

INSURERS AND BROKERS BEWARE

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Despite ongoing talks between Iran and the P5+1 (the US, Russia, China, the UK, France and Germany), culminating in recent discussions in Kazakhstan in February and April 2013, Iran is still subject to international trade sanctions which are amongst the most onerous (and certainly the most complex) which have ever been imposed against any country.

As well as the diplomatic pressure, there is an increasing focus on Iran's commercial links with the rest of the world, and policy makers and regulators have shown that they are prepared to shift the burden on to commercial parties to promote foreign policy objectives, by restricting Iran's ability to trade. The legal measures are backed with teeth, and significant enforcement action has been taken recently against those companies which have failed to do enough to comply with international trade sanctions.

Some commercial enterprises may object that the sanctions do not apply to them, because the restrictions are targeted at Iran's nuclear and Weapons of Mass Destruction

(WMD) programmes, but in fact the measures potentially apply to every company which trades directly or indirectly with Iran, because the current restrictions focus on Iran's commercial operations, which are said to be funding and supporting Iran's nuclear and WMD programmes.

This makes it particularly important that companies worldwide, including insurers, reinsurers and the marine industry in the Middle East, are aware of the restrictions which apply to them, and have in place robust compliance programmes, to ensure that they do not inadvertently breach those restrictions. The most wide-ranging sanctions are those imposed by the US and the EU, which are the focus of this article.

Rigorous enforcement

The seriousness of breaching international trade sanctions is highlighted by recent enforcement activity. FAL Oil Limited was penalised by the US authorities in January 2012 for providing



over US\$70 million in refined petroleum to Iran over multiple shipments in late 2010. As a result, FAL Oil was barred from receiving US export licences, barred from receiving US Export Import Bank financing, and barred from receiving loans over \$10 million from US financial institutions.

More severe penalties were imposed in March 2013 against a Greek businessman, Dr Dimitris Cambis, who helped Iran evade international oil sanctions by using Iranian funds to purchase oil tankers and also by disguising the Iranian origin of oil transported on these vessels. Dr Cambis and all of the various front companies were identified as acting on behalf of the Government of Iran, and added to the US Specially Designated Nationals (SDN) List, with the result that US persons are prohibited from engaging in any transactions with Dr Cambis or those entities, and any assets they may have under US jurisdiction are blocked. The companies include four companies in the UAE (Asia Energy General Trading LLC, Polinex General Trading LLC, Sima General Trading Co FZE and Synergy General Trading FZE).

In addition, there are also significant reputational risks, not to mention the impact on commercial operations of being dragged in to any investigation.

Checklist for insurers

So, what should insurers and other companies in the Middle East do to ensure they do not inadvertently breach the restrictions which apply to them?

1. Do you employ US nationals or have any US shareholders?

Because US domestic sanctions effectively amount to an embargo on unlicensed trade with Iran, and because they extend to US nationals, wherever they are, persons in the US or those who are owned or controlled by US persons (including US companies), the first stage for every company should be to find out whether it employs any US nationals, or has any US shareholders.

2. Is the underlying transaction prohibited by US extraterritorial sanctions?

Even those companies which have no connection with the US could potentially be affected by US extra-territorial sanctions, if they want to continue trading with the US or trading in US dollars. They should therefore check that the underlying transaction is not prohibited by US extraterritorial sanctions, such as the prohibition on supplying refined petroleum products to Iran or the prohibition on the supply to Iran of goods that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products.

The US extra-territorial sanctions are contained in a number of different statutes, the most recent of which is the National Defence Authorization Act 2013. The key provisions of that act take effect on 1 July 2013 and will have a severe impact on

Iran's energy, shipping and shipbuilding sectors, as well as Iran's ability to trade in graphite, raw and semifinished metals (such as steel and aluminium) and coal. There are specific measures which target insurance.

These include a prohibition on providing insurance for any activity with respect to Iran which is prohibited by US sanctions against Iran, a prohibition on providing insurance to or for any Iranian SDN and a prohibition on providing insurance for any activity in the energy, shipping or shipbuilding sectors of Iran, for which sanctions are imposed under US sanctions.

Because these (and a number of other) prohibitions and restrictions expressly include insurance, there is scope for an insurer to be exposed by the activities of its assured. However, in each instance there is a defence where the insurer has exercised due diligence in establishing and enforcing official policies, procedures and controls to ensure that the insurer does not provide underwriting services or insurance or reinsurance in connection with any activity which is prohibited.

3. Is the assured engaged in prohibited trade with Iran?

Insurers and brokers should therefore obtain as much information as possible to satisfy themselves that their assured is not engaged in a prohibited trade with Iran which could expose insurers and/or brokers. They should also include



appropriate exclusions in policy wording, as well as considering the circumstances in which they would want to be able to terminate cover or in which the policy would become void, or voidable.

4. [Have the assured and co-assured been identified and screened?](#)

The status of the assured and any co-assureds, or other people with an interest in the policy should be identified, and ideally they should be screened against the lists of EU and US sanctions targets. While insurers in the Middle East may decide not to turn down business purely on the grounds that an assured is included on the list of EU and US sanctions targets, this will highlight any potential practical problems (for example, payment of premium, payment of claims, obtaining reinsurance and so on).

5. [Are banks and insurers targets of sanctions?](#)

Insurers and brokers should also check the status of the banks and insurers who they deal with, to check that they are not EU or US sanctions targets. Banks such as Bank Tejarat and Bank Saderat are subject to EU and US sanctions, and Bank Saderat has challenged its designation by the EU. Likewise insurers such as Kish Protection & Indemnity and Bimeh Markazi (aka Central Insurance of the Islamic Republic Of Iran) are subject to US sanctions.

While EU sanctions do not have an express extraterritorial

effect, they do have what could be called an implied extra-territorial effect. This is because insurers in the Middle East who rely on reinsurers, brokers or banks in the EU will find themselves indirectly subject to the restrictions which apply to those EU-based institutions, in that if the involvement of a EU company is necessary for the transaction to proceed, then it will only go ahead if it complies with EU sanctions, even if the role of the EU company is quite limited.

Insurers and brokers in the Middle East need to be aware of the scope of the sanctions which apply to EU and US reinsurers, banks and others, and consider carefully whether those entities need to be involved in the business. For example, EU insurers are prohibited from providing insurance to any Iranian person, entity or body (other than a natural person). This may have a major impact on the ability of brokers in the Middle East to place business in the London market.

The need for diligence

While insurers and brokers may resent the high burden which regulators impose on them, and the fact that they are increasingly being targeted in sanctions regimes, neither fact is likely to change soon. They therefore need to ensure that they have procedures and checks in place so that they are not exposed because of the actions of their assureds, or because of the insurance they choose to write.

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