

Update

The US significantly expands the extraterritorial scope of sanctions with enactment of the Iran Freedom and Counter-Proliferation Act of 2012

On January 2, 2013, President Obama signed into law the Iran Freedom and Counter-Proliferation Act of 2012 (the “IFCPA”) as part of the National Defense Authorization Act for the fiscal year 2013. The IFCPA represents a significant development in the US government’s efforts to expand the extra-territorial reach of US Iran sanctions, which now extend to the entirety of the Iranian energy, shipping and ship-building industries.

Most of the IFCPA sanctions become effective July 1, 2013, 180 days after its enactment. In this update, we provide an overview of the key provisions of the IFCPA.

Broad new sanctions applicable to Iranian industries

Section 1244 of the IFCPA designates entities that operate ports in Iran and entities in the energy, shipping, and shipbuilding sectors of Iran, as “entities of proliferation concern.” The IFCPA requires the President to block all property and transactions of any person or entity who is determined after July 1, 2013 to be:

- part of the energy, shipping, or shipbuilding sectors of Iran
- operating a port in Iran
- knowingly providing significant financial, material, technological, or other support, goods or services in support or for the benefit of persons or entities identified above, or to Iranians identified as Specially Designated Nationals (“SDNs”) by the US Office of Foreign Assets Control (“OFAC”).

Section 1244 also requires the President to impose sanctions against (1) any person who sells, supplies or transfers “significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran,” and (2) foreign financial institutions that facilitate significant financial transactions for the sale, supply or transfer to or from Iran of goods or services described therein.

The Section 1244 sanctions are subject to certain exceptions and do not apply to the sale, supply or transfer of natural gas to and from Iran, but they do apply to foreign financial institutions that facilitate financial transactions for the sale, supply or transfer to or from Iran of natural gas. The Section 1244 sanctions also do not apply with respect to certain transactions concerning Iranian petroleum that are exempted pursuant to provisions of the previous National Defense Authorization Act.

New sanctions on dealings with certain materials going to or from Iran

Section 1245 of the IFCPA requires the President to impose sanctions on any person or entity who, after July 1, 2013, knowingly sells, supplies or transfers to or from Iran:

- precious metals
- graphite, raw or semi-finished metals and software for integrating industrial processes used by Iran for barter transactions or listed on the “national balance sheet of Iran”
- graphite, raw or semi-finished metals and software for integrating industrial processes (a) used in connection with the energy, shipping, or shipbuilding sectors of Iran; (b) sold, supplied or transferred to or from an Iranian SDN; or (c) used in connection with the Iranian nuclear, military or ballistics missile program

Section 1245 also requires the President to impose sanctions against foreign financial institutions that facilitate significant financial transactions for the sale, supply or transfer to or from Iran of the goods or services described therein.

Notably, Section 1245 provides an exception for persons exercising due diligence in establishing and enforcing official policies, procedures, and controls to prevent violations of Section 1245.

New sanctions on underwriting services or insurance or reinsurance transactions

Section 1246 of the IFCPA requires the President to impose sanctions on any person that, after July 1, 2013, knowingly provides underwriting services or insurance or reinsurance:

- for any activity that violates any US sanctions on Iran
- to or for any person with respect to the Iranian energy, shipping or shipbuilding activities for which sanctions are imposed under Section 1244
- to or for any person with respect to the sale, supply, or transfer of materials described in Section 1245
- to or for any person designated for sanctions in connection with Iran’s proliferation of weapons of mass destruction or support for international terrorism
- to or for any Iranian persons listed as a SDN (other than certain Iranian financial institutions)

Section 1246 provides an exception for underwriters and insurance providers who exercise due diligence in establishing policies, procedures and controls to prevent violations of Section 1246.

New sanctions on foreign financial institutions that facilitate financial transactions on behalf of SDNs

Section 1247 of the IFCPA imposes sanctions on foreign financial institutions that knowingly facilitate financial transactions on behalf of SDNs (except for certain Iranian financial institutions).

Other provisions

Section 1248 imposes sanctions on the Islamic Republic of Iran Broadcasting and its president, both of which are now included on the SDN list.

Section 1249 imposes sanctions on persons engaged in the diversion of goods, including agricultural commodities, food, medicine, and medical devices, intended for the people in Iran.

Section 1253 grants the President the authority to impose penalties provided in the IEEPA to any person that violates, attempts to violate, conspires to violate or causes a violation of the IFCPA. Thus, the President will have the authority to impose civil penalties of \$250,000 per violation, or an amount that is twice the amount of the transaction that is the basis for the violation and criminal penalties of \$1 million per violation and/or twenty years imprisonment for willfully committing the unlawful act.

The IFCPA implementation

Many terms in the IFCPA are undefined, many of the determinations the President will make are subject to discretion, and most of the new sanctions will not be imposed until July 1, 2013. It is likely that in the months ahead the President will issue related Executive Orders and/or that OFAC will promulgate related regulations that will further clarify the scope and enforcement approach for these sanctions. Thus, while the scope of the provisions in the IFCPA is potentially sweeping, it remains to be seen how the IFCPA's prohibitions will be implemented in practice

Further information

If you would like further information on any issue raised in this update please get in touch with any of the key contacts listed on our sanctions microsite, sanctions.clydeco.com or contact:

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