

IRAN SANCTIONS: GUIDANCE FOR INSURERS, REINSURERS AND BROKERS

Insurers, reinsurers and brokers will be looking carefully at the latest Iran sanctions developments to see whether the sanctions relief presents an opportunity or a threat for their businesses, as well as seeking to anticipate what new activities assureds may now be contemplating, in order to be able to respond to their requests for cover.

So what are the headline points?

First the good news

The EU ban on insurance for Iranian persons has been lifted.

Likewise the EU bans on insurance relating to particular trades have mainly been lifted, as have the majority of the US extra-territorial sanctions which previously restricted the ability of foreign insurers (i.e. those insurers who had no US connection) to provide cover for Iranian trades.

In addition, a new General Licence issued by the US Office of Foreign Assets Control (OFAC) on 16 January 2016 means that non-US subsidiaries of US companies can now engage in most Iranian trade without the US parent being exposed by the activities of the subsidiary, provided the subsidiary complies with all of the conditions of the General Licence. It is important to note that the US entity

still needs to make sure that none of its activities would put it in breach of US domestic sanctions.

A large number of Iranian individuals and entities, including Iran Insurance Company (aka Bimeh Iran), have been removed from the EU and US sanctions lists.

Now the bad news

The US domestic sanctions (sometimes called primary sanctions) are largely unaffected by the sanctions relief. This means that US insurers will still only be able to write Iranian business (or reinsure Iranian risks) where they are permitted to do so by an applicable licence, and continuing care needs to be taken by brokers and others to ensure that US insurers are identified and are not involved in writing unlicensed business.

Likewise non-US insurers who employ US nationals still risk exposing those individuals if they write unlicensed Iranian business.



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In addition, because US primary sanctions continue to prohibit US clearing banks from processing payments for transactions involving Iran, there is no change to the inability of insurers and brokers to collect premium and pay claims in US Dollars (whether or not insurers themselves have any US connection).

So what should insurers and brokers do?

Insurers and brokers should conduct due diligence and obtain the necessary information and/or warranties to ensure that their assureds are not engaging in trade which remains prohibited (e.g. supply of banned equipment, infrastructure for military purposes and supply of metals for certain prohibited end uses).

They should do the same to ensure that their assureds are not dealing with any individuals or entities who remain on any sanctions lists (either the residual listings on the “main” Iran lists, or the human rights, terrorism or Syria lists, which continue to include Iranian individuals and entities).

Due diligence is of course needed not only at the underwriting stage, but also at the claims stage, in order to ensure that the person receiving the payment is not subject to sanctions and that the payment is not otherwise in breach of sanctions. Due diligence should be carefully documented.

Even if insurers and brokers can deal with all of the above points, they should be aware that many banks are still being very cautious, and these banking issues may mean that the receipt of premium and payment of claims could still be problematic, even where no legal issues arise. Insurers and brokers should discuss these issues with their banks in advance, so that no problem arises at the point when premium is received or claims are payable.

Insurers and brokers should also consider the availability of reinsurance, the extent to which US reinsurers are involved and the impact where those reinsurers are unable to pay claims.

Insurers and brokers should review the existing general sanctions clause which

is included in their policy wordings and decide whether it is effective to deal with the new landscape in respect of sanctions against Iran or whether bespoke wording more specific to Iran should be added.

Finally, insurers may now be asked to look at historic claims where payments were not made because of sanctions at the time, and determine whether those claims can now be paid. Insurers and brokers should proceed carefully, having taken legal advice, and if necessary, spoken to the relevant regulator.



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