subject to sanctions under section 1245 of IFCA?

A FFI, prior to conducting or facilitating a significant financial transaction for the sale, supply, or transfer to or from Iran of the materials will need to undertake due diligence to ensure that the transaction does not involve the materials listed in section 1245(d) – as described in part in Q&A 298 – being sold, supplied, or transferred, directly or indirectly, to or from Iran for sanctionable uses under section 1245. [06-03-13]

302. Are there any exceptions to section 1245 of IFCA?

A person will not be subject to sanctions under section 1245 of IFCA if a determination is made by the Department of the Treasury or the Department of State, as appropriate, that the person has established and enforced official policies, procedures, and controls to ensure that the person does not sell, supply, or transfer to or from Iran, or facilitate or conduct a significant financial transaction to sell supply, or transfer to or from Iran, materials listed in section 1245 as sanctioned under section 1245. The Department of the Treasury or the Department of State, as appropriate, will make this determination on a case by case basis as part of an investigation or enforcement action by the relevant Department. [06-03-13]

[^ TOP](#)

Sanctions Relating to Insurance, Reinsurance, or Underwriting

303. Which insurance, reinsurance, or underwriting activities are potentially subject to sanctions under section 1246(a)(1)?

A number of insurance activities are subject to sanctions under IFCA, including providing insurance, reinsurance, or underwriting services to persons on the SDN List sanctioned for activities with respect to Iran. [06-03-13]

304. Are there exceptions to insuring, reinsuring, or underwriting sanctioned activities?

Yes. IFCA includes the following exceptions to insuring, reinsuring, or underwriting sanctioned activities.

a. Transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran can be insured, reinsured, or underwritten.

b. A person that provides insurance, reinsurance, or underwriting services to sanctioned activity, if a determination is made by the Department of the Treasury or the Department of State, as appropriate, that the person has established and enforced official policies, procedures, and controls to ensure that the person does not underwrite or enter into a contract to provide insurance or reinsurance for activities targeted under section 1246 of IFCA. The Department of the Treasury or the Department of State, as appropriate, will make this determination on a case by case basis as part of an investigation or enforcement action by the relevant Department. [06-03-13]

Sanctions Relating to FFIs that Facilitate Transactions with SDNs

305. Sanctions under section 1247 of IFCA apply to FFIs that facilitate financial transactions on behalf of an Iranian person on the SDN List. How does the Executive Order relate to section 1247?

The E.O. tightens the financial sanctions applicable to FFIs under section 1247 of IFCA. (See Q&A 312 below for a discussion of the applicable financial sanctions and exceptions.) [06-03-13]

[^ TOP](#)

Executive Order

306. How does the Executive Order relate to the IFCA provisions?

The E.O. provides additional tools related to the IFCA provisions by:

- a. Authorizing prohibitions or restrictions on the importation of goods; and
- b. Implementing the statutory requirements of section 105C of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, as added by section 1249 of IFCA, by blocking the property and interests in property and suspending the entry into the United States of persons

determined to have engaged, on or after January 2, 2013, in corruption or other activities relating to the diversion of goods intended for the Iranian people or the misappropriation of proceeds from the sale or resale of such goods. [06-03-13]

307. In addition to implementing certain IFCA provisions, what else does the Executive Order do?

In addition to implementing IFCA, the E.O. authorizes both new sanctions with respect to Iran and the broadening of existing sanctions.

The new sanctions under the E.O. target significant transactions related to (1) the purchase or sale of Iranian rials and derivative, swap, future, forward, or other similar contracts whose value is based on the exchange rate of the Iranian rial, as well as the maintenance of significant funds and accounts outside the territory of Iran denominated in the Iranian rial (see Q&A 309 below), and (2) Iran's automotive sector (see Q&As 310 and 311 below).

The broadened sanctions under the E.O. allow for the imposition of sanctions on:

- a. Persons that materially assist certain Iranian persons on the SDN List (see Q&A 308 below);
- b. Persons that materially assist certain other persons whose property and interests in property are blocked under Executive Order 13599 and the E.O. (see Q&A 308 below); and
- c. FFIs that knowingly conduct or facilitate a significant financial transaction on behalf of an Iranian person included on SDN List, and certain other persons whose property and interests in property are blocked under Executive Order 13599 or the E.O. (see Q&A 312 below). [06-03-13]

Sanctions Relating to the Provision of Material Assistance to Certain Persons

308. What are the implications of the material assistance provision of the Executive Order?

Subsection 2(a)(i) of the E.O. authorizes the Department of the Treasury to block the property and interests in property of persons determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, (i) Iranian persons included on the SDN List as well as other persons included on the SDN List whose property and interests in property are blocked pursuant to Executive Order 13599, in both cases other than Iranian depository institutions whose property and interests in property are blocked solely pursuant to Executive Order 13599, and (ii) persons whose property and interests in property are blocked pursuant to subsection 2(a)(i) of the E.O. Certain activities relating to the pipeline project to supply natural gas from the Shah Deniz gas field in Azerbaijan to Europe and Turkey are excepted from the material support provision of the E.O.

In implementing this provision, the United States Government will take appropriate steps to avoid, among other things, undue impacts on the access of the people of Iran to humanitarian items, telecommunications, and other basic services. [06-03-13]

Sanctions Relating to Certain Transactions Involving the Iranian Rial

309. What transactions involving the Iranian rial will be subject to sanctions?

FFIs risk correspondent and payable-through account and blocking sanctions for (i) knowingly conducting or facilitating, on or after July 1, 2013, significant transactions related to the purchase or sale of Iranian rials or a derivative, swap, future, forward, or other similar contract whose value is based on the exchange rate of the Iranian rial, or (ii) maintaining, on or after July 1, 2013, significant funds or accounts outside the territory of Iran denominated in the Iranian rial. [06-03-13]

[^ TOP](#)

Sanctions Relating to Iran's Automotive Sector

310. What is considered Iran's automotive sector for purposes of the Executive Order?

The E.O. authorizes the imposition of correspondent and payable-through account and Iran Sanctions Act-style sanctions for certain transactions, on or after July 1, 2013, for the sale, supply, or transfer to Iran of significant goods or services used in connection with Iran's automotive sector. The E.O. defines the automotive sector of Iran as the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles. [06-03-13]

311. What are goods or services used in connection with Iran's automotive sector for purposes of the E.O.?

We anticipate that regulations to be promulgated will define goods or services used in connection with Iran's automotive sector to include goods or services that contribute to (i) Iran's ability to research, develop, manufacture, and assemble light and heavy vehicles, and (ii) the manufacturing or assembling of original equipment and after-market parts used in Iran's automotive industry.

The E.O. makes sanctionable certain transactions for the sale, supply, or transfer to Iran of "significant" goods or services used in connection with the automotive sector of Iran. (See Q&A 289 above for an interpretation of "significant.") [06-03-13]

Financial Sanctions Relating to Financial Transactions on Behalf of Certain Persons

312. How does the Executive Order tighten the financial sanctions applicable to FFIs under section 1247 of IFCA?

Section 3 of the E.O. tightens the financial sanctions applicable to FFIs under section 1247 of IFCA and provides for correspondent and payable-through account sanctions on FFIs that knowingly conduct or facilitate a significant financial transaction on behalf of an Iranian person included on the SDN List (other than Iranian depository institutions whose property and interests in property are blocked solely pursuant to Executive Order 13599) or any other person included on the SDN List whose property and interests in property are blocked pursuant to Executive Order 13599 (other than Iranian depository institutions whose property and interests in property are blocked solely pursuant to Executive Order 13599) or subsection 2(a)(i) of the E.O.

The following transactions would not be subject to sanctions under this section of the E.O.:

- a. Transactions for the provision of agricultural commodities, food, medicine, or medical devices to Iran.
- b. A significant financial transaction conducted or facilitated by a FFI for the purchase of petroleum or petroleum products from Iran if a significant reduction exception under section 1245(d)(4)(D) of the NDAA applies to the country with primary jurisdiction over such FFI and the financial transaction is for trade between Iran and the country with primary jurisdiction over the FFI, and any funds owed to Iran as a result of the trade are credited to an account located in the country with primary jurisdiction over the FFI. We anticipate the implementation of these trade requirements to be similar to the trade requirements set forth in the IFSR, in particular 31 CFR § 561.203(j) and 31 CFR § 561.203(k).
- c. A significant financial transaction conducted or facilitated by a FFI for the sale, supply, or transfer of natural gas to or from Iran only if the financial transaction is solely for trade between the country with primary jurisdiction over the FFI and Iran, 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 FFI. We anticipate the implementation of these trade requirements to be similar to the trade requirements set forth in the IFSR, in particular 31 CFR § 561.203(j) and 31 CFR § 561.203(k).
- d. Certain activities relating to the pipeline project to supply natural gas from the Shah Deniz gas field in Azerbaijan to Europe and Turkey. [06-03-13]