

International Trade Alert

Recent U.S. Initiatives to Augment Sanctions Against Iran Could Significantly Impact the Insurance and Reinsurance Industries

March 8, 2010

As the U.S. government continues 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 pressuring 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 increasing its enforcement resources and bringing more civil penalty cases involving Iran. These actions are not limited to U.S. persons, but also include cases involving non-U.S. financial institutions that facilitate non-U.S. persons’ trade with Iran through misuse of the U.S. banking system. For example, in December 2009, Credit Suisse AG agreed to pay \$536 million to settle a case involving the removal of information from American-bound wire transfers that would have signaled that the money originated in Iranian banks. In a similar case, in January 2009, OFAC brought an enforcement action against Lloyds TSB, which paid a \$350 million fine for secretly channeling Iranian (and Sudanese) money through the American banking system. Separately, in September 2008, OFAC designated Iran’s national maritime carrier, Islamic Republic of Iran Shipping Lines (IRISL), a Specially Designated National. As a result, U.S. financial institutions, such as insurance and reinsurance companies, may not directly or indirectly engage in transactions 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 litany 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.



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Efforts to Build Multilateral Support for Sanctions Against Iran

The United States is circulating a proposal for a new round of U.N. sanctions against Iran that would, among other things, target the Iranian Revolutionary Guard Corps and could potentially affect the insurance and banking sectors. However, the United States must obtain support for such initiatives from China and Russia, both of which have increasing economic ties to Iran as well as veto power in the U.N. Security Council. Although Russia has stated that it is ready to consider new sanctions against Iran, China has voiced opposition to a new U.N. resolution and would prefer diplomatic negotiations and peaceful settlement. Additionally, it is not clear whether Brazil, Lebanon or Turkey, three of the current 10 non-permanent members of the U.N. Security Council, would vote in favor of new sanctions. To pass, a resolution would require nine of the 15 members of the Security Council to vote in favor, and none of the five veto-wielding members to vote against.

Congressional Initiatives to Impose New Sanctions Against Iran

Congress is working to pass legislation that would empower the president to impose new U.S. sanctions unilaterally against Iran. Some of these new sanctions would impact the insurance industry. The Obama administration has stated that it would like Congress to ensure that any new sanctions bill complements the U.S.'s international efforts regarding Iran.

- **Iran Refined Petroleum Sanctions Act (H.R. 2194, H.R. 2475; 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. Specifically, H.R. 2194 empowers the president to impose sanctions on companies that provide Iran refined petroleum products, or related goods, services, technology, information or support, with a value of \$200,000 or more on a per-contract basis or \$500,000 or more in any 12-month period. This provision also specifically targets companies that underwrite or otherwise provide insurance or reinsurance related to the shipment of refined petroleum products to Iran in excess of the monetary thresholds above. 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 was passed by the House on December 15, 2009.
- **Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009 (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, subject to a de minimis threshold of \$200,000 per transaction or an aggregate of \$1 million in any 12-month period. S. 2799 specifically defines "goods, services, technology, or support" to include underwriting or otherwise insuring or reinsuring the sale or lease of any goods, services or technology necessary to import refined petroleum, as well as the financing or brokering of such transactions. The bill would also authorize sanctions against companies if their subsidiaries invest in Iran's energy sector or provide Iran refined petroleum resources, and it contains a divestment provision that authorizes states, local governments and mutual funds to divest from firms investing in Iran's energy sector. S. 2799 passed the Senate on January 28, 2010.
- **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.
- **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.

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