On Tuesday, January 2, 2013 President Obama signed into law the FY 2013 National Defense Authorization Act (the "FY 2013 NDAA"), a large legislative package that includes the Iran Freedom and Counter-Proliferation Act of 2012 (the "IFCPA")—the fourth major legislative expansion of US sanctions against Iran in just the past two years.

Originally drafted by Senator Robert Menendez (D-NJ) and Senator Mark Kirk (R-IL), the IFCPA substantially expands the already robust framework of US sanctions against Iran.

The IFCPA significantly expands the scope of US extraterritorial sanctions on Iran's energy, shipping, and shipbuilding sectors. The new law also includes sanctions on Iran's ports, greatly enlarging the scope of foreign commerce with Iran that is now subject to US sanctions. By its terms, these provisions of the IFCPA assert jurisdiction over all persons, including foreign nationals and foreign entities. However, as with other US sanctions against Iran, the actual exercise of extraterritorial jurisdiction is not automatic—indeed, it almost always involves a highly sensitive balancing of geo-political concerns as well as the typical challenges involved in asserting jurisdiction over foreign parties.

Notably, the IFCPA seeks to leverage the full range of types of sanctions penalties available under US law, albeit with new scopes of coverage. For example, the IFCPA includes measures that would:

- Require the blocking of property and interests in property within US jurisdiction ("Blocking");
- Impose sanctions from the menu of penalties available under the Iran Sanctions Act of 1996, as amended¹("ISA Penalties");
- Make certain persons ineligible to receive a US visa; or
- Prohibit or impose strict conditions on US correspondent or payable-through accounts of a foreign financial institution ("US Banking Restrictions").

Set forth below is a top-line summary of key highlights of the Iran Freedom and Counter-Proliferation Act. These provisions generally become effective 180 days after the date of enactment, although certain sections, such as the Section 1249 provisions regarding diversion of goods intended for the people of Iran take effect immediately.

To view the full text of the IFCPA, including language regarding implementation timetables, humanitarian and other exceptions, and waiver authorities, see §§ 1241 - 1255 of the FY 2013 NDAA.

"Imposition of Sanctions With Respect to the Energy, Shipping, and Shipbuilding Sectors of Iran"(Section 1244)

This provision imposes several types of penalties on any person – US or foreign -- that is part of Iran's energy, shipping, and shipbuilding sectors, or operates a port in Iran – all of which are designated by the IFCPA as "entities of proliferation concern." This provision would also impose penalties on any person who facilitates or otherwise
provides significant financial, material, or other support to these entities.

- **Blocking.** Section 1244 requires the President to freeze (block) any property or interests in property within US jurisdiction of any person determined by the President to be part of Iran's energy, shipping or shipbuilding sectors, to operate an Iranian port, or to knowingly provide support for the foregoing or for any Iranian on the list of Specially Designated Nationals ("SDNs"). By its terms, this blocking requirement does not reach persons who knowingly support certain Iranian financial institutions that are on the SDN list for reasons other than linkage to weapons of mass destruction proliferation, support for international terrorism, or facilitation of human rights abuses (so-called "non-designated Iranian banks").

- **ISA Penalties.** Section 1244 requires the President to impose five or more of the penalties outlined by the Iran Sanctions Act on an person who knowingly sells, supplies or transfers to or from Iran significant goods or services used in connection with the energy, shipping or shipbuilding sectors of Iran. IFCPA states that entities in these sectors include, but are not limited to, the National Iranian Oil Company ("NIOC"), the National Iranian Tanker Company ("NITC"), and the Islamic Republic of Iran Shipping Lines ("IRISL").

- **US Banking Restrictions.** Section 1244 of IFCPA requires the President to prohibit or impose strict conditions on the US correspondent or payable through accounts of any foreign financial institution that the President determines to have knowingly conducted or facilitated a significant financial transaction for the sale, supply, or transfer to or from Iran goods or services used in connection with the energy, shipping or shipbuilding sectors of Iran.

IFCPA, by its terms, aligns with Section 1245 of the FY 2012 National Defense Authorization Act, which provides a framework for penalties on financial institutions located in countries that import Iranian petroleum and petroleum products, and exceptions for institutions whose country of primary regulatory jurisdiction has been determined by the US to have "significantly reduced" such imports.

The language of the IFCPA appears to curtail the scope of the "significantly reduced" exemption, in part to limit this exemption only to crude sales and prevent persons from relying upon it as authority to engage in other commercial transactions. IFCPA would limit the exemption to financial transactions only for trade in goods or services that are not otherwise subject to US sanctions and that are between the country with primary jurisdiction over the financial institution and Iran. Any funds owed to Iran because of this trade must be credited to an account located in the country with primary jurisdiction over the financial institution – not Iran.

IFCPA also provides an exemption from sanctions under Section 1244 to the purchase from Iran of natural gas – a key concern for Turkey. IFCPA exempts such purchases from the sanctions that it would otherwise apply, provided that, as with the petroleum exports, such transactions are not otherwise sanctionable and that any funds owed to Iran as a result of natural gas purchases are credited to an account located in the country with primary jurisdiction over the financial institution involved – not Iran.

"Imposition of Sanctions With Respect to the Sale, Supply, or Transfer of Certain Materials To or From Iran" (Section 1245)

This provision is intended to address perceived "gaps" in the scope of US sanctions against Iran, including the continued use of precious metals (particularly gold) as a means of exchange to finance Iran's petroleum sales. This provision also appears intended to bridge the gap in coverage that was created when, on October 15, 2012, the European Union prohibited the export to Iran of certain materials that were not expressly covered under US extraterritorial sanctions, including graphite, raw or semi-finished metals (e.g., aluminum and steel), and software for integrating industrial processes.\(^5\)

- **ISA Penalties.** Section 1245 requires the President to impose five or more of the ISA Penalties on any person that the President determines knowingly sells, supplies, or transfers (directly or indirectly) to or from Iran a precious metal. Section 1245 also covers certain transfers to or from Iran of graphite, raw or semi-finished metals (e.g.,
aluminum and steel), coal, or software for integrating industrial processes. By its terms, this provision also applies to transfers of the foregoing when the President determines (pursuant to a required periodic review) that Iran is using these materials as a medium for exchange or listing any of these materials as assets on Iran's national balance sheet. By its terms, this provision also applies to certain other transfers of any of the specified materials, such as:

- If the material is to be used in connection with Iran's energy, shipping, or shipbuilding sector, or any sector of the Iranian economy that is controlled (directly or indirectly) by the Iranian Revolutionary Guard Corps;

- If the material is sold, supplied, or transferred to or from an Iranian SDN (other than a non-designated Iranian bank); or

- If the material is relevant to Iran's nuclear, military or ballistic missile programs.

**US Banking Restrictions.** Section 1245 requires the President to prohibit or impose strict conditions on the US correspondent or payable-through accounts of a foreign financial institution if the President determines that the institution knowingly conducts or facilitates a significant financial transaction for the sale, supply, or transfer to or from Iran of the materials that are sanctionable under this section.

Notably, Section 1245 includes an exception from penalties under this provision for persons that the President determines are exercising certain "due diligence." By its terms, the President cannot impose either the ISA Penalties or Banking Restrictions under this provision if the President determines that the person at issue has exercised due diligence in implementing official policies, procedures, and controls to ensure that the person does not engage in, or facilitate, a transfer that is prohibited under this part.

"Imposition of Sanctions With Respect to the Provision of Underwriting Services or Insurance or Reinsurance for Activities or Persons With Respect to Which Sanctions Have Been Imposed" (Section 1246)

Section 1246 attempts to expand the scope of existing US sanctions on the provision of underwriting services, insurance, or reinsurance. Under current law, extraterritorial sanctions are focused on the provision of underwriting, insurance or reinsurance for Iran's energy sector, for NIOC and NITC, and for certain shipping services involving Iran's weapons of mass destruction proliferation activities or support for international terrorism.

**ISA Penalties.** Under *IFCPA*, the President is required to impose five or more of the ISA Penalties on any person the President determines to have knowingly provided underwriting services or insurance or reinsurance for a far wider range of conduct, including:

- Any activity that is sanctionable under any provision of law relating to Iran sanctions;

- To or for any person for the benefit of any activity in Iran's energy, shipping or shipbuilding sector that is sanctionable under *IFCPA*;

- For the sale, supply or transfer to Iran of the materials designated for restrictions under *IFCPA* (e.g., precious metals, graphite, raw or semi-finished metals, coal, or software for integrating industrial processes);

- To or for any person designated for sanctions under IEEPA in connection with Iran's weapons of mass destruction proliferation activities or Iran's support for international terrorism; or

- To or for any Iranian SDN, other than non-designated Iranian banks.

Notwithstanding this broad coverage, Section 1246 includes a "due diligence" exception which essentially exempts any person who the President determines exercises due diligence in establishing and implementing policies,
procedures, and controls to ensure against engaging in certain conduct that is sanctionable under this provision. This
due diligence exception is not available for the provision of insurance or reinsurance to a person designated for
sanctions under IEEPA in connection with Iran's weapons of mass destruction proliferation activities or Iran's support
for international terrorism.

"Imposition of Sanctions With Respect to Foreign Financial Institutions That Facilitate
Financial Transactions On Behalf of Specially Designated Nationals" (Section 1247)

Section 1247 is intended to widen the scope of US extraterritorial sanctions that are designed to cut off SDNs from
the international financial system, in part by leveraging the role of the US and the US Dollar in the global economy.
This section is also designed to expand the scope of US extraterritorial sanctions on any person that does business
with the Government of Iran or its agents or instrumentalities.

**US Banking Restrictions.** Section 1247 requires the President to prohibit or impose strict conditions on the US
correspondent or payable-through accounts of a foreign financial institution that the President determines has
knowingly facilitated a significant financial transaction on behalf of an Iranian SDN, other than a non-designated
Iranian bank. Because the SDN list includes entities that are determined by the US to constitute the "Government of
Iran," the scope of these US Banking Restrictions would appear to be quite expansive.

As with Section 1244 of *IFCPA*, Section 1247 is aligned with existing US law imposing extraterritorial sanctions on
foreign financial institutions engaged in facilitating Iran's petroleum exports. As with Section 1244, Section 1247
imposes certain limitations on the exercise of the "significantly reduces" exemption, and includes a special
exemption for certain purchases from Iran of natural gas.

"Imposition of Sanctions With Respect to Persons Engaged in the Diversion of Goods
Intended for the People of Iran" (Section 1249)

Section 1249 is designed to help ensure that legitimate humanitarian aid can flow to the people to of Iran without
being intercepted and diverted by corrupt regime officials. This section is also designed to address recent reports
alleging that, because of US and Western sanctions, food, medicine and humanitarian products are not reaching the
people of Iran.

This provision adds a new component to one of the provisions of *CISADA* that authorized the imposition of sanctions
on persons complicit in the brutal crackdown by the Government of Iran in the wake of that country's June 12, 2009
"elections."

New CISADA section 105C requires the President to, as relevant information becomes available, submit to Congress
a list of persons determined by the President to have engaged in corruption or other activities relating to the diversion
of goods intended for the people of Iran, or misappropriation of the proceeds from the sale or resale of such goods.
The President is directed to impose several penalties on each such listed person, including deeming the person at
issue ineligible to receive a US visa, as well as the full range of penalties available under IEEPA, including blocking of
property, restrictions or prohibitions on financial transactions, and restrictions or prohibitions on exports or imports.

Waiver Requirement Related to Exceptional Circumstances Preventing Significant
Reductions in Crude Oil Purchases (Section 1250)

*IFCPA* amends certain waiver provisions of Section 1245 of the FY 2012 *National Defense Authorization Act*.

As noted above, Section 1245 of the FY 2012 *National Defense Authorization Act* generally imposes US Banking
Restrictions on foreign financial institutions involved in facilitating the purchase of Iranian petroleum or petroleum
products, subject to certain exceptions, including for financial institutions whose primary regulatory jurisdiction
"significantly reduces" its purchases of Iranian crude. The FY 2012 *National Defense Authorization Act* also includes
a backstop waiver provision by which the President can choose not to impose these sanctions if he finds that this
would be in the national security interests of the United States. Under current law, if the President exercises this waiver authority, he must submit to Congress a report with both the justification for the waiver and any concrete cooperation the President has received or expects to receive as a result of the waiver.

IFCPA adds to the required elements of this waiver report to Congress. IFCPA requires that, if the President exercises this waiver authority, he must also certify that the country with primary jurisdiction over the financial institution in question faced exceptional circumstances that prevented it from being able to significantly reduce its volume of crude oil purchases so as to qualify for the "significantly reduces" exception.

"Report on Use of Certain Iranian Seaports by Foreign Vessels and Use of Foreign Airports by Sanctioned Iranian Air Carriers" (Section 1252)

Section 1252 requires the President to issue a report to Congress within 180 days of enactment, and annually thereafter, with a list of large of otherwise significant vessels (including the names of their owners and operators) that have entered Iranian seaports controlled by the Tidewater Middle East Company, an SDN that is linked to the Iran's Islamic Revolutionary Guard Corps. This report also must contain a list of all airports at which aircraft owned or controlled by any sanctioned Iranian air carrier have landed.

This menu of penalties includes:

1. Prohibition on US Export-Import Bank assistance to the sanctioned person;
2. Prohibition on the granting of export licensure to the sanctioned person;
3. General prohibition on US financial institutions from making loans or providing credits to a sanctioned person with a total value greater than $10 million in any 12-month period;
4. If the sanctioned person is a financial institution, then a prohibition on that institution from serving as a primary dealer in US Government debt instruments, and a prohibition on service as a repository of government funds;
5. Prohibition on the sanctioned person from being a US Government contractor;
6. Prohibition on transactions in foreign exchange that are subject to US jurisdiction and in which the sanctioned person has any interest
7. Prohibition on any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are both subject to US jurisdiction and involve any interest of the sanctioned person;
8. Prohibition on acquiring, holding, transferring, or engaging in a transaction with respect to any property (within US jurisdiction) in which the sanctioned person has interest;
9. Restrictions on imports to a sanctioned person;
10. Prohibition on US persons from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person;
11. Exclusion from the United States foreign (non-US) persons who are corporate officers, principals, or controlling shareholders in a sanctioned firm; and
12. Authorization for the President to impose any of the full menu of Iran Sanctions Act sanctions on the principal executive officer(s) of any sanctioned person, including but not limited to freezing the US assets of any such person.

Because of a highly technical US legislative procedure issue, by its terms, this provision of IFCPA does not authorize the President to impose sanctions on the importation of goods.

As with the above-mentioned blocking authority, because of the same procedural issue, by its terms, IFCPA states that any sanction relating to the importation of goods shall not count for purposes of the requirement to impose five or more of the ISA Penalties.

Id.

See "The EU Further Expands Sanctions Against Iran," October 24, 2012

Any sanction relating to the importation of goods shall not count for purposes of the requirement to impose five or more of the ISA Penalties. See supra at 3.

This provision includes some catchall language intended to cover resales, retransfers or other conveyances.
Any sanction relating to the importation of goods shall not count for purposes of the requirement to impose five or more of the ISA Penalties. See supra at 3.

By its terms, IFCPA notes that this includes, but is not limited to, the International Emergency Economic Powers Act ("IEEPA"), the Iran Sanctions Act ("ISA") the Comprehensive Iran Sanctions Accountability and Divestment Act ("CISADA"), the Iran Threat Reduction and Syria Human Rights Act ("TRA"), and the Iran, North Korea and Syria Non-Proliferation Act ("INKSNA").