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**CLIENT ALERT:**

**NDAA 2013 EXPANDS  
IRANIAN SANCTIONS**

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**INTRODUCTION**

The President signed into law the National Defense Authorization Act for Fiscal Year 2013 ("NDAA 2013") on January 2, 2013. The NDAA sets forth the fiscal year 2013 appropriations for the Department of Defense as well as security programs for the Department of Energy and Department of Transportation. In addition to those appropriations, the NDAA for 2013 contains a number of provisions relating to sanctions on Iran which may have a significant impact on not only the maritime sector, but also potentially a very profound and direct impact on the marine insurance industry. These sanctions are not restricted to "U.S. persons", but are designed to have extraterritorial effect. The sanctions go into effect on July 1, 2013.

**SANCTIONS WITH RESPECT TO SUPPORT  
OF IRANIAN ENERGY, SHIPPING OR  
SHIPBUILDING SECTORS**

The NDAA 2013 provides for sanctions with respect to a person who *"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."* Likewise, the NDAA 2013 directs the President to block the property of any person who *"knowingly provides significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of... a person determined...to be a part of the energy, shipping or shipbuilding sectors of Iran...[or]...a person determined...to operate a port in Iran."* This provision could clearly have a very significant bearing on the marine industry, and, depending on just how broadly this language is construed, it could effectively result in sanctions being imposed in connection with a wide range of shipments to or from Iran.

## **SANCTIONS WITH RESPECT TO SPECIFIC MATERIALS IN CONNECTION WITH THE IRANIAN ENERGY, SHIPPING OR SHIPBUILDING SECTORS**

Further, the NDAA 2013 provides for sanctions with respect to the *"sale, supply or transfer"* of certain materials to or from Iran, including *"precious metal, ... graphite, raw or semi-finished metals such as aluminum and steel, coal and software for integrating industrial processes"*, where such materials are *"to be used in connection with the energy, shipping, or shipbuilding sectors of Iran."* Again, this provision poses a significant risk of sanctions with respect to any carriage of such materials as it may not be readily apparent whether the materials are intended for use in the *"energy, shipping or shipbuilding sectors of Iran."*

## **SANCTIONS WITH RESPECT TO INSURERS**

Finally, as alluded to above, the NDAA 2013 presents a significant challenge to marine insurers. While previous sanctions have certainly had some bearing on the marine insurance industry, NDAA 2013 represents what may prove to be a rather dramatic expansion of U.S. sanctions as they pertain to marine underwriters. The 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, such as CISADA, 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 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., as set forth *supra*.

However, this section does include a due diligence exception, providing that sanctions will not be imposed on an insurer who has in place policies, procedures, and controls to ensure that the insurer does not provide insurance or reinsurance for a sanctioned activity.

## **SUMMARY OF NDAA 2013**

A more detailed analysis of the most relevant provisions of the 2013 NDAA is as follows:

### ***SECTION 1244 IMPOSITION OF SANCTIONS WITH RESPECT TO THE ENERGY, SHIPPING, AND SHIPBUILDING SECTORS OF IRAN***

#### ***(c) Blocking of Property of Entities in Energy, Shipping, and Shipbuilding Sectors***

This provision directs the President to block and prohibit all transactions in property and interests in property located in the U.S., or which come within the U.S., with respect to any person under Sub-section (c)(2) that

*"(A) is part of the energy, shipping, or shipbuilding sectors of Iran;*

*(B) operates a port in Iran; or*

*(C) Knowingly provides significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of*

\* \* \*

*(i) a person determined... to be a part of the energy, shipping or shipbuilding sectors of Iran;*

(ii) a person determined . . . to operate a port in Iran; or

(iii) an Iranian person included on the [SDN list]"

*(d) Additional Sanctions With Respect to the Energy, Shipping, and Shipbuilding Sectors of Iran*

This section provides for the imposition of sanctions on a person who *"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."*

This provision further prohibits the opening of accounts in the U.S. by any foreign financial institution that knowingly conducts or facilitates *"a significant financial transaction"* for the sale, supply or transfer to or from Iran of goods or services used in connection with the energy, shipping or shipbuilding sectors of Iran.

*(e) Humanitarian Exception.*

This sub-section provides for a humanitarian exception with respect to *"any person for conducting or facilitating a transaction 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."*

*(g) Applicability of Sanctions to Petroleum and Petroleum Products*

This provision states that Sec. 1244 *"shall apply with respect to the purchase of petroleum or petroleum products from Iran,"* subject to a determination by the

President under the NDAA *"that the price and supply of petroleum and petroleum products produced in countries other than Iran is sufficient to permit purchasers of petroleum and petroleum products from Iran to reduce significantly their purchases from Iran..."*

The provision provides for exceptions for certain countries for exportation of petroleum and petroleum products from Iran where the importing country has an exception under the NDAA for fiscal year 2012 and that exception was applicable at the time of the exportation. See 2(A).

The provision further provides for exceptions for financial transactions conducted by a financial institution if the country having *"primary jurisdiction"* over the financial institution was subject to an exception under the NDAA for fiscal year 2012 and that exception was applicable *"at the time of the transaction."* See 2(B).

*(h) Applicability of Sanctions to Natural Gas*

This provision states that Sec. 1244 *"shall not apply to the sale, supply, or transfer to or from Iran of natural gas."*

However, the provision does extend the application of Sec. 1244 to *"a foreign financial institution that conducts or facilitates a financial transaction for the sale, supply, or transfer to or from Iran of natural gas unless – (A) the financial transaction is only for trade in goods or services – (i) not otherwise subject to sanctions [under U.S. law]; and (ii) between the country with primary jurisdiction over the foreign financial institution and Iran; and (B) any funds owed to Iran...are credited to an account located in the country with primary jurisdiction over the foreign financial institution."*

#### COMMENTS:

This section could potentially have a direct and significant impact on the international maritime and energy sectors. In particular, with respect to ocean carriers, the prohibition against knowingly providing support or services to persons in Iran in the shipping or energy industries, or any person who operates a port in Iran, is obviously very broad. Carriers should exercise careful judgment in considering whether a particular cargo might violate the sanctions. Were the U.S. authorities to take an extreme position, they might argue that any ship calling in Iran provides "support" for the port at which it calls. However, this would eliminate all shipments to Iran and if that is what NDAA 2013 intended, we believe it would have so stated point blank.

There is some question as to whether the "support" and "services" need be "significant" for the sanctions to take effect. This depends on how strictly one construes and interprets Sub-Section (c)(2)(C) – and in particular whether the term "significant" qualifies only "financial support" or all support or services. However, this issue may be academic, as we would expect that any support or services provided to the shipping, energy and port industries in Iran will likely be deemed to fall within the scope of the sanctions and this is certainly the interpretation we would urge carriers and other interested clients to adopt in evaluating the impact of NDAA 2013.

Finally, this section will also have an impact on financial institutions with respect to any financial transactions for the sale, supply or transfer to or from Iran of goods or services used in connection with the energy, shipping or shipbuilding sectors of Iran. As such transactions are an integral part of conducting trade to/from Iran, this provision clearly has a direct impact on the maritime sector.

#### **SECTION 1245 IMPOSITION OF SANCTIONS WITH RESPECT TO THE SALE, SUPPLY, OR TRANSFER OF CERTAIN MATERIALS TO OR FROM IRAN**

##### *(a) Sale, Supply, or Transfer of Certain Materials*

This provision provides for sanctions to a person who "*knowingly....sells, supplies, or transfers, directly or indirectly, to or from Iran*" any of the following:

*"precious metal";*

*"graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes," where it is determined in a report to be prepared by the President that Iran is using such "materials" "as a medium for barter, swap, or any other exchange or transaction" or "listing any of such materials as assets of the Government of Iran for purposes of the national balance sheet of Iran..."* These materials may also be the subject of sanctions where it is determined that the material is "*(I) to be used in connection with the energy, shipping, or shipbuilding sectors of Iran or any sector of the economy of Iran determined . . . to be controlled directly or indirectly by Iran's Revolutionary Guard Corps; (II) sold, supplied or transferred to or from an Iranian person included on the [SDN list]; or (III) relevant to the nuclear, military, or ballistic missile programs of Iran...*"

Sanctions will also be triggered where such materials are "*resold, retransferred, or otherwise supplied*" to persons or for purposes prohibited as set forth above.

##### *(c) Facilitation of Certain Transactions*

This provision provides that the President shall prohibit opening new accounts and impose strict limitations on maintaining correspondent or payable-through accounts in the U.S. by a foreign financial institution that the President determines

*"knowingly...conducts or facilitates a significant financial transaction for the sale, supply, or transfer to or from Iran of materials the sale, supply, or transfer of which would subject a person to sanctions under subsection (a)."*

(e) *Determination with Respect to Use of Materials*

As discussed in Sub-section (a) above, the President is required to issue a report as to whether the prohibited materials, identified in sub-section (d), are being used for purposes of barter, swap, or other exchange or transaction, or being listed by Iran as assets of the Government for purpose of the national balance sheet.

The President is further required to set forth in this report *"which sectors of the economy of Iran are controlled directly or indirectly by Iran's Revolutionary Guard Corps,"* and which of the prohibited materials discussed above *"are used in connection with the nuclear, military, or ballistic missile programs of Iran."*

(f) *Exception for Persons Exercising Due Diligence*

This provision provides that the President may not impose sanctions where 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 sell, supply, or transfer to or from Iran materials the sale, supply, or transfer of which would subject a person to sanctions under subsection (a) or conduct or facilitate a financial transaction for such a sale, supply, or transfer."*

**COMMENTS:**

While this section is somewhat less broad than Sec. 1244, in that it references specific products and materials which may trigger sanctions, it nevertheless has the potential for a significant impact on ocean carriers. In particular, carriers will have to be very wary of any carriage of raw or semi-finished metals, including steel, which may trigger sanctions if they are *"to be used in connection with the energy, shipping, or shipbuilding sectors of Iran or any sector of the economy of Iran determined . . . to be controlled directly or indirectly by Iran's Revolutionary Guard Corps; sold, supplied or transferred to or from an Iranian person included on the [SDN list]; or used in connection with the nuclear, military, or ballistic missile programs of Iran..."* To the extent that it may be exceptionally difficult, if not impossible, for carriers to determine the end use of the cargos they carry, this section may effectively preclude the carriage of these materials to or from Iran.

As noted with respect to Sec. 1244, this section will also have an impact on any financial institution who *"knowingly...conducts or facilitates a significant financial transaction for the sale, supply or transfer to or from Iran of materials the sale, supply, or transfer of which would subject a person to sanctions under subsection (a)."* Again, while not aimed directly at the maritime sector, it will certainly have an impact on the financial transactions that are integral to

**SECTION 1246 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**

*(a) In General*

This section provides for the imposition of sanctions for any person who "knowingly" provides underwriting services or insurance or reinsurance as follows:

*(1)(A) for any activity with respect to Iran for which sanctions have been imposed under this subtitle, the International Emergency Economic Powers Act, the Iran Sanctions Act of 1996, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ["CISADA"], the Iran Threat Reduction and Syria Human Rights Act of 2012, the Iran, North Korea, and Syria Nonproliferation Act, or any other provision of law relating to the imposition of sanctions with respect to Iran;*

*(B) to or for any person –*

*(i) 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 this subtitle;*

*(ii) for the sale, supply, or transfer to or from Iran of materials described in section 1245(d); or*

*(iii) designated for the imposition of sanctions pursuant to the International Emergency Economic Powers Act (50*

*U.S.C. 1701 et seq.) in connection with*

*(I) Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction; or*

*(II) Iran's support for international terrorism; or*

*(C) to or for any Iranian person included on the list of specialty designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (other than an Iranian financial institution described in subsection (b)).*

*(c) Humanitarian Exception.*

This sub-section provides for a humanitarian exception with respect to "the provision of underwriting services or insurance or reinsurance for a transaction 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."

*(d) Exception for Underwriters and Insurance Providers Exercising Due Diligence.*

This sub-section provides that the President may not impose sanctions "with respect to a person that provides underwriting services or 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 underwrite or enter into a contract to provide insurance or reinsurance for an activity described in subparagraph (A) of [subsection (a)(1)] or to or for any person described in subparagraph (C) or clause (i) or (ii) of subparagraph (B) of that subsection."



**COMMENTS:**

While this section is obviously geared towards the insurance industry, it likewise has a significant impact on the shipping industry as it would effectively eliminate coverage for carriage of shipments which may fall within the scope of sanctions under NDAA 2013 or prior sanctions. (See Sec. 1246(a)(1)(A)). As discussed with respect to Sec. 1244, given the broad language concerning *"any activity in the energy, shipping, or shipbuilding sectors of Iran,"* insurers also will need to exercise careful judgment regarding Iranian related transportation which they insure.

**SECTION 1247 IMPOSITION OF SANCTIONS WITH RESPECT TO FOREIGN FINANCIAL INSTITUTIONS THAT FACILITATE FINANCIAL TRANSACTIONS ON BEHALF OF SPECIALLY DESIGNATED NATIONALS**

*(a) In General*

This section provides that the President shall prohibit the opening of corresponding or payable-through accounts, or impose strict limitations on the maintenance of existing accounts by foreign financial institutions that the President determines *"knowingly facilitated a significant financial transaction on behalf of any Iranian person included on [the SDN list]."*

*(b) Humanitarian Exception*

As in previous sections, there is a humanitarian exception with respect to *"any person for conducting or facilitating a transaction 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."*

*(c) Applicability of Sanctions to Petroleum and Petroleum Products*

This sub-section provides for an exception with respect to financial transactions for institutions where the country with primary jurisdiction has obtained an exception under the NDAA.

*(e) Applicability of Sanctions to Natural Gas*

This provision provides that subsection (a) of Sec. 1247 *"shall apply to a foreign financial institution that conducts or facilitates a financial transaction for the sale, supply, or transfer to or from Iran of natural gas unless – (1) the financial transaction is only for trade in goods or services – (A) not otherwise subject to sanctions [under U.S. law]; and (B) between the country with primary jurisdiction over the foreign financial institution and Iran; and (2) any funds owed to Iran...are credited to an account located in the country with primary jurisdiction over the foreign financial institution."*

**COMMENTS:**

While this sub-section is directed at financial institutions, it nevertheless will have an impact on the maritime shipping and energy sectors as it will bear upon the financial transactions that are integral to those industries – if the transaction is on behalf of a person on the SDN.

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