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INTERNATIONAL TRADE ALERT

RECENT U.S. INITIATIVES TO AUGMENT SANCTIONS AGAINST IRAN COULD SIGNIFICANTLY IMPACT THE INSURANCE AND REINSURANCE INDUSTRIES

As the U.S. government moves to confront Iran on its suspected nuclear weapons program, the Obama administration and Congress are looking at economic sanctions as a principal tool for weakening the Iranian economy, thereby bringing pressure to bear on the Iranian government to address U.S. nuclear concerns. In this context, U.S. officials view targeting the insurance industry as a way to indirectly impair the ability of persons outside of the United States to engage in trade with Iran. As the U.S. government ramps up enforcement of its existing economic sanctions against Iran and seeks to enhance and expand them globally, both U.S. and non-U.S. insurers should reassess their export control and sanctions policies and procedures to ensure that they remain compliant with evolving U.S. unilateral and multilateral sanctions against Iran. Set forth below is an overview of recent U.S. sanctions initiatives that could significantly impact the insurance industry.

INCREASED ENFORCEMENT OF EXISTING SANCTIONS

The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers a comprehensive set of sanctions regulations that generally prohibit U.S. persons from engaging in transactions not licensed by OFAC that involve Iran or a blocked Iranian person or entity. Furthermore, all property, including insurance contracts, in which any blocked Iranian person or entity holds a direct or indirect interest, is considered "frozen." Finally, U.S. persons may not engage in insurance transactions that facilitate transactions by third parties that would be prohibited if performed by a U.S. person. Thus, for example, U.S. underwriters, brokers, agents, primary insurers, reinsurers and U.S. employees of foreign firms in the insurance industry may not participate in an insurance policy covering potential damage to an Iranian merchant vessel that has been designated as a blocked person or in a reinsurance contract for policies underwritten by an Iranian blocked person.

OFAC is adding to its enforcement resources and bringing more civil penalty cases involving Iran. These actions are not limited to U.S. persons. For example, earlier this year, OFAC brought enforcement action against Lloyds TSB, which paid a $350 million fine for secretly channeling Iranian (and Sudanese) money through the American banking system. Last September, OFAC also designated Iran's national maritime carrier, Islamic Republic of Iran Shipping Lines (IRISL), as a Specially Designated National. As a result, U.S. financial institutions, such as insurance and reinsurance companies, may not directly or indirectly engage in transac`tions involving IRISL, its subsidiaries or any of its more than 120 vessels. Furthermore, any property of IRISL that comes under the control of a U.S. person must be blocked.

POSSIBLE EXPANSION OF OFAC SANCTIONS

OFAC's Iranian sanctions regulations include a number of exceptions and licensing provisions that permit otherwise-prohibited transactions involving Iran and Iranian interests, such as shipments of certain commodities. Because these transactions require insurance, the exceptions and licensing provisions indirectly affect the insurance industry. To expand the reach of the Iran sanctions program without congressional action, OFAC could exercise its discretion and scale back or eliminate these exceptions and licensing provisions, thereby cutting off the ability of U.S. companies to insure these transactions.

EFFORTS TO BUILD MULTILATERAL SUPPORT FOR SANCTIONS AGAINST IRAN

The Obama administration is also considering whether to push the international community for increased multilateral sanctions against Iran, including UN resolutions, which could target the insurance and banking sectors. However, the United States must obtain support for such initiatives from China and Russia, both of which have not only increasing economic ties to Iran, but also veto power in the U.N. Security Council.

CONGRESSIONAL INITIATIVES TO IMPOSE ADDITIONAL NEW SANCTIONS AGAINST IRAN

Although the Obama administration has not yet decided whether it wants a new Iran sanctions bill for fear of interfering with ongoing international negotiations with Iran, Congress is working to pass legislation that would empower the president to impose U.S. sanctions unilaterally against Iran. Some of these new sanctions would impact the insurance industry.

- **2010 Energy-Water Appropriations Bill (H.R. 3183)** – H.R. 3183 bans companies that sell refined petroleum products to Iran valued at $1 million or more from selling crude oil to the U.S. Strategic Petroleum Reserve. The restriction would also apply to any company that contributed services in the amount of $1 million or more to the ability of Iran to import refined petroleum products, such as insurance and reinsurance companies that underwrite vessels carrying gasoline destined for Iran. The ban would be lifted if a company ceased to do business with Iran. H.R. 3183 was signed into law on October 28, 2009 as Public Law 111-85.

- **Dodd-Shelby Comprehensive Iran Sanctions, Accountability, and Divestment Act (S.2799)** – The Dodd-Shelby Iran sanctions bill would amend the Iran Sanctions Act of 1996 to strengthen the president's authority to impose sanctions on any entity that engages in activities that could contribute to Iran's ability to import refined petroleum resources or helps Iran to maintain or expand its domestic refining capacity, such as by underwriting or otherwise providing insurance or reinsurance. The bill would also authorize sanctions against companies if their subsidiaries invest in Iran's energy sector or provide Iran refined petroleum resources. It also contains a divestment provision that authorizes states, local governments and mutual funds to divest from firms investing in Iran's energy sector. The Senate Banking Committee reported the bill to the Senate floor on October 29, 2009, and it was placed on the Senate Legislative Calendar under General Orders on November 19, 2009.

- **Iran Refined Petroleum Sanctions Act (H.R. 2194, H.R. 2574; S. 908)** - H.R. 2194 would amend the Iran Sanctions Act of 1996 to empower the president to prohibit companies that assist Iran, either directly or indirectly, in obtaining gasoline and other refined petroleum products or in maintaining or expanding its domestic production of refined petroleum resources from doing business in the United States. The bill would apply to financial assistance and would prohibit banks and financial institutions (such as insurance companies) that do business with Iranian banks from clearing their international trades through U.S. banks. H.R. 2194, which has 336 sponsors, was approved by the House Foreign Affairs Committee on October 28, 2009. The bill is also under consideration by the House Financial Services, Oversight and Government Reform, and Ways and Means committees. A similar bill, S. 908, on which the Dodd-Shelby bill is based in part, has 76 co-sponsors in the Senate.

- **Iran Sanctions Enabling Act (H.R. 1327; S. 1065)** - S. 1065 would authorize state and local governments to divest from companies that do more than $20 million in business with Iran's energy sector. It also provides safe harbor for fund managers that divest according to the bill's guidelines. The bill was referred to the Senate Committee on Banking, Housing, and Urban Affairs. H.R. 1327, the House companion bill, was passed in the House (414-6) and referred to the Senate on October 15, 2009.

- **Peace through Strength Act of 2009 (H.R. 3832)** – H.R. 3832 would authorize the president to impose a range of sanctions against any firm that made an investment of

$20 million or more (or any combination of investments of at least $5 million each that in the aggregate equals or exceeds $20 million in any 12-month period), that directly and significantly contributed to the enhancement of Iran's ability to develop its petroleum resources. The bill was referred to the House committees on Foreign Affairs, Financial Services, Armed Services, Ways and Means, and Oversight and Government Reform on October 15, 2009.

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