

Iran Sanctions Expanded by the National Defense Authorization Act for Fiscal Year 2013

Late on 2 January 2013, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2013 (the "2013 NDAA"). As of 1 July 2013, the 2013 NDAA will significantly increase the range of Iran-related transactions that can attract US extraterritorial sanctions. It will do so primarily by making significant transactions in any currency with an Iranian Specially Designated National ("SDN") (i.e., Iranian persons included on the list of specially designated nationals and blocked persons maintained by US Treasury's Office of Foreign Assets Control – "OFAC") a basis for designation by OFAC. An exception will apply for certain transactions with banks that are SDNs of Iran but not weapons of mass destruction ("WMD"), terror or human rights SDNs. In total, the SDN list contains hundreds of Iranian SDNs. The 2013 NDAA also expands the risk of designation in regard to a range of specific proscribed activities, through a series of overlapping and redundant designation provisions. Effectively, the 2013 NDAA repeats the same core set of sanctions multiple times, providing the President with a range of options for addressing specific proscribed conduct. The end result is a major increase in the US secondary boycott against Iran, i.e., the use of sanctions to deter non-US persons from entirely non-US business with US sanctions targets in Iran. As of yet, countries that continue to trade with Iran have not protested or threatened any counter-measures, but perhaps that will change as the 1 July 2013 effective date approaches.

We summarize below the Iran-related provisions of the 2013 NDAA that appear particularly significant.

Imposes a blocking requirement

The 2013 NDAA calls upon the President (through OFAC) to designate as an SDN any person that OFAC determines, after 1 July 2013, to:

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- Constitute part of the energy, shipping, or shipbuilding sectors of Iran;
- Operate a port in Iran; or
- Knowingly provide significant financial, material, technological, or other support to, or goods or services in support of the above-listed persons or any other Iranian person listed as an SDN (except for banks that are SDNs of Iran but not WMD, terror or human rights SDNs).

Imposes CISADA sanctions on persons determined to be involved in certain proscribed activity

The 2013 NDAA calls upon the President (through the State Department) to impose 5 of the 12 sanctions available under the Comprehensive Iran Sanctions, Accountability, and Divestment Act ("CISADA") against any person that State Department determines after 1 July 2013 to have done any of the following:

- 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 by the National Iranian Oil Company, the National Iranian Tanker Company, and the Islamic Republic of Iran Shipping Lines;
- Sell, supply or transfer, directly or indirectly, to or from Iran:
 - precious metals;
 - graphite, raw or semi-finished metals, or software for integrating industrial processes, that the President determines are (a) used by Iran as a medium for barter, swap, or any other exchange transaction, or (b) listed by Iran as assets for purposes of Iran's national balance sheet; or
 - graphite, raw or semi-finished metals, or software for integrating industrial processes, if such materials are to be used in connection with certain proscribed end-uses (e.g., Iran's energy, shipping or shipbuilding sectors, or Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction) or sold, supplied, or transferred to or from Iranian SDNs (except for banks that are SDNs of Iran but not WMD, terror or human rights SDNs).
- Provide underwriting services or insurance or reinsurance:
 - for any activity with respect to Iran that is subject to sanctions;
 - 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 are imposed [by the 2013 NDAA]";
 - to or for any person for the sale, supply or transfer to or from Iran of graphite, raw or semi-finished metals, or software for integrating industrial processes for which sanctions are imposed under the 2013 NDAA;
 - to or for persons sanctioned by the US in connection with Iran's WMD proliferation or support for international terrorism; or

- to or for Iranian SDNs (except for banks that are SDNs of Iran but not WMD, terror or human rights SDNs).

Prohibits and/or restricts the operation of US correspondent accounts by foreign financial institutions that conduct or facilitate significant financial transactions related to certain proscribed activity.

The 2013 NDAA calls upon the President (through OFAC) to deny access to US correspondent accounts to foreign financial institutions that OFAC determines to have facilitated, after 1 July 2013, a significant financial transaction relating to:

- Any of the above referenced proscribed activities, or
- Any Iranian SDN (except for banks that are SDNs of Iran but not WMD, terror or human rights SDNs).

Exceptions

The 2013 NDAA includes the following exceptions from the imposition of sanctions even if a person engages in proscribed activity (but only under the NDAA, without creating a general exception from all other US sanctions risks).

- The exportation of petroleum or petroleum products from Iran to a country to which the exception under section 1245(d)(4)(D)(i) of the NDAA for Fiscal Year 2012 (the "NDAA Exception") applies at the time of the exportation of the petroleum or petroleum products.
- A financial transaction conducted or facilitated by a foreign financial institution if, at the time of the transaction:
 - the NDAA Exception applies to the country with primary jurisdiction over the foreign financial institution (the "Primary Country");
 - the financial transaction is for the trade of goods and services between the Primary Country and Iran and is not otherwise prohibited by US law; and
 - any funds owed to Iran as a result of such trade are credited to an account located in the Primary Country.
- 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 President may also provide for an exception from the imposition of sanctions under this section for reconstruction assistance or economic development for Afghanistan.
- The 2013 NDAA provides that the President may waive the imposition of sanctions for a renewable period of 180 days if vital to US national security.

Due diligence exception

The 2013 NDAA also provides for an exception to the imposition of sanctions on persons who engage in proscribed activities either: (a) related to trade in precious metals and materials, or (b) in connection with the provision of underwriting, insurance or reinsurance, if "the President determines that the person has exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not [engage in the proscribed activity] or conduct or facilitate a financial transaction for such [proscribed activity]."

Shah Deniz exception

The 2013 NDAA does not impose any sanctions on activity relating to the Shah Deniz natural gas field in Azerbaijan's sector of the Caspian Sea and related pipeline projects to bring the gas from Azerbaijan to Europe and Turkey.

Other Provisions

The 2013 NDAA also includes other provisions related to Iran sanctions such as: the imposition of sanctions on the Islamic Republic of Iran Broadcasting and persons engaged in the diversion of goods intended for the people of Iran; additional waiver authority for the President for sanctions under the National Defense Authorization Act of 2012, etc. We expect that OFAC will issue additional guidance regarding the implementation and scope of particular 2013 NDAA-imposed measures.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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