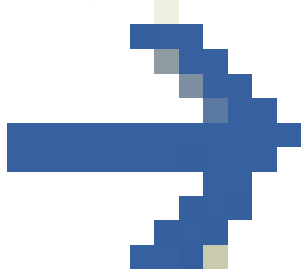


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Executive Order Targets New Sectors of Iranian Economy for Sanctions: Are You Prepared to Comply?

Effective July 1, 2013, President Obama's Executive Order 13645 implements certain provisions of the Iran Freedom and Counter-Proliferation Act of 2012¹ (IFCA) and expands the Iranian sanctions regime to new sectors of Iran's economic base, including the automotive, energy, and shipping and shipbuilding industries. E.O. 13645 specifically addresses certain types of financial transactions by non-U.S. financial institutions. E.O. 13645 also broadly includes new industries and expands the scope of sanctions against already-targeted sectors like the petrochemical sector.

The desired effect, exacting a deep freeze on already chilly foreign trade with Iran, will likely be accompanied by uncertainty as to what transactions by non-U.S. companies might be considered "significant transactions" and thus within the harsh sanctions of the IFCA and related OFAC regulations.

To facilitate compliance with E.O. 13645 and the IFCA, the Office of Foreign Assets Control (OFAC) also published **new guidance** on June 3rd as part of the agency's "Frequently Asked Questions." The guidance provides some insight into interpretations of the scope of these targeted sanctions, e.g., regarding provisions citing "offshore activity." OFAC is careful to caveat the guidance, however, using language like "OFAC anticipates." The agency also states throughout that formal OFAC regulations regarding E.O. 13645 are forthcoming, as is guidance from the Department of State.

The central provisions of E.O. 13645 levy new sanctions and clarify existing sanctions:

- **Foreign Financial Institutions.** Foreign financial institutions that knowingly conduct or facilitate any "significant transaction" related to sale of Iranian Rials, or a derivative, swap, future, forward, or similar transaction based on Rials, or that maintain "significant funds" denominated in Rials, are subject to sanction.
- **Iranian SDNs.** Any person that provides material assistance, technological support, goods or services to (or in support of) any Iranian person designated as a Specially Designated National (SDN) is subject to sanction.
- **Automotive Sector.** Foreign financial institutions that knowingly conduct or facilitate "significant financial transactions" with the "automotive sector of Iran," or that supply significant goods or services used in connection with Iran's auto sector, will be subject to sanctions. The E.O. defines Iran's automotive sector to include manufacturing or assembling in Iran of light or heavy vehicles, including passenger cars, trucks, and other vehicles, as well as OEM and after-market parts manufacturing related to such vehicles.
- **Petroleum Sector.** E.O. 13645 clarifies already-existing petroleum sector sanctions, and provides that the sanctions also apply to entities involved in significant transactions in the *transport and marketing* of Iranian petrochemical products.
- **Precious Metals.** The IFCA also provides for sanctions concerning certain precious metals and graphite, and raw or semi-finished materials, pursuant to IFCA §1245(d).

Given the potential scope of these new sanctions, the interpretation of the term "significant" within the IFCA is essential. According to OFAC's guidance, the agency anticipates reliance on the interpretation set forth at §561.404 of the Iranian Financial Sanctions Regulations (IFSR), which is a fact-specific analysis based on a "list of broad factors." This uncertainty necessitates diligent review of all Iranian business and proposed business partners (i.e., is the person/entity an SDN, or owned or controlled by an SDN?). E.O. 13645, Section 3(e) expressly carves out and maintains the established exemptions for humanitarian aid (under TSRA) and other licensed transactions.

Energy, Shipping and Shipbuilding Sectors of Iran

For the first time, E.O. 13645 expands the targeted industries well beyond the "energy" sector. The

IFCA specifically provides for sanctions involving activities and transactions related to the following:

- **“Shipping sector”** is expected to include all activities involving the transportation of goods by seagoing vessels, including 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 (e.g., National Iranian Tanker Company and Islamic Republic of Iran Shipping Lines).
- **“Shipbuilding sector”** will include activities involving the construction of seagoing vessels, including oil tankers and cargo vessels, in Iran.
- OFAC anticipates that the **“energy sector”** will include activities involving the exploration, extraction, production, refinement, or liquefaction of petroleum, natural gas, or petroleum products in Iran.

Importantly, IFCA §§1244(d)(1) and (2) designate as sanctionable transactions the sale, supply or transfer, to or from Iran, of “goods or services” used in connection with these sectors. OFAC has stated that regulations will be published that will define “goods and services.” Moreover, OFAC has interpreted the sanctions to apply to activities conducted offshore where Iran claims jurisdiction (e.g., the exclusive economic zone and continental shelf), which is particularly applicable to ports and shipbuilding. For example, Iranian shipping, per OFAC guidance, includes all activities relevant to the sale or charter of a vessel; registry and classification services; and repair, survey, supply, bunkering, and docking benefitting seagoing vessels flagged by Iran or owned, controlled, or chartered by the Iranian government.

Also, persons/entities that are determined to be part of these industries, including port operators in Iran, will be identified as such on the SDN List. We caution that the sanctions will likely reach to entities owned or controlled by these designated entities.

Timing

Entities operating under valid contracts made before July 1 are not exempt from the new sanctions, but a pre-existing contract contributes to the calculus of whether a transaction is “significant,” as defined by the regulations. Exemptions for humanitarian aid, agricultural products, and medicine are still available for certain transactions.

The expanded sanctions under E.O. 13645 and the IFCA provisions go into effect in a few short weeks. As of July 1, 2013, non-U.S. entities, including non-Iranian entities, should be aware of these sanctions and be ready to comply. Recent enforcement actions and investigations demonstrate that the legal and potential commercial ramifications for non-compliance are real and far-reaching.

For additional details on how the Iranian sanctions may impact your international business activities, please contact any attorneys in our **International Trade and Customs Group** for assistance.

¹ IFCA, signed into law on January 2, 2013, as part of the National Defense Authorization Act for FY 2013, 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 certain metals; and the provision of underwriting and (re)insurance services, or financial transactions involving sanctioned Iranian entities and individuals. Most IFCA provisions target conduct occurring on or after July 1, 2013.