



CLIENT ALERT:
FREQUENTLY ASKED QUESTIONS (“FAQs”)
REGARDING ENFORCEMENT OF U.S. TRADE SANCTIONS
AGAINST IRAN

March 15, 2013

OVERVIEW

The U.S. trade sanctions applicable to Iran are not encapsulated in any single statute or other easily identifiable source, but rather are incorporated into a rather complex web of statutes, regulations and Executive Orders. To the extent there is any universal theme, it is that the sanctions pertaining to Iran have become increasingly expansive in their scope, both in terms of the trade and transactions to which they apply, as well as their increasingly extraterritorial effect in their application to non-U.S. persons / entities.

In terms of a general overview as to the progression of U.S. sanctions over the last several years, the initial U.S. sanctions regimes were directed primarily at “U.S. persons,” consisting of U.S. companies, U.S. persons wherever located, and anyone actually in the United States. U.S. persons were subject to, *inter alia*, the Iran Sanctions Act of 1996 (“ISA”) and regulations enforced by the Office of Foreign Assets Control (“OFAC”), an agency within the U.S. Treasury Department which has historically had the primary responsibility for enforcing U.S. sanctions. Pursuant to these regulations and legislation, U.S. persons are and have been for years prohibited from engaging in virtually any transaction having a connection to Iran.

The U.S. Government’s position in terms of limiting sanctions primarily to U.S. persons began to change rather dramatically with the passage of the Comprehensive Iran Sanctions, Accountability and Divestment Act (“CISADA”). CISADA was signed into law in July 2010 and amended the ISA in a number of critical aspects. CISADA was significant because, *inter alia*, it provided for sanctions against foreign persons and was unique because the State Department was charged with the responsibility for enforcing a number of the sanctions provided therein, as opposed to OFAC.

Since the enactment of CISADA, the U.S. has continued its effort to place pressure on Iran by prescribing additional sanctions directed at foreign persons. These efforts have taken the form of further statutory enactments including, but not limited to, the Iran Threat Reduction and Syria Human Rights Act of 2012 (“ITRASHA”), the National Defense Authorization Act for 2012 (“NDAA 2012”), and the National Defense Authorization Act for 2013 (“NDAA 2013”). Additionally, the Iranian sanctions regime has been supplemented, and, in many instances, significantly expanded, by a series of Executive Orders authorizing sanctions against foreign persons. These Executive Orders include E.O. 13590 issued in November 2011, E.O. 13608 issued in May 2012 and E.O. 13622 issued in July 2012, amongst others.

These FAQs are specifically intended to deal with U.S. sanctions measures. EU sanctions measures also exist and EU Regulation 267/2012, as amended by EU Regulation 1263/2012, is in force across the European Union’s Member States. Members who are subject to EU law need to comply strictly with the EU and national EU/EEA Member State provisions. Sanctions legislation or regulations of other relevant jurisdictions may also be applicable, such as those of the country where the activity is to be performed including the law of the flag state; or the country of the Member’s domicile etc.

The below FAQs summarize the more relevant statutory enactments and E.O.s as to foreign persons and provide useful comments on some of the more practical implications of the sanctions regime. The FAQs below should not, however, be considered a comprehensive analysis of the sanctions implicated by any potential transaction. It is recommended that anyone of whatever nationality considering carrying out any business with an Iranian connection seek legal advice to avoid inadvertent violations and/or unexpected delays and disruptions to their trade. With that background, the following FAQs may be of assistance.

FAQs

1. WHAT ARE THE BASES FOR ENFORCEMENT OF TRADE SANCTIONS AGAINST IRAN UNDER U.S. LAW?

As explained above, the current body of U.S. trade sanctions against Iran does not derive from any single source, but rather from a rather wide array of statutes, regulations and Executive Orders.

2. WHAT IS AN EXECUTIVE ORDER?

An Executive Order is a decree by the President of the United States that has the force of law even though it has not been issued through the normal and customary legislative process.

3. WHO IS RESPONSIBLE FOR ENFORCEMENT OF U.S. TRADE SANCTIONS IN THE U.S.?

Depending on the source of the sanction, enforcement of U.S. trade sanctions can be delegated to the State Department, the Treasury Department, or both, as well as other departments or agencies. As a very general rule, however, where the sanction relates to foreign persons or the carriage of petroleum or petrochemical products, the State Department is generally charged with primary enforcement responsibility.

4. ON WHOM MAY SANCTIONS BE IMPOSED?

As a general proposition, sanctions may be imposed on the foreign person (which includes a natural person, a business organization and its successor, a governmental entity operating as a business enterprise or a successor to any such entity) engaging in the sanctionable conduct. According to guidance from the State Department, all types of business organizations and enterprises fall within this broad definition of person including without limitation a corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, and/or guarantor.

Additionally, sanctions may be imposed on any successor entity to the primary sanctioned target, any person who owns or controls the primary sanctioned target (provided that person knew or should have known that the primary target engaged in such conduct), or any person under common ownership or control with the sanctioned target, provided that person knowingly participated in the sanctionable conduct.

Furthermore, certain sanctions (including those imposed under the ISA, as amended by CISADA and ITRASHA) include the possibility of excluding the foreign person's corporate officers, principals and controlling shareholders from entering the U.S. and imposing sanctions on its principal executive officers. With respect to the latter, the sanctions against the principal officers can consist of the same type of financial sanctions that can be imposed against the sanctioned person (see FAQ #5) such as blocking any property of the officer that comes within the U.S. and denying the officer access to the U.S. banking system.

5. WHAT TYPES OF SANCTIONS CAN BE IMPOSED ON FOREIGN PERSONS?

Due to the fact that the potential sanctions derive from various sources, the type of sanctions that might be imposed will often depend on which statute or E.O. was violated. 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) preventing the corporate officers, principals or controlling shareholders of the foreign person from entering the U.S.;
- (iv) imposing sanctions on the principal executive officers of the foreign person; and
- (v) in some instances prohibiting a vessel from entering the U.S. for a period of two years (*see* FAQ # 11 below).

6. DO FOREIGN PERSONS ALSO FACE CIVIL OR CRIMINAL PENALTIES?

The list of potential sanctions identified in the recent E.O.s and ISA, as amended by CISADA and ITRASHA, do not include the imposition of civil or criminal penalties against foreign persons. However, with the enactment of NDAA 2013, which takes effect on July 1, 2013, foreign persons may face the same civil and criminal penalties authorized under the International Emergency Economic Powers Act ("IEEPA").

Under IEEPA, "persons" are subject to the imposition of civil and criminal penalties for violating, attempting to violate, conspiring to violate or causing a violation of any sanction regulation enforced by OFAC. The OFAC regulations generally consist of the sanctions directed at U.S. persons, and insofar as Iran is concerned, prohibit U.S. persons from engaging in virtually any transaction having a connection to Iran or a person/entity/vessel on the Specially Designated Nationals list ("SDN" – see FAQ #8), including exporting any services to or for the benefit of Iran or a SDN. (OFAC administers sanctions regulations pertaining to transactions with other countries, and thus the penalties that can be imposed under the IEEPA are not limited to Iranian transactions, but for purposes of this FAQ, the focus is on Iran.)

Historically the IEEPA was considered as applying only to U.S. persons. However, because the IEEPA on its face does not limit its application to only "U.S. persons," the U.S. authorities very recently have taken the position that any person who can be considered subject to the general jurisdiction of the U.S. (*e.g.* a company that does substantial U.S.-related business even if not located in the U.S.) may be subject to the IEEPA for "causing" a U.S. person to violate the sanction regulations. Such a person may be subject to a civil fine to the greater of \$250,000 or twice the amount of the transaction at issue and criminal penalties up to \$1 million per violation with a potential imprisonment up to twenty (20) years per violation.

By way of example, certain foreign banks were alleged by OFAC to have violated the IEEPA by altering U.S. dollar wire transfer details to remove any reference to the nexus between the transaction and a sanctioned country. OFAC alleged that this conduct caused the U.S. banks processing the transfers to violate the OFAC regulations because the U.S. banks (unknowingly) exported financial services from the U.S. for the benefit of Iran or other sanctioned countries, and as such, the foreign banks caused a violation within the scope of the IEEPA. Settlements were eventually reached between OFAC and the foreign banks, but the allegations demonstrate the broad interpretation recently advanced by the U.S. insofar as the IEEPA is concerned and its application to foreign persons.

Consequently, under the IEEPA, a foreign person may be subject to civil and criminal penalties if it otherwise conducts substantial business in the U.S. and "causes" a U.S. person to violate the regulations administered by OFAC. The instances of such conduct may be limited but would include as an example a shipowner or Club which engages in substantial and regular business within the U.S. receiving or making payments in U.S. dollars for any transaction that has a connection to Iran or to an SDN, even though no U.S. persons are involved in the underlying transaction, and manipulating the payment instructions to conceal the fact that the underlying transaction has a connection to Iran or a SDN.

The NDAA 2013 will expand the scope of IEEPA by providing that the IEEPA civil and criminal penalties shall apply to a person who "violates, attempts to violate, conspires to violate, or causes a violation" of the NDAA 2013 or any regulations enacted thereunder. In this way, NDAA 2013 confirms that a foreign person may face civil or criminal penalties in addition to the types of penalties described in FAQ #5.

7. WHAT IS THE MEANING OF KEY TERMS USED IN THE VARIOUS SANCTIONS IMPOSED BY THE U.S.?

Each sanction source may have its own definitions section, but some of the key terms seen in one or more of the sanctions include the following:

- **"Due diligence"** is not defined in any of the legislation but it generally includes an analysis of whether the foreign person had in place sufficient procedures and safeguards to reasonably protect against the possibility of engaging in sanctionable conduct. What is required to exercise due diligence will depend on the circumstances. (See also FAQ#10 for a further discussion on due diligence).
- **"Financial institution"** includes, *inter alia*, an insurance company, including an agency or underwriter, but when the term "foreign financial institution" is used, it typically does not include an insurance company, but rather refers to traditional banking institutions.
- **"Knowingly"** means that a person or entity has actual knowledge, or should have known, of the conduct, the circumstance, or the result. (See also FAQ #9 below discussing further the meaning of "knowingly").
- **"Petrochemical product"** includes any aromatic, olefin, or synthesis gas, and any derivative of such a gas, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea. (For guidance as to specific "petrochemical products" that may be subject to sanctions, please see the State Department's "Sanction Information and Guidance" available at <http://www.state.gov/e/eb/tfs/spi/iran/fs/200316.htm>).
- **"Petroleum resources"** includes petroleum, refined petroleum products, oil or liquefied natural gas, natural gas resources, oil or liquefied natural gas tankers, and products used to construct or maintain pipelines used to transport oil or liquefied natural gas.
- **"Refined petroleum products"** means diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel) and aviation gasoline. (For guidance as to specific "petroleum products" that may be subject to sanctions, please see the State Department's "Sanction Information and Guidance" available at <http://www.state.gov/e/eb/tfs/spi/iran/fs/200316.htm>).
- **"Significantly"** is not defined but the Treasury Department has indicated in its guidance publications that a number of factors are considered in determining "significance," including size, number, and frequency; type, complexity, and commercial purpose; and the ultimate economic benefit conferred on the sanctions target. However, as explained, the State Department (not Treasury) generally has primary responsibility for enforcing the sanctions directed at foreign persons. While one cannot be certain, it is believed likely that the State Department will apply the same factors in assessing whether a transaction is significant.

8. WHAT IS THE U.S. SPECIALLY DESIGNATED NATIONALS ("SDN") LIST?

The SDN list is published by and updated regularly by OFAC which describes the list as follows:

As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers, designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

(A searchable version of the list is available at <http://sdnsearch.ofac.treas.gov/>.) A U.S. person, which again includes a U.S. person wherever located, is prohibited from virtually any transaction having a connection to anyone on the SDN list absent a specific license from OFAC.

The SDN list, in and of itself, does not apply to foreign persons and, therefore, foreign persons are not prohibited from transacting with parties on the SDN list. However, both OFAC and the Department of State have suggested that foreign persons could sustain "reputational damage" if they deal with parties on the SDN list. Further, a foreign person

which “causes” a U.S. person to violate the SDN prohibitions may be subject to civil and criminal penalties under the IEEPA (see FAQ #5). **Additionally**, as of July 1, 2013, the NDAA 2013 incorporates the SDN list into certain of its sanctions provisions, and does prohibit foreign persons from dealing with parties on the SDN list with respect to certain goods and services. (See FAQ# 17). As such, to avoid the imposition of sanctions related to the SDN list, foreign persons should ensure that any transaction with or involving an entity on the SDN list does not come within U.S. jurisdiction (*e.g.*, U.S. dollars routed through a U.S. bank) and also that it is not the type of activity that could lead to the imposition of U.S. sanctions.

9. WHAT DEGREE OF CULPABILITY IS REQUIRED FOR TRADE SANCTIONS TO APPLY UNDER U.S. LAW?

Generally speaking, U.S. sanctions target conduct done “knowingly.” Depending on the requirements of the specific sanction, “knowingly” may require a showing of actual knowledge, whereas in other instances it may be sufficient that the person “should have known” of the conduct, circumstance, or result. There is no test or defined set of factors that will be examined to determine if a person “should have known” of a specific conduct, circumstance or result. It is believed that in assessing the existence of “should have known,” the U.S. authorities will examine, similar to what is examined in a due diligence analysis (see FAQ #10 below), whether the foreign person had in place sufficient procedures and safeguards to reasonably protect against the possibility of engaging in sanctionable conduct.

10. WHAT DOES IT MEAN WHEN A SANCTION PROVIDES AN EXCEPTION FOR THE EXERCISE OF “DUE DILIGENCE” BY THOSE PROVIDING INSURANCE SERVICES?

As explained herein, several sanctions provide that those providing insurance services are not subject to sanctions provided they exercised “due diligence” to reasonably ensure that they do not provide insurance for sanctionable conduct. Due diligence is not specifically defined but for the most part the sanctions having a due diligence exception provide that a person providing underwriting services, insurance or reinsurance is not subject to sanctions if it has established and enforced policies, procedures, and controls to ensure that the person does not provide its services in relation to sanctionable conduct.

While there is no set definition, the State Department has provided guidance on the meaning of the term. That guidance provides several non-exhaustive examples of what steps might be taken to exercise due diligence including, but not limited to, confirming that an entity owned or controlled by Iran is not involved in the transaction, reviewing on a regular basis OFAC’s SDN list, searching commercial databases and verifying ownership structure of unknown companies, and in the case of transportation of crude oil, petroleum or petrochemical products, verifying that Iran is not the origin of the cargo.

The State Department has also advised that due diligence measures could include inserting coverage exclusions for activities associated with sanctionable conduct. The State Department has also suggested that due diligence could include establishing strict underwriting policies and procedures that scrutinize the business activity of prospective insured persons and decline risks that present a “probability” of insuring sanctionable conduct. The State Department guidance is not definitive on precisely the policies or procedures that might demonstrate due diligence, but state that such procedures “may” include “affirmative, rigorously applied” company rules against engaging in sanctionable conduct, instruction of employees regarding prohibited and sanctionable activity with Iran, and active monitoring, inspection and diligence on customers’ activities.

In our view, the lack of definitive requirements from the State Department, coupled with the discretionary language used in the guidance provided when identifying the non-exhaustive list of policies/procedures, indicates that the State Department would consider what measures are practical and appropriate under the circumstances in assessing whether due diligence exists. For instance, a measure such as active monitoring of customers identities might be more feasible in the case of vessel owners, but less so in the insurance context, where an insurer may be expected to be fully aware of who it insures but may encounter practical difficulties in monitoring the day to day activities of their Members. We believe that State Department would have to take practicality into account in assessing whether due diligence was exercised in a particular situation.

11. WHAT CONDUCT IS CURRENTLY SANCTIONABLE WITH RESPECT TO FOREIGN PERSONS ENGAGED IN THE TRANSPORTATION OF CRUDE OIL AND PETROLEUM PRODUCTS FROM IRAN?

- **Transportation of crude oil from Iran:** if a vessel is used to transport crude oil from Iran to another country, a controlling beneficial owner is subject to sanctions if it had “actual knowledge” that the vessel was so used and anyone who otherwise owns, operates, controls or insures such a vessel is subject to sanctions if they “knew or should have known” that the vessel was so used. [ITRASHA]
 - **NOTE:** Guidance from the State Department suggests that the term “from” Iran is not limited to actual loading in Iran but is also intended to capture situations where Iran is the country of origin regardless of the place of loading.
 - **NOTE:** While “storage” is not specifically mentioned, the State Department has suggested that it considers storage of crude oil from Iran to fall within the scope of the sanctions, and thus, it is believed that providing insurance with respect to such storage would also be considered sanctionable to the same extent as insuring the actual transportation.
 - **NOTE:** Sanctions cannot be imposed if the crude oil was transported from Iran to a country holding a “NDAA” waiver from the U.S. at the time of the transportation of the crude oil. The U.S. grants NDAA waivers to countries which have demonstrated that they have significantly reduced their importation of Iranian oil. Currently 20 countries hold NDAA waivers consisting of Belgium, China, France, Germany, Greece, India, Italy, Japan, Malayasia, Poland, Singapore, South Africa, South Korea, Spain, Sri Lanka, Taiwan, The Czech Republic, The Netherlands, The United Kingdom, and Turkey.
 - **Further note:** while there is no definitive ruling or guidance from the State or Treasury Departments, it is believed that an insurer will also not be sanctioned for providing insurance for a transaction that would otherwise be sanctionable save for the existence of a NDAA waiver.
- **Concealing Iranian origin of crude oil and refined petroleum products:** if a vessel is used in a manner that conceals the Iranian origin of crude oil or refined petroleum products transported on the vessel, a controlling beneficial owner is subject to sanctions if it had actual knowledge the vessel was so used and anyone who otherwise owns, operates, controls or insures the vessel is subject to sanctions if they knew or should have known. [ITRASHA]
 - Concealing conduct includes permitting the vessel to suspend the operation of its satellite tracking device.
 - Concealing also includes obscuring or concealing the ownership, operation or control of the vessel by the Government of Iran, the National Iranian Tanker Company, or IRISL, or any other entity determined by the U.S. to be owned or controlled by any of these three. **A person is deemed to have actual knowledge that a vessel is so owned, operated or controlled if the vessel appears on the list of Specially Designated Nationals published by OFAC and updated regularly.** A searchable version of the list is available at <http://sdnsearch.ofac.treas.gov/>.
 - **NOTE:** the sanctions imposed can include barring the vessel engaged in sanctionable activity from “landing” at a U.S. port for **two years** after the sanctions are imposed. “Landing” is not defined, but it is believed that this provision will be broadly construed and could result in a vessel being prohibited from, *inter alia*, entering a U.S. port, docking in a U.S. port or conducting any cargo operations in a U.S. port.

12. CAN INSURERS AND UNDERWRITERS BE SANCTIONED WITH RESPECT TO THE TRANSPORTATION OF CRUDE OIL AND REFINED PETROLEUM PRODUCTS FROM IRAN?

Yes. Underwriters, insurers and reinsurers can be subject to sanctions under the ISA, as amended by CISADA and ITRASHA, for the conduct described in FAQ #11 above. The legislation however provides that sanctions may not be imposed for that conduct with respect to an underwriter, insurer or reinsurer if the person has exercised "due diligence" as discussed in FAQ #10.

13. ARE INSURERS AND UNDERWRITERS SUBJECT TO SANCTIONS FOR ANY OTHER ACTIVITIES RELATING TO TRADE WITH IRAN?

Yes. Underwriters are exposed to sanctions for any of the following conduct:

- Underwriting or entering into a contract to provide insurance or reinsurance for the sale, lease or provision of goods, services, technology, information or support "that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products." Such goods, services and support includes "providing ships or shipping services to deliver refined petroleum products to Iran." [CISADA]
 - **NOTE:** This provision is subject to the "due diligence" exception discussed in FAQ #10 above.)
- Providing insurance or reinsurance to the transportation to or from Iran of any goods "that could materially contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction or support acts of international terrorism." [ITRASHA]
- Providing underwriting services, insurance or reinsurance for the National Iranian Oil Company or the National Iranian Tanker Company or successor entities to either company. [ITRASHA]
 - **NOTE:** This NIOC/NITC provision is also subject to the "due diligence" exception discussed in FAQ #10 above.) Additionally, this provision is subject to an exception for the provision of agricultural commodities, food, medicine or medical devices to Iran or the provision of humanitarian assistance.

In addition to the above, underwriters are facing significant exposure to sanctions once the NDAA takes effect on July 1, 2013. NDAA 2013 provides for sanctions with respect to any person who "knowingly" provides underwriting services, insurance or reinsurance for any activity giving rise to sanctions under the NDAA 2013 **or other existing sanctions** (which would include both statutes and E.O.s), or "*with respect to, or for the benefit of any activity in the energy, shipping, or shipbuilding sectors of Iran for which sanctions are imposed under [the NDAA].*" (The sanctions related to the energy, shipping or shipbuilding sectors are discussed in FAQ #17). The NDAA 2013 also provides for sanctions with respect to any person who knowingly provides insurance with respect to the sale, supply or transfer to or from Iran of any of the prohibited materials covered by the NDAA 2013, *i.e.* such as precious metals, graphite, steel, etc. (See FAQ # 17).

- **NOTE:** The imposition of sanctions on underwriters under NDAA 2013 is again subject to the same due diligence exception discussed in FAQ #10.

14. WHAT OTHER CONDUCT IS CURRENTLY SANCTIONABLE WITH RESPECT TO FOREIGN PERSONS RELATED SPECIFICALLY TO PETROLEUM, PETROLEUM PRODUCTS, AND PETROCHEMICAL PRODUCTS?

While not exhaustive, a synopsis of some of the conduct most relevant to the marine and insurance sectors which could result in sanctions is as follows:

- **Exporting or delivering refined petroleum products to Iran:** knowingly selling or providing to Iran refined petroleum products of certain value or providing goods, services or support of a certain value that “could directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products” including (i) underwriting for the sale, lease or provision of such goods, services or support, (ii) providing ships or shipping services to deliver refined petroleum products to Iran, and (iii) bartering or contracting by which goods are exchanged for goods, including the insurance or reinsurance of such exchange. (See FAQ # 15 for a discussion as to the threshold values required to trigger these sanctions.) [CISADA]
 - **NOTE:** With respect to underwriters and insurance providers, the legislation provides that they cannot be sanctioned for this conduct if they exercised due diligence to ensure that they do not underwrite or enter into a contract to provide insurance or reinsurance for conduct that is sanctionable.

- **Investments related to petroleum resources:** knowingly making an investment meeting certain financial thresholds that “directly and significantly” contributes to the enhancement of Iran’s ability to develop petroleum resources. [CISADA]

- **Goods and services related to Iran’s domestic production of petroleum products and petroleum resources:** knowingly providing goods, services, or support meeting certain financial thresholds that could directly and significantly contribute to the maintenance or enhancement of Iran’s (i) ability to develop petroleum resources located in Iran or (ii) domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries or directly associated infrastructure, including construction of port facilities, railways, and roads, the primary use of which is to support the delivery of refined petroleum products. (See FAQ # 15 for a discussion as to the threshold values required to trigger these sanctions.) [CISADA & E.O. 13590]
 - The U.S. has confirmed that item (ii) is intended to sanction upstream oil and gas activities that go beyond investment to the provision of goods and services. One such example is providing oil field equipment having a value meeting the minimum monetary limits.

- **Goods and services related to Iran’s domestic production of petrochemical products:** knowingly providing goods, services or support that could directly and significantly contribute to the maintenance or expansion of Iran’s domestic production of petrochemical products. [E.O. 13590]
 - **NOTE:** The monetary threshold for this sanction is slightly lower than for other sanctions. To be sanctionable, these goods or services provided need only have a fair market value of at least \$250K or an aggregate value of \$1 million in a 12-month period. (See FAQ #15 for a discussion as to the threshold values required to trigger these sanctions.)

- **Transactions related to purchases or acquisition from Iran:** knowingly engaging in a “significant transaction for the purchase or acquisition” from Iran of petroleum, petroleum products, or petrochemical products. [E.O. 13622]
 - **NOTE:** While this sanction does not specifically refer to transportation, insurance or shipping services, the State Department has indicated informally that this sanction is to be read as broadly as possible and that transporting product (and insuring that transportation) is so integral to purchasing or acquiring that a vessel owner/charterer or insurer might fall within the scope of this sanction.
 - **NOTE:** Further, the State Department has suggested that “storage” can be considered part of transportation. As such, providing storage (or insuring vessels for such storage) could also be viewed as being integral to the underlying purchase or acquisition such that a person providing such storage or insurance might fall with the scope of this sanction.

- **NOTE:** Additionally, guidance from the State Department suggests that the term “from” Iran is not limited to actual loading in Iran but is also intended to capture situations where Iran is the country of origin regardless of the place of loading.
- **Transactions related to purchases or acquisition of Iranian origin bunkers or bunker blends with Iranian origin components:** the purchase of Iranian origin bunkers potentially falls under the prohibition against knowingly engaging in a “significant transaction for the purchase or acquisition” from Iran of petroleum, petroleum products, or petrochemical products. [E.O. 13622]
 - **NOTE:** Informal discussions with the State Department suggest that there is a risk that the purchase of bunkers in Iran or of Iranian origin bunkers anywhere in the world may be regarded as a potential violation of U.S. sanctions, if the purchase is done “knowingly” and is “significant.” A definition of “knowingly” appears in FAQ 7 and while “significant” is not defined, FAQ 7 also provides guidance as to the meaning of that term. Similar considerations apply to the purchase or acquisition of bunker blends containing Iranian origin bunkers.
 - **NOTE:** When purchasing bunkers it would be therefore prudent to inquire as to the origin of the bunkers and whether the bunkers contain any Iranian origin components.
 - **NOTE:** While there is no State Department confirmation on this point, it would seem logical that the purchase of bunkers with Iranian origin components, but blended in a country which holds a NDAA 2012 waiver permitting it to purchase Iranian petroleum, would not be in violation of U.S. sanctions.
- **Dealings with NIOC, NICO or the Central Bank of Iran:** knowingly and materially assisting, sponsoring or providing financial, material or technological support for, or goods or services in support of, NIOC, Naftiran Intertrade Company, or the Central Bank of Iran, and/or the purchase or acquisition (regardless of the channel) of U.S. bank notes or precious metals by the Government of Iran. [E.O. 13622]

15. WHAT IS THE BASIS FOR THE FINANCIAL THRESHOLDS FOR VIOLATIONS OF THE SANCTIONS REFERENCED ABOVE?

As outlined above, several sanctions provide for the imposition of penalties if certain goods, services or support are provided to Iran with a value that exceeds a financial threshold, usually \$1M per transaction or \$5M in the aggregate over a twelve (12) month period.

In the case of transportation services it is regrettably not clear whether the financial threshold would be based on the value of the transportation provided (for example, ocean freight) or on the value of the prohibited goods carried. The sanctions themselves do not address this point and in informal discussion neither OFAC nor the Department of State has been willing to take a definitive stance.

In the case of insurance services, the State Department has previously suggested that the financial threshold would be based on the value of the premium received by the insurer, although the guidance did not indicate whether the total value would be evaluated on a fleet-wide or vessel specific basis. The Acts and E.O.s with financial thresholds all refer to values for a single transaction and aggregate values for a 12 month period. However, absent definitive advice from the State Department in respect of the value for insurance premiums it is not possible to give accurate advice as to whether the relevant transactional value for the purposes of the financial thresholds would be the annual insurance premium or such premium pro-rated for the period of the offending voyage or voyages. Further, the guidance was provided before the enactment of the NDAA 2013 which broadens the potential exposure faced by those providing insurance services. (See FAQ #13). Under the NDAA 2013 (which takes effect on July 1, 2013), underwriters, insurers and reinsurers face potential sanctions for providing services with respect to any transaction that is itself sanctionable conduct under any sanction legislation or E.O. Consequently, if the underlying transaction meets the financial threshold and constitutes sanctionable conduct, an underwriter, insurer or reinsurer arguably could face sanctions even if the premium received does not meet the financial threshold.

16. TO WHAT EXTENT DO U.S. SANCTIONS TARGET THE DEVELOPMENT OF WEAPONS OR NUCLEAR TECHNOLOGY AND WHAT BEARING DO SUCH SANCTIONS HAVE ON THE MARINE AND INSURANCE SECTORS?

- **Shipping and insurance services:** A person is subject to sanctions if it knowingly sells, leases or provides a vessel, insurance, reinsurance or other shipping services for the transportation to or from Iran of goods that could materially contribute to Iran's activities with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism. [ITRASHA]
- **Transfers and transshipments:** A person is subject to sanctions if it exports, transfers, permits or otherwise facilitates the transshipment of any goods, services, or other items to any person (wherever located) if it knew or should have known that his actions would likely result in another person (wherever located) exporting, transferring, transshipping or otherwise providing the goods, services, or other items to Iran and those "would contribute materially to the ability of Iran to acquire or develop chemical, biological, or nuclear weapons or related technologies or acquire or develop destabilizing numbers and types of advanced conventional weapons. [ITRASHA]

17. TO WHAT EXTENT DO U.S. SANCTIONS SPECIFICALLY TARGET IRAN'S ENERGY, SHIPPING AND SHIPBUILDING SECTORS?

As of July 1, 2013, the NDAA 2013 becomes effective and it contains broad restrictions on transactions related to Iran's energy, shipping and shipbuilding sectors. While many of the prior sanctions set forth specified monetary thresholds for activities that might give rise to sanctions, the NDAA 2013 does not and instead employs the term "significant" as the standard. Some of the more relevant provisions provide as follows:

- **Transactions with persons on the SDN list:** A foreign person's property and interests in the United States can be blocked if it knowingly provides "significant" financial, material, technological or other support to, or goods or services in support of, any action or transaction on behalf of any Iranian person on the SDN list.
- **Transactions related to energy, shipping or shipbuilding:** a foreign person's property and interests in the United States can be blocked if it knowingly provides "significant" financial, material, technological or other support to, or goods or services in support of, any action or transaction on behalf of any person who is a part of the energy, shipping or shipbuilding sectors of Iran or who operates a port in Iran.
 - **NOTE:** Again, this can obviously be construed broadly to include a wide range of transactions with a port and has not yet been further defined or clarified. 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 persons involved in energy, shipping, shipbuilding, or port operation:** A foreign person's property and interests in the United States can be sanctioned if it sells, supplies, or transfers to or from Iran "significant" goods or 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.
 - **NOTE:** This can obviously be construed broadly to include a wide range of goods and services and has not yet been further defined or clarified. However, please see the note above under the second bullet point in this FAQ.
- **Transactions involving precious metals and certain materials:** A foreign person can be sanctioned if it knowingly sells, supplies or transfers, directly or indirectly, to or from Iran: (i) a precious metal (e.g. gold)

or (ii) graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes, if those materials are (a) to be used in connection with the energy, shipping or shipbuilding sectors of Iran, (b) sold, supplied or transferred to an Iranian person on the SDN list, or (c) to be used in connection with the nuclear, military, or ballistic missile programs of Iran.

While the NDAA 2013 does not define “services” specifically to include providing insurance, other provisions of the NDAA 2013 specify that providing insurance services for a transaction that otherwise violates the NDAA 2013 (or any other provision of law relating to the imposition of sanctions with respect to Iran) can result in sanctions being imposed on the person providing such insurance. (See FAQ #13). Accordingly, these same prohibitions described in the bullet points above should be considered as encompassing providing insurance in relation to the described conduct.

FREEHILL HOGAN & MAHAR LLP

80 Pine Street

New York, NY 10036

www.freehill.com

William L. Juska, Jr.

juska@freehill.com

Willam J. Pallas

pallas@freehill.com

Gina M. Venezia

venezia@freehill.com
