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IRAN SANCTIONS: IS YOUR BUSINESS EXPOSED?

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Overview

Sanctions remain a hot topic, with additional restrictions imposed by authorities in the US, EU and elsewhere on a regular basis. The penalties for breaching sanctions are severe, and any company which trades with Iran or Syria (or which has customers who do) needs to understand the nature and extent of the current restrictions.

Both EU and non-EU companies which are involved in the oil and gas and petrochemical sectors need to be particularly mindful, as the latest restrictions may affect them directly (in the case of EU companies) or indirectly (in the case of non-EU companies) by preventing their European insurers and reinsurers from providing the cover which those companies rely upon.

In addition, because many cash-strapped governments see trade sanctions as a cost-effective foreign policy tool, any company which trades to volatile countries should be aware of the general framework of the current trade sanctions, as we may well see sanctions deployed (potentially at short notice) against other countries in the near future.

In this article, we look at the latest sanctions against Iran, and identify practical measures which companies can take to minimise the risk of an inadvertent breach of the relevant regimes.

Council Regulation (EU) No 267/2012

Council Regulation (EU) No 267/2012, which was published on 24 March 2012 significantly increases the scope of EU sanctions against Iran, by repealing and replacing Council Regulation (EU) No 961/2010, which we considered in our June 2011 article.

Measures affecting the oil and gas and petrochemical sectors

The latest measures target Iran's ability to export crude oil, petroleum products and petrochemical products, and all companies

which import, purchase or transport Iranian cargoes of this kind will find their activities severely curtailed, even if the cargoes are not being imported into the EU.

While the measures will, of course, directly affect EU companies and nationals, as well as business done in the EU, the measures will also have an indirect effect on many of those outside the EU, because of the prohibition on insurance and reinsurance related to the import, purchase or transport of crude oil, petroleum products and petrochemical products of Iranian origin or which have been imported from Iran.

Because shipping companies worldwide depend on insurance and reinsurance provided by P&I Clubs and other insurers based in the EU, and because there is limited scope for insurers elsewhere to provide replacement cover, particularly as they cannot then reinsure the risk back into the EU, these latest measures are relevant to shipping companies wherever they are based.

Since 1 May 2012 the import, purchase or transport of Iranian petrochemical products (which includes ammonia, ethylene and toluene) has been entirely prohibited. Likewise, the provision of related financing, financial assistance, insurance and reinsurance has been prohibited since 1 May 2012.

In the case of crude oil and petroleum products, there are equivalent prohibitions, but companies can still benefit from two key derogations. The first permits the execution, until 1 July 2012, of trade contracts concluded before 23 January 2012 or of ancillary contracts necessary for the execution of such contracts. To benefit from this derogation companies must notify the relevant competent authority at least 20 working days in advance of performance. The second derogation allows the provision, until 1 July 2012, of third party liability insurance (which includes P&I cover) and environmental liability insurance and reinsurance.

Because of the impact of these measures on companies (and ultimately consumers) outside the EU, there has been a great deal of focus on whether insurers and reinsurers outside the EU are able to step in and provide replacement insurance. Any company which intends to continue purchasing or transporting Iranian crude oil, petroleum products or petrochemical products should obtain legal advice on their position, to ensure that they will continue to have in place the insurance which they require.

Other measures

All EU companies which trade with Iran or which make or receive payments to or from natural persons in Iran need to ensure that they comply with the updated procedures to be followed for any transfer of funds to or from any Iranian person, entity or body (which includes natural persons, ie individuals). In particular, the updated procedures now apply not only to electronic transfers of funds, but also to transfers of funds by non-electronic means. The effect of this is that any payment to any Iranian person, or any individual in Iran, needs to be notified in advance if it exceeds €10,000 and it needs to be authorised in advance if it is €40,000 or more and does not relate to foodstuffs, healthcare, medical equipment or humanitarian purposes.

Companies should also be aware that banks (particularly those in the UK and the US) are subject to a host of additional restrictions. As a result companies which wish to engage in legitimate trade with Iran should discuss the position in advance with their bank, to ensure that the bank is able to process the necessary payment requests.

Insurance brokers need to be aware that the existing prohibition on providing insurance or reinsurance (other than certain permitted insurance and reinsurance) to a wide range of Iranian persons and entities, including not only “Iran, its Government, its public bodies, corporations and agencies” but also any “Iranian person, entity or body other than a natural person” has now been extended, such that the brokering of such insurance or reinsurance is prohibited.

In addition to the above measures, Council Regulation (EU) No 267/2012 repeats (and in some instances extends) the measures which were set out in Council Regulation (EU) No 961/2010, including:

- The restrictions on supply of arms and related materials.
- The asset freeze (which now applies to 115 named individuals and 440 named entities).
- The prohibition on selling, supplying, transferring or exporting key equipment and technology for Iran’s oil and gas industry (now extended so

that the prohibition includes key equipment and technology for Iran's petrochemical industry).

- The prohibitions on investing in Iran's oil and gas industry (now extended to prohibit investments in Iran's petrochemical industry).

US restrictions - overview only

As well as the above measures, companies should be aware that US extra-territorial sanctions under CISADA continue to apply. These target Iran's ability to import and produce refined petroleum products and have recently been enhanced by an Executive Order, signed by President Obama on 1 May 2012.

The Executive Order does not alter or expand the prohibitions against non-US entities or persons doing business with Iran as set forth under CISADA and Executive Order 13590, but instead it extends the range of punishments which may be imposed on non-US companies which breach US sanctions. In particular, the Executive Order allows the US Treasury publicly to identify Foreign Sanctions Evaders ("FSEs") - ie entities and individuals who violate US sanctions against Iran and/or Syria.

Once such an entity or individual is designated as an FSE, US persons will be prohibited from providing goods, services, or technology to, or from, the FSE (unless they have US Treasury authorisation), and fund transfers may be rejected and the FSE could find it difficult to access their bank accounts in the US. In addition, FSEs who are individuals will be banned from entering the United States. As such, it appears that the latest Executive Order will be used to put commercial pressure on non-US entities and individuals who either (i) violate US extraterritorial sanctions (eg CISADA) or (ii) facilitate or enable a breach by a US person of US domestic sanctions.

Practical suggestions

In order to ensure compliance with the above restrictions, companies need to carry out thorough due diligence on their direct and indirect counterparties, they need to check that the cargo is not prohibited, and they need to take care when investing in any Iranian company to be sure that it is not active in the oil and gas or petrochemical industry.

Companies should also have a full and frank dialogue with their bank and their insurers, to be confident that they will receive the support and services which they need to perform their contractual obligations, including making payments in accordance with the updated procedures on transfers of funds, and having in place insurance which deals with the usual risks of every maritime adventure.

Given the dynamic nature of sanctions, companies should also carefully review their existing contracts and standard terms and conditions to ensure these include adequate protection, particularly where their counterparty is in a jurisdiction which imposes less onerous restrictions on trade with Iran. In addition to clear warranties (supported by appropriate indemnities, where these can be obtained), companies should consider including suitable liberties, to deal with the situation where the regulatory regime changes and the company would prefer no longer to trade with Iran.

For example, shipowners should be aware of draft legislation in the United States which, it is understood, would require owners of ships calling at US ports to declare that the vessel has not called at a port in Iran, Syria or North Korea in the preceding 180 days.

Companies with existing contracts with Iranian companies may want to look closely at Article 38 of Council Regulation (EU) No 267/2012, which provides a complete defence to a claim by a designated person or any other Iranian person, entity or body, where the performance of any contract or transaction has been directly or indirectly affected by the measures imposed by the Regulation.

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