

## Cease and Desist – severe new restrictions on dealing with Iranian banks

You may have seen reports of the latest round of financial sanctions imposed by the UK Government against Iran, which were announced, and became effective, yesterday. The new measures are contained in The Financial Restrictions (Iran) Order 2011 (the “**Order**”), made pursuant to the Counter-Terrorism Act 2008. Insurers should not be deceived by the brevity of the Order (it is only two pages long), as the potential implications for the insurance market are significant.

The Order arises out of concerns regarding Iran’s development of a nuclear and ballistic missile capability, and Iran’s failure to address the risk of terrorist financing which, it is said, poses a serious threat to the integrity of the international financial system. It is reported that other countries are taking similar actions against Iran.

### Isolation of the Iranian banking system

The Order applies to all persons operating in the UK financial sector as financial or credit institutions (including (Re)Insurers) and all branches of such persons, wherever those branches are located (“**Relevant Persons**”). The Order does not, however, apply to subsidiaries of UK financial or credit institutions incorporated outside the UK or any subsidiaries of UK financial or credit institutions, wherever located, where those subsidiaries are not themselves financial or credit institutions.

The Order directs that Relevant Persons must not enter into, or continue to participate in, any transaction or business relationship with: (i) any credit institution incorporated in Iran; (ii) any subsidiary or branch of a credit institution incorporated in Iran, wherever that subsidiary or branch is located; or (iii) the Central Bank of Iran.

In practice, this means that Relevant Persons are prohibited from performing any existing transaction or undertaking any activity pursuant to an existing

business relationship with Iranian credit institutions, unless licensed to do so by HM Treasury. This includes making payments to, or receiving payments from, Iranian credit institutions either directly or indirectly via one or more intermediaries.

Notwithstanding the above, provided that all reasonable steps are taken and all due diligence exercised to ensure that the requirements of the Order are complied with, it is a defence to show that Relevant Persons did not know or have reasonable cause to suspect that their participation in a transaction was prohibited by the Order.

### Interrelationship with existing financial sanctions

Several Iranian banks are already subject to asset freezes under the existing sanctions regime. The Order goes further and 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.

The pre-existing sanctions regime that applies already to certain Iranian banks contained some exemptions to the prohibition on making funds available to designated persons. Previously, UK financial or credit institutions were permitted to:

1. credit frozen accounts where they receive funds transferred into the account of a designated person;
2. add interest or other earnings to frozen accounts; or
3. add to frozen accounts payments due under contracts, agreements or obligations that were concluded or arose before the date on which the person was designated, provided that such additions to frozen accounts were themselves frozen.

It is not the intention that the Order should prevent transfers of funds permitted under the exemptions

described above. Accordingly HM Treasury has issued a general licence, exempting such payments.

In addition to the above, Article 21 of EU Regulation 961/2010 (the “**Regulation**”) put in place certain requirements in relation to notification of transfers of funds to or from Iranian persons, entities or bodies (broadly, that: payments of €10,000 or less can be made without notification; payments between €10,000 and €40,000 can be made without authorisation, on condition that they are notified prior to being made; and payments greater than €40,000 must be authorised before being made). These requirements continue to apply; however, transfers of funds to or from Iranian credit institutions that would previously have been possible if made in accordance with the above notification requirements, are now prohibited.

## Provision of Insurance and Reinsurance

The pre-existing sanctions regime, as set out in the Regulation, prohibits specifically the provision of (re) insurance to an Iranian person, entity or body, including Iran, the Government of Iran and its public bodies, corporations and agencies. Additionally, it is prohibited to provide (re)insurance to any person acting on behalf of any of the above. The Order goes further than the Regulation and prohibits the provision of (re)insurance to Iranian credit institutions.

The Regulation includes certain exemptions to the general prohibition on the provision of (re)insurance, including: (i) the provision of compulsory or third party insurance to Iranian persons based in the EU; (ii) the provision of insurance to non-designated individuals acting in their private capacity (and reinsurance relating thereto); and (iii) the provision of (re)insurance to the owner of a vessel, aircraft or vehicle chartered by a non-designated Iranian person.

Because the Order goes further than the Regulation in certain respects, e.g. in prohibiting payment in relation to a contract of (re)insurance that would otherwise be permitted under one of the above exemptions, in order to preserve these exemptions, HM Treasury has issued a general licence (General Licence 3), allowing transactions related to these exemptions to be made (including in relation to the provision of exempt contracts of (re) insurance to Iranian credit institutions).

## Consequences for Exporters

The Order is not intended to serve as a trade ban with Iranian companies (although the UK government does not encourage such trade). However, in the absence of a licence from HM Treasury, exporters will no longer be able to use UK credit or financial institutions to make or receive payments to or from Iranian credit institutions or to provide services where so doing would involve the UK institution in a business relationship with an Iranian credit institution. This may have implications for (Re)Insurers.

## Licensing

In total, HM Treasury has issued six general licences. In addition, it will still be possible to apply to HM Treasury for specific licences in respect of particular transactions. However, given the purpose of the Order (the prevention of nuclear proliferation) HM Treasury have stated that “...it is unlikely that the Treasury will issue licences for business with Iranian banks on an ongoing basis under new contracts.”

## Offences

It is an offence not to comply with the requirements of the Order or to participate intentionally in activities knowing that the object or effect of them is to circumvent the requirements of the Order. Penalties for a failure to comply with the Order include: (i) a civil penalty of such amount as is considered appropriate; or (ii) a term of imprisonment of up to two years and/or a fine. In addition, civil (but not criminal) penalties may be imposed for failure to comply with the terms of a licence issued by HM Treasury.

## Conclusion

The scope of the prohibitions introduced by the Order is wide-ranging and the penalties that can be imposed are severe. In essence, UK (Re)Insurers are prohibited from providing (re)insurance to Iranian credit institutions. In addition, the Order prohibits all payments to/from Iranian credit institutions (wherever located), whether made or received directly or indirectly. Regardless of the identity of the Insured or Reinsured any step in relation to any policy of (re)insurance that

involves making a payment to, or receiving a payment from, an Iranian credit institution will be caught by the terms of the Order.

In such circumstances, Insurers will need to determine whether any proposed course of action is permitted under the terms of one of the general licences issued by HM Treasury. If not, then a specific licence application will need to be made, although the chances of such an application being looked upon favourably would, in the light of the comments from HM Treasury, appear to be doubtful.

If you have any questions arising from this update or in respect of the sanctions regime against Iran generally then please do contact either Lindsay McQuillian or Graham Gowland.

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