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US Extraterritorial Sanctions Targeting Non-US Insurers for Iran-Related Activities

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The US government has again expanded the scope of its Iranian extraterritorial sanctions program with the enactment of the Iran Freedom and Counter-Proliferation Act of 2012 (the “IFCPA”). Among other things, the IFCPA provides for ISA-type sanctions against non-US insurers who conduct underwriting services or insurance or reinsurance activities relating to Iran. The measures are extremely broad and are designed to punish non-US insurers who engage in the Iranian market. The new measures are effective July 1, 2013.

The IFCPA is included at sections 1241 through 1267 of the National Defense Authorization Act for Fiscal Year 2013. Section 1246 of the IFCPA requires the imposition of five or more of the sanctions set forth in the Iran Sanctions Act (as amended) (the “ISA”) against non-US entities that provide underwriting services or insurance or reinsurance:

- for any activity with respect to Iran for which sanctions have been imposed under US law;
- to or for any person: (a) with respect to, or for the benefit of, any activity in the energy, shipping, or shipbuilding sectors of Iran for which sanctions under the IFCPA have been imposed; (b) for the sale, supply, or transfer to or from Iran of certain materials (i.e., graphite, raw or semi-finished metals such as aluminum and steel, coal, or software for integrating industrial processes) for which sanctions are imposed under the IFCPA; or (c) that has been designated by OFAC on the Specially Designated Nationals and Blocked Persons List (the “SDN List”) as a global terrorist or weapons of mass destruction proliferator; or
- to or for any Iranian person included on the SDN list (with the exception of certain Iranian financial institutions that have not been designated as global terrorists, weapons of mass destruction proliferators, or involved in human rights abuses in Iran).

Sanctions that could be imposed for conducting the activities described above, as set forth in the ISA, prohibit:

- export assistance from the Export-Import Bank of the United States;
- specific licenses for export of US military, dual-use, or nuclear-related goods or technology;
- US bank loans exceeding \$10 million in any 12-month period;
- designation as a primary dealer in US government debt for financial institutions;
- procurement contracts with the US government;
- foreign exchange transactions subject to US jurisdiction;
- financial transactions subject to US jurisdiction;
- transactions with respect to property and interests in property subject to US jurisdiction;
- investment in equity or debt of the sanctioned person by US persons;
- entry into the US of corporate officers of sanctioned entities (visa ban); or
- any of the above activities with respect to principal executive officers of sanctioned entities.

As a general matter, the ISA seeks to punish non-US entities for conducting business in or with Iran by imposing sanctions against such non-US entities generally restricting their access to the US economic system. At its inception in 1996, the ISA sought to impose extraterritorial (i.e., reaching individuals and entities that are not otherwise subject to US jurisdiction) sanctions against entities who conducted certain business in Iran's petroleum sector. Through a series of amendments to the ISA and the enactment/imposition of additional US statutes and executive orders, the scope of activities for which non-US persons can be sanctioned for Iranian business activities has increased significantly. Section 1246 of the IFCPA is the most recent example of the expansion of the US government's extraterritorial sanctions relating to Iran (Sections 1244 and 1245 of the IFCPA also expand the extraterritorial scope of sanctionable activities as they relate to Iran's shipping and shipbuilding sectors and Iranian precious metals, graphite, metals (e.g., aluminum and steel), and coal).

The plain language of Section 1246 suggests that the scope of sanctionable activities relating to underwriting services and insurance and reinsurance is extremely broad. Effectively, a non-US insurer can be sanctioned for insuring any activity that is conducted in violation of US economic sanctions law targeting Iran. This means generally that sanctions are mandated against non-US insurers for providing underwriting services, insurance or reinsurance for all of the activities enumerated in the ISA, which apply to non-US persons, as well as all Iran-related activities conducted by US persons. As a general matter, non-US insurers should be aware of all Iran-related activities with which it is involved and make a determination as to whether such activities expose it to sanctions under the IFCPA.

Section 1246 of the IFCPA contains two significant exceptions. First, excluded from sanctionable activities under Section 1246 is 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. Second, sanctions may not be imposed against a non-US insurer if such insurer 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 that is sanctionable under Section 1246. The provisions of Section 1246 may also be waived if the US government deems a waiver to be vital to the national security of the United States.

Section 1246 is effective 180 days after the enactment of the IFCPA, or July 1, 2013.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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