

## Iranian Sanctions

### Background

The U.K. and U.S. governments have adopted a series of measures against Iran in response to the International Atomic Energy Agency's report of 18 November 2011 in which it was concluded that Iran has carried out activities relevant to the development of nuclear explosive devices. The basis for these measures is that Iran is using the financial system to continue to fund illicit development of nuclear firearms and that steps need to be taken to strengthen safeguards to protect financial centres from money laundering and the financing of terrorism risks emanating from Iran.

### The United States

With effect from 21<sup>st</sup> November 2011 the US measures consist of (1) the identification of Iran as a jurisdiction of "Primary Money Laundering Concern" (2) the designation of a number of entities and individuals for the application of asset freeze measures under powers vested in the Department of State and Treasury Department pursuant to Executive Order 13382 of 28 June 2005, and (3) the imposition of sanctions pursuant to Executive Order 13590 against persons that engage in activities that directly and significantly contribute to Iran's ability to develop its petroleum resources and its production of petrochemical products.

#### Designation as Jurisdiction of Primary Money Laundering Concern

The designation of the Islamic Republic of Iran as a "Jurisdiction of Primary Money Laundering Concern" under Section 311 of the USA Patriot Act authorises the US Treasury Department to issue regulations imposing a prohibition on the opening or maintaining of correspondent accounts by any US financial institution or agency for



or on behalf of a foreign banking institution, if the correspondent account involves Iran. "Primary Money Laundering Concern" is a statutory term and covers all areas of illicit finance. US financial institutions are required to implement additional due diligence measures to prevent indirect access to U.S. correspondent accounts by or on behalf of Iranian banking institutions, including, where necessary, terminating the correspondent account.

In a background briefing dated 21 November 2011, senior officials from the U.S. State Department describe this step as a means to firewall off US banks from any operation that their international partners might have with Iran. They warn that any transaction or business dealing with Iran subjects the party engaging in that transaction to grave risk and state that this designation will have a serious chilling effect on the willingness of any foreign financial institution anywhere in

the world to continue to do business with Iran.

#### Designations under Executive Order 13382

This Executive Order is aimed at freezing the assets of proliferators of weapons of mass destruction (WMD) and their supporters. With effect from 21 November 2011, an additional ten companies and one individual are designated and added to the OFAC SDN list.

The effect of designation under EO 13382 is that all transactions involving any of the designated entities and any U.S. person or within U.S. jurisdiction are prohibited. Moreover any assets of the designated entities under U.S. jurisdiction, including but not limited to, U.S. dollar wire transfers, are frozen.

US persons are defined as *any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.*



## Executive Order 13590

With effect from 21 November 2011, the US has widened the range of activities and persons against which sanctions can be imposed. EO 13590 is aimed at non-US persons that provide support to Iran's energy and petrochemical sectors. It goes further than CISADA, which targeted investment in Iran and the importation into Iran, or Iran's ability to import or produce Refined Petroleum Products (RPP), including a prohibition on shipping and insurance services in relation to those activities.

Under Order 13590 the newly sanctionable activities include:

### 1. Goods, Services, Technology, or Support for the Development of Petroleum Resources

The knowing sale, lease, or provision of goods, services, technology, or support to Iran that could directly and significantly contribute to the enhancement of Iran's ability to develop petroleum resources located in Iran could trigger the imposition sanctions if a single transaction has a fair market value of \$1 million or more, or if a series of transactions from the same entity have a fair market value of \$5 million or more in a 12-month period.

### 2. Goods, Services, Technology, or Support for the Maintenance or Expansion of the Production of Petrochemical Products

The knowing sale, lease, or provision of goods, services, technology, or support to Iran that could directly and significantly facilitate the maintenance or expansion of its domestic production of petrochemical products could

trigger the imposition sanctions if a single transaction has a fair market value of \$250,000 or more, or if a series of transactions from the same entity have a fair market value of \$1 million or more in a 12-month period.

If any person, (i.e. not limited to "U.S. person" as defined above), wherever located, is found to have provided a prohibited good, service, technology, or support described in E.O. 13590, the Secretary of State, in consultation with other agencies, has the authority to impose sanctions on that person, including prohibitions on: foreign

exchange transactions; banking transactions; property transactions in the United States; U.S. Export-Import Bank financing; U.S. export licenses; imports into the United States; loans of more than \$10 million from U.S. financial institutions; U.S. government procurement contracts; and, for financial institutions, designation as a primary dealer or repository of U.S. government funds.

In the Order:

"Petroleum Resources" includes petroleum, oil or natural gas, liquefied natural gas and refined petroleum products.

To "Develop" petroleum resources means "to explore for, or to extract, refine, or transport by pipeline petroleum resources."

"Refined Petroleum Products" means diesel, gasoline, jet fuel (including naphtha – type and kerosene-type jet fuel) and aviation gasoline.

"Petrochemical Products" includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol and urea.

"Knowingly" with respect to a conduct, a circumstance or a result, means that a person has actual knowledge or should have known of the conduct, the circumstance or the result.

### What Constitutes Sanctionable Activity?

The provision of maritime transportation services, and related insurances, could trigger sanctions under Executive Order 13590.

In a telecon briefing on 21/11/11 the US State Department stated that sanctions will be imposed on companies that provide goods and services **for upstream Iranian oil and gas activities**, like development, exploration, and extraction of oil and gas. The provision of goods and services is targeted e.g. the sale of drilling equipment, and provision of engineering services. The intention is to deprive Iranian entities of capital and technology to hit oil production which is vital to the economy.

The new Order also targets the petrochemical industry for the first time, which is the biggest export earner for Iran after crude oil. The US is campaigning to encourage governments and companies to

switch from Iran to alternative sources of petrochemical supply. There will be a sanction on companies who provide goods, services and technology to help maintain and expand the petrochemical industry e.g. transportation and delivery of petrochemical catalyst to Iran. The insurance of such cargo or of the transporting vessel could constitute sanctionable activity under EO 13590.

The Order is thus very widely drawn. It is possible that ships or shipping services could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources in Iran or domestic production of petrochemical products. It is not yet certain whether it is the intent of the US State Department to sanction persons involved in the transport by sea, or the insurance of activities which involve the sea carriage, generally, of petroleum resources or petrochemical products into or out of Iran. (See the IG's specific request for guidance below).

Initial unofficial guidance from the State Department is that it is not the intention of the US to sanction shipowners and their supporting banks and underwriters involved in the carriage of Iranian crude oil. With respect to shipment or transportation of oil or petroleum **from** Iran, the State Department has informally indicated that "develop" does not include the transportation of petroleum resources **from Iran by ship**. Therefore, the purchase and lifting of crude oil from Iran would not constitute sanctionable activity under Executive Order 13590. There is however less certainty concerning imports of petroleum resources and the carriage of petrochemical cargoes. The State Department is expected to publish a Fact Sheet in the coming days which should provide clarity on the types of trade that may or may not be sanctionable. In the meantime, specific concerns should be directed to legal counsel in the US specialising in sanctions matters.

The IG has on 25-11-11 sought official guidance from the US State Department on a number of issues including whether:

- the transportation by sea of crude oil and/or Petrochemical Products and / or Petroleum Resources into or out of Iran,





and the insurance and reinsurance of vessels performing such trades will now attract sanctions;

- the financial criteria applying to sanctionable activities referred to in the EO and whether:
  - in the case of insurance, these refer to insurance premium charged for a voyage, or if not the basis on which they are calculated; and
  - in respect of ship owners/charterers/managers/operators, these refer to the value of the cargo being carried, or if not the basis on which they are calculated.

A response from the State Department is currently awaited and updates will be provided to Members in due course via the Club website.

## United Kingdom

### FINANCIAL RESTRICTIONS (IRAN) ORDER 2011 EFFECTIVE 21 NOVEMBER 2011 ("the Order")

Pursuant to the Order, all credit and financial institutions operating in the UK financial sector (relevant persons) must not, with effect from 21 November 2011: enter into, or continue to participate in, any transaction or business relationship with

- any bank incorporated in Iran
- any subsidiary or branch of a bank incorporated in Iran, wherever located, or
- The Central Bank of Iran (also known as Bank Markazi Jomhuri Islami Iran) (designated persons)

There are both civil and criminal penalties for failing to comply with the Order. The Order is valid for one year, and will (unless it is revoked earlier) expire on 20 November 2012.

The direction applies to "all persons operating in the UK financial sector", as defined in the Counter-Terrorism Act 2008 ("relevant persons"). This definition includes authorised insurance companies. Steamship Mutual Bermuda and

Steamship Mutual London are both considered by Her Majesty's Treasury ("HMT") to fall within that definition, and hence must comply with this Order.

The Order prohibits making or receiving payments from Iranian banks and their branch offices and subsidiaries, wherever located, and requires UK financial and credit institutions to end business relationships with such banks. The prohibitions include transactions involving indirect payments to/from Iranian banks, such as those through one or more intermediaries, or where transfers are made to an Iranian bank for the account of a customer.

HMT can in certain circumstances issue licences to exempt transactions or business relationships from the requirements of the Order, but if a transaction is authorised under a general, as opposed to an individual licence, the notification and authorisation requirements under Article 21 of EU Regulation 961/2010 will still apply.

Existing asset freezes against various Iranian banks continue and do not conflict with the requirements of the Order. However, the Order goes further in that it prevents all transactions and business relationships with all Iranian banks, not just making available funds or economic resources to those subject to an asset freeze.

### Impact on Trade

The Order is not intended to serve as a trade ban with Iranian companies, although the UK government does not encourage such trade. Exporters will no longer be able to use UK credit or financial institutions to make or receive payment to or from Iranian banks unless HMT has licensed the transaction. HMT advises that the reason for the prohibition is that the Iranian banking sector provides the financial service which underpins the procurement of goods and materials from abroad for Iran's nuclear and ballistic missile programmes. By prohibiting transactions and business relationships with Iranian banks, the UK Government is hoping to remove any opportunity for Iran to procure those goods and materials. Given this aim, HMT warns that it is unlikely to issue licences for business with

Iranian banks on an on-going basis under new contracts.

The Department of Business Innovation Skills has produced a notice to exporters and companies with trading interests in Iran which can be accessed through this link.

<http://www.bis.gov.uk/policies/export-control-organisation/eco-notice-exporters>

### Impact on Payments and Guarantees

The effect of the recent actions taken by the US and the UK with regard to financial institutions mean that it will be impossible to use US or UK banks to effect payments to and from any Iranian bank. Any non-US bank which needs to have access to the US financial system will be unwilling to put such access at risk by continuing to deal with Iranian entities.

From a claims perspective it will be harder, if not impossible, to provide bank guarantees to Iranian entities and so far as Club letters are concerned, it is quite possible that, if the letter is called upon, the Club would in fact be unable to arrange payment pursuant to its guarantee obligations since it may not find a bank willing to process the transaction. The ability of Clubs to issue LOUs to Iranian interests may therefore be prejudiced by these measures.

## European Union

It is anticipated that the outcome of a meeting of EU foreign ministers on 1 December 2011 will be a further EU Regulation with measures against Iran, likely to target industries such as shipping. Further developments will be advised in due course.

For further information on this or other Loss Prevention topics please contact your usual Syndicate Contact or the Head of the Loss Prevention Department, Steamship Insurance Management Services Ltd.

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