

IRAN SANCTIONS UPDATE



Summary

Further sanctions have been imposed on Iran following the report of the International Atomic Energy Agency into Iran's nuclear programme.

The latest round of sanctions target transactions between US/UK financial institutions (including insurance companies) and Iranian banks. UK registered financial institutions and insurance companies now face a blanket prohibition on dealings with Iranian banks, unless licensed by HM Treasury. In many respects this formalises what was already a reality for companies and insurers seeking to do business with Iranian persons, who were finding it very difficult to obtain UK based financial or payment services.

A number of further entities have been designated by the EU and the US, and the US has also further targeted Iran's ability to develop petroleum resources, as well as the Iranian petrochemical industry. Taken together these further measures significantly increase the difficulties (and risks) of any trade with Iran.

Introduction

On 21 November 2011, the UK, along with the US (and Canada), imposed further restrictions on trade with Iran. The latest UK sanctions require UK financial institutions to cease business relationships and transactions with all banks incorporated in Iran. In practice this severely curtails the ability of companies to make payments to (or receive payments from) Iranian persons via UK bank accounts. The latest UK measures go beyond the current EU sanctions that are in place.

On 1 December 2011, the EU added a further 180 entities and individuals to the list of persons subject to restrictive measures. The EU has indicated that it is looking at broadening the scope of the existing sanctions to include further measures directed against the Iranian financial, transport, and energy sectors. EU foreign ministers have indicated that further measures will be taken no later than the end of January 2012.



The US measures impose further restrictions on the Iranian petrochemicals industry, and identify Iran as a jurisdiction of “Primary Money Laundering Concern.”

The UK measures regarding financial transactions

The Financial Restrictions (Iran) Order 2011 (the “Order”) prohibits any “relevant person” from entering into or continuing to participate in any transaction or business with a “designated person:”

- A “designated person” is a credit institution incorporated in Iran (or any branch or subsidiary, wherever located) or the Central Bank of Iran.
- A “relevant person” is a person operating in the UK financial sector as a credit or financial institution, and all branches of such persons, wherever those branches are located. Life assurance companies, syndicates at Lloyd’s, and any insurance companies authorised by the FSA will be relevant persons.

Relevant persons must not enter into or continue to participate in any transaction or business relationship with a designated person, unless licensed by HM Treasury. Relevant persons should seek to end business relationships and transactions with designated persons with immediate effect.

The Order goes beyond the pre-existing EU requirement (contained in Article 21 of Regulation 961/2010) for financial institutions to seek authorisation for the transfer of

funds to and from Iranian persons. Authorisations are granted unless there are reasonable grounds for suspecting that the funds will be used for the development of Iran’s nuclear activities. The Order goes beyond this, as it prohibits all transfers unless a licence is obtained.

The Order covers any transmission of funds between a relevant person and a designated person, as well as the accrual of funds for a designated person. The prohibition applies to own-account transactions and transactions undertaken on behalf of customers. It also applies to payments made by or received from intermediaries, where the relevant person knows that the intended recipient or the originator of the payment is a designated person.

Relevant persons are also prohibited from exchanging financial or credit documents with a designated person, acting on the instructions of a designated person, or acting under a contract agreed with or pursuant to an obligation owed to a designated person.

If a relevant person which infringes the prohibition can demonstrate that it exercised reasonable due diligence to ensure that the requirements of the Order were met, then it will not be guilty of an offence.

The following will not be “relevant persons:”

- Any subsidiaries of a UK financial or credit institution where those subsidiaries are incorporated outside the UK.
- Any subsidiaries of a UK financial or credit institution, wherever

located, where those subsidiaries are not financial or credit institutions.

Those affected by the Order can apply for a licence. General licences also apply in relation to the following:

- The provision of humanitarian aid, and personal remittances (both must be under €40,000).
- Provision of compulsory or third party insurance to Iranian persons, and provision of insurance (such as health or travel insurance) to persons acting in a private capacity (these are permitted under the existing EU sanctions Regulation).
- Relevant persons holding assets from frozen Iran banks’ accounts, and relevant persons holding accounts of non-frozen Iran banks (such accounts should have been notified to HM Treasury by 5 December 2011).
- Completion of payments to or from Iranian banks in progress at the time the Order came into force.

Infringement of the prohibition is a criminal offence and can lead to a custodial sentence.

The corresponding US measures regarding payments to Iranian financial institutions

Iran has been identified as a Jurisdiction of Primary Money Laundering Concern by the US Treasury.

Although we are not qualified to advise on US law, we understand that the special measures imposed



allow the US Treasury to prohibit the opening or maintaining of correspondent accounts by any domestic US financial institution, if the correspondent accounts have any connection to Iran (including to the Iranian Central Bank). Correspondent accounts are necessary to enable US banks to make payments to or receive payments from foreign banks. US banks will also be required to apply special due diligence to guard against any improper indirect use of US banks by Iranian banking institutions (including the Iranian Central Bank).

Implications of the financial measures taken by the UK and the US

The recent UK and US measures to a large extent formalise the commercial reality in relation to the vast majority of UK and US financial institutions, which had already taken policy decisions not to process payments to Iranian persons (even where these were then permitted, for example, in the UK, following appropriate notification to or authorisation from HM Treasury).

Companies seeking to make payments to Iranian persons should not seek to make payments through the US or the UK banking systems, and should avoid making payments in US Dollars or Pounds Sterling.

In practice, the Order merely formalises what had already become a commercial reality for most companies.

Further US sanctions on the Iranian petrochemical industry

We understand from correspondent US law firms that Executive Order 13590 (the “Executive Order”), dated 21 November 2011, expands the US sanctions that are already in place against Iran’s oil and gas sector under the Iran Sanctions Act and the Comprehensive Iran Sanctions, Accountability, and Divestment Act (“CISADA”) (which applies to non-US companies).

Specifically, the Executive Order authorises sanctions for any person who:

- Provides to Iran goods, services, technology, or support that has a fair market value of either \$1,000,000 for one transaction, or more than \$5,000,000 over any 12 month period, and that could directly and significantly contribute to the maintenance or enhancement of Iran’s ability to develop petroleum resources located in Iran. In effect the threshold has been reduced from \$20,000,000 to \$5,000,000.
- Knowingly sells, leases, or provides to Iran goods, services, technology, or support that has a fair market value of either \$250,000 or more than \$1,000,000 over any 12 month period, and that could directly and significantly contribute to the maintenance or expansion of Iran’s domestic production of petrochemical products. This is a new provision specifically to target the petrochemical industry.

The Executive Order does not cover the purchase of petroleum

resources or petrochemicals from Iran, or the shipping of those products from Iran, absent other sanctionable conduct. Nonetheless, as regards petrochemicals, the US has embarked on a diplomatic campaign to encourage governments and companies that purchase petrochemicals from Iran to switch to alternative sources of supply. Unlike the case with crude oil, the US considers that there are lots of alternative producers of petrochemicals, so switching supplier should be relatively straightforward.

Any non-US person who breaches the sanctions contained in the Executive Order will be subject to the measures contained in CISADA. These include prohibitions on foreign exchange transactions, banking transactions, property transactions in the US, US export-import bank financing, US export licences, and imports into the US.

Further individuals and entities were added to the US list of designated persons on 21 November 2011.

On 1 December 2011, the US Senate unanimously passed a Bill that would give the President the power to bar foreign financial institutions that do business with Iran’s Central Bank from having correspondent bank accounts in the US. If enacted, it could be much harder for foreign companies to pay for oil imports from Iran, the world’s third-largest crude exporter. The Obama Administration opposes the legislation.

The EU adds to the list of designated entities

On 1 December 2011, the Council of the EU designated a further



180 entities and individuals to be subject to restrictive measures. The designations included entities and individuals that the Council considers to be directly involved in Iran's nuclear activities, entities and individuals owned, controlled or acting on behalf of the Islamic Republic of Iran Shipping Line (IRISL), and members of, as well as entities controlled by, the Islamic Revolutionary Guards Corps (IRGC).

The Council agreed to broaden existing sanctions by examining, in close coordination with international partners, additional measures including measures aimed at severely affecting the Iranian financial system, in the transport sector, in the energy sector, measures against the Iranian Revolutionary Guard Corps, as well as measures in other areas.

For further information, please contact **Anthony Woolich**, Partner, on +44 (0)20 7264 8033 or anthony.woolich@hfw.com, or **Daniel Martin**, Associate, on +44 (0)20 7264 8189 or daniel.martin@hfw.com, or **Simon Burden**, Associate, on +44 (0)20 7264 8054 or simon.burden@hfw.com, or your usual contact at HFW.

**For more information,
please also contact:**

Nick Hutton

London Partner
T: +44 (0)20 7264 8254
nick.hutton@hfw.com

Guillaume Brajeux

Paris Partner
T: +33 (0)1 44 94 40 50
guillaume.brajeux@hfw.com

Stéphane Selegny

Rouen Partner
T: +33 (0)1 44 94 40 50
stephane.selegny@hfw.com

Konstantinos Adamantopoulos

Brussels Partner
T: +32 2 535 7861
konstantinos.adamantopoulos@hfw.com

Jeremy Davies

Geneva Partner
T: +41 (0)22 322 4810
jeremy.davies@hfw.com

Dimitri Vassos

Piraeus Partner
T: +30 210 429 3978
dimitri.vassos@hfw.com

Edward Newitt

Dubai Partner
T: +971 4 423 0555
edward.newitt@hfw.com

Paul Hatzer

Hong Kong Partner
T: +852 3983 7788
paul.hatzer@hfw.com

Henry Fung

Shanghai Partner
T: +86 21 5888 7711
henry.fung@hfw.com

Simon Davidson

Singapore Partner
T: +65 6305 9522
simon.davidson@hfw.com

Richard Jowett

Melbourne Partner
T: +61 (0)3 8601 4500
richard.jowett@hfw.com

Stephen Thompson

Sydney Partner
T: +61 (0)2 9320 4600
stephen.thompson@hfw.com

Hazel Brewer

Perth Partner
T: +61 (0)8 9422 4702
hazel.brewer@hfw.com

Jeremy Shebson

São Paulo Partner
T: +55 (11) 3179 2903
jeremy.shebson@hfw.com

Lawyers for international commerce hfw.com

HOLMAN FENWICK WILLAN LLP
Friary Court, 65 Crutched Friars
London EC3N 2AE
T: +44 (0)20 7264 8000
F: +44 (0)20 7264 8888

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