Iran still a minefield for reinsurers

Lindsay McQuillian and **Graham Gowland** of law firm Mayer Brown International examine why the past year has seen reinsurers face greater challenges when dealing with firms with links to Iran and its administration

Since the EU imposed sweeping economic sanctions against Iran in October 2010 reinsurers have faced significant restrictions on their ability to provide reinsurance to Iranian persons and entities. Recently, in light of concerns regarding Iran's development of a nuclear and ballistic missile capability, and its failure to address the risk of terrorist financing, the UK government has imposed further curbs on reinsurers' ability to write business with an Iranian nexus.

The sanctions imposed in 2010 prohibited reinsurers from providing reinsurance to an Iranian person, entity or body, including Iran, the Government of Iran and its public bodies, corporations and agencies. In addition, it was prohibited to provide reinsurance to any person acting on behalf of any of the above. These prohibitions still stand. However, there were 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.

In addition to the restrictions detailed above, certain designated Iranian persons and entities were subject to an asset freeze, although again, there were exemptions to the prohibitions on making funds available to these designated persons that allowed UK financial or credit institutions to: credit frozen accounts where they received funds transferred into the account of a designated person; add interest or other earnings to frozen accounts; or 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.

The latest round of economic sanctions applies to all persons operating in the UK financial sector as financial or credit institutions (including reinsurers) and all branches of such persons, wherever those branches are located. The restrictions do 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.

Reinsurers to whom the restrictions apply 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 order to preserve the exemptions to the Iranian sanctions regime described above, 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 new restrictions, 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.*"

In practice, this means that reinsurers 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.

Rather than a quantum leap, the new measures represent an incremental development in the economic sanctions against Iran. Nevertheless, penalties for breach of the new measures can be severe (a fine of such amount as is deemed appropriate and/or up to two years in prison). Therefore, reinsurers should tread carefully when taking any step in relation to any contract of reinsurance that they know, or have reasonable cause to suspect, involves making a payment to, or receiving a payment from, an Iranian credit institution (regardless of the identity of the original insured or the reinsured).

In such circumstances, reinsurers 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 (any permitted payment may still need to be notified to 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.