LLOYD'S

SANCTIONS DUE DILIGENCE GUIDANCE FOR THE LLOYD'S MARKET

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THIS GUIDANCE IS NOT PRESCRIPTIVE. The compliance procedures adopted by each managing agent will vary depending on their risk profile. It should not be treated as bespoke legal advice and/or a "safe harbour" for sanctions compliance.

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PART 1 - BACKGROUND INFORMATION REGARDING SANCTIONS AND GUIDANCE ON DUE DILIGENCE AND SCREENING PROCEDURES OF GENERAL RELEVANCE

1. BACKGROUND INFORMATION

1.1 What are sanctions?

1.1.1 A more detailed explanation of what sanctions are and their purpose is set out in Market Bulletin Y4117. Sanctions can take a number of forms, but the most relevant types of sanctions are: (i) financial sanctions; and (ii) trade sanctions.

1.1.2 Financial sanctions laws can affect (re)insurers either by prohibiting the provision of (re)insurance to certain entities or individuals or in the form of funds and asset-freeze measures affecting the provision of funds and economic resources (which will prevent the payment of claims and/or other sums under (re)insurance contracts, and all other dealings in the funds of designated persons/entities). Targeted or "smart" sanctions measures can prohibit indirect connections or dealings with designated entities or persons. Financial sanctions often also prohibit the provision of financing or financial assistance (which can include (re)insurance) connected to prohibited transactions.

1.1.3 Trade sanctions laws can affect (re)insurers since the provision of (re)insurance in connection with certain restricted trade or certain risks subject to sanctions can be prohibited and/or amount to a prohibited export of service or a prohibited promotional activity. In certain cases, the provision of (re)insurance may need to be licensed (by the Export Control Organisation and/or other agencies).

1.1.4 It is also broadly prohibited to engage in any activities the object or effect of which is to circumvent sanctions. As a consequence, (re)insurers will not be permitted to structure transactions so as to sidestep the effects of international sanctions. Other sanctions regimes prohibit the facilitation of any activities that would amount to an infringement if performed by the (re)insurer themselves.

1.2 Multiple applicable regimes

1.2.1 In some cases, more than one sanctions regime may apply to a managing agent's[1] activities and managing agents should take steps to ensure that they understand which sanctions apply to their group companies, corporate aligned members and those that act on their behalf (including their employees).

1.3 Penalties and compliance

1.3.1 Breach of financial or trade sanctions law can result in the commission of a criminal offence punishable by imprisonment, a fine or both. In addition, it is expected by the FSA that all authorised firms should have processes to manage the risk that they be used for the furtherance of financial crime. As such, firms should have adequate systems and controls in place to prevent infringements of sanctions legislation. Recent enforcement action brought by the FSA and other authorities demonstrates that failure to implement and maintain adequate systems and controls can result in very substantial fines.

1.3.2 Sanctions apply immediately upon enactment and/or inclusion of designated persons/entities/activities within the scope of sanctions. HM Treasury's financial sanctions page outlines the latest sanctions regimes for various countries. Managing agents can subscribe to AFUsubscribe@hmtreasury.gsi.gov.uk for financial sanctions

[1] In this guidance, the term "managing agent" means Lloyd's managing agents and, where the sense requires, managing agent employees/contractors and the syndicates on whose behalf the managing agent underwrites.

related releases. Similarly, information on trade sanctions can be found at the Export Control Organisation's website (part of the Department for Business, Innovation and Skills ("BIS").

1.4 **Risk-based approach to compliance**

1.4.1 Sanctions law and regulation does not set out mandatory due diligence and screening procedures. The FSA explicitly recognises that regulated firms are likely to implement reasonable and proportionate systems and controls to mitigate the risk of infringement of sanctions on a risk-sensitive basis. Therefore, managing agents may establish processes and procedures based on their assessment of their sanctions risk profile. However, managing agents must remain aware at all times that the effects of sanctions laws and regulations are absolute and any infringements are likely to expose them to the risk of enforcement action. Managing agents must not seek to use their risk assessments as a justification for substandard or inadequate sanctions due diligence and screening processes and cannot rely on knowledge-based defences to avoid conducting robust and proportionate due diligence and screening.

1.4.2 Where managing agents know or have reasonable cause to suspect that the business they propose to underwrite would infringe international sanctions, they must not underwrite that business. Where such knowledge or suspicion arises post-underwriting, managing agents must take immediate steps to address this and any sanctions infringement which may arise from it.

1.4.3 Managing agents are also encouraged to keep their assessment of their sanctions risk under ongoing review. Sanctions are highly fact-specific and subject to constant change. Similarly, managing agents should not ignore areas of their business that they deem to have a lower risk profile, as again breaches could still expose them to the risk of prosecution (even where due diligence and screening has been performed).

1.4.4 Finally, managing agents must ensure that they keep themselves abreast of the latest developments in sanctions law and regulation and comply with these when they are enacted. This is not an insignificant task. The procedures managing agents adopt should facilitate such review and implementation.

2. RISK FACTORS – ESTABLISHING RISK-SENSITIVE COMPLIANCE PROCEDURES

2.1 When determining what due diligence and screening processes to adopt, the following is a **NON-COMPREHENSIVE** list of suggested risk factors managing agents might use to assess their exposure to sanctions:

(a) the **geographical location(s)** of the risks or (re)insureds that managing agents are asked to underwrite;

(b) the **nature and scope of cover** of the (re)insurance contracts concerned (including the class of business), the **complexity** of their terms (including whether any term of the (re)insurance contracts concerned makes it likely that cover could be extended to, or payments made to, persons/entities that are not identified at the moment of underwriting or to activities/goods which are not identified at the point of underwriting) and/or the nature/complexity of other business transactions in which managing agents propose to engage;

(c) the **corporate structure, identity, ownership and control**, and operational structure, of the **(re)insured** or other beneficiaries of cover that managing agents are asked to underwrite;

(d) the likely **activities, goods, equipment, services or trade** covered;

(e) the **corporate structure, identity, ownership and control**, and operational structure, of the managing agent and the syndicate which participates in the risk concerned;

(f) the **distribution channels** through which the managing agent conducts business and the screening arrangements of the parties through whom the managing agent conducts business (e.g., the placing broker, producing broker and/or coverholder);

(g) the **method of acceptance** of the (re)insurance contract concerned and whether the managing agent participates as a lead or following underwriter on such contract;

(h) the **sanctions laws that apply** to the managing agent (and the fact that these can create civil and criminal liability); and

(i) **other factors** for example, strong/historical links between the (re)insured and/or subject-matter of the (re)insurance and certain countries/regions and/or the location of one of the parties (e.g. the broker) in a certain country/region.

2.2 Managing agents may determine that other risk factors are relevant when determining what due diligence and screening processes to adopt. Managing agents' assessment of their risk profile may vary across different business lines, underwriting disciplines and group companies. For example, managing agents' view of their sanctions risk profile might be altered should the (re)insurance contracts they underwrite contain, as a matter of course, comprehensive sanctions exclusion or warranties (although this will not obviate the need to conduct due diligence and screening).

2.3 It is not reasonable to assume automatically that (re)insureds or (re)insurance arrangements introduced to managing agents through regulated entities will have already been analysed and screened for compliance with sanctions (and even if they have, it is unlikely to be reasonable to presume automatically that sanctions apply to the parties that have conducted such screening in the same way as they do to managing agents). However, a managing agent might take this fact into consideration when determining the nature of due diligence and screening which it proposes to undertake on such (re)insureds or (re)insurance arrangements.

2.4 It is not reasonable for managing agents to rely on their banks/payment service providers to perform due diligence or screening.

2.5 As stated above, even if a managing agent has assessed the sanctions risk associated with a particular (re)insurance contract to be low, if it becomes aware or suspects that it breaches sanctions, it must take appropriate steps immediately to rectify the breach and/or report the matter to the relevant regulatory authority (e.g. HM Treasury).

3. DUE DILIGENCE AND SCREENING

3.1 What is due diligence?

3.1.1 Due diligence is the identification of named (re)insureds, all those associated with or benefiting from the cover (and receiving payments under it) and/or any trade to which the cover relates, which managing agents are asked to underwrite or the transaction in which they are asked to engage. Where appropriate, due diligence should enable managing agents to determine the ownership and control of their named (re)insureds and those other parties associated with or benefiting from cover. Due diligence should also enable

managing agents to obtain a full understanding of the activities in which their client and those associated persons engage.

3.1.2 Conducting due diligence is a key tool to ensure compliance with sanctions legislation and managing agents' regulatory compliance requirements. This is because sanctions focus on (i) the identity of the person/entity with whom one is dealing; (ii) the ownership and control of those persons/entities; (iii) the relationships those parties have with third parties (for example, agency and/or employment relationships); (iv) the activities of the person/entity with whom one is dealing; and (v) the subject matter of the transaction. Determining this at an early stage and before entering into a transaction (and keeping this information up to date through the life of that transaction) will enable managing agents to determine whether sanctions apply and will enable them to act accordingly.

3.2 What is screening?

3.2.1 Screening is the checking of information obtained about a person/entity against the lists of sanctioned persons/entities to whom it is prohibited to make funds or financial services available and/or against the lists of sanctioned goods/equipment/services it is prohibited to export (without a licence). Screening may also include the checking of this data against intelligence compiled and maintained by screening software and other providers.

3.2.2 Screening will also include the checking of information obtained by performing due diligence against specific non-list based sanctions (for example, in relation to sanctions against Iran and Syria – as to which, please **see Part 4 Section A**) and also against sanctions which prohibit investments in certain countries/regions (where this is appropriate).

3.2.3 It is only through performing due diligence on clients, associated parties and their activities, and screening the results of this due diligence, that managing agents can determine whether and how sanctions apply to them when engaging in activities or transactions related to those parties on which they have performed due diligence.

3.3 Amalgamating sanctions compliance procedures with other financial crime procedures

3.3.1 Many of the actions a managing agent is likely to take when seeking to ensure its compliance with sanctions will overlap with the steps it will take to ensure compliance with other applicable financial laws/regulation. It is perfectly permissible for managing agents to develop and implement integrated financial crime compliance procedures and Lloyd's encourages managing agents to consider doing so.

4. GENERAL DUE DILIGENCE CONSIDERATIONS – FINANCIAL SANCTIONS

4.1 The following guidance is designed to assist managing agents in setting their risk-sensitive compliance procedures. It is designed to assist managing agents in determining which due diligence information they wish to obtain in relation to their (underwriting and non-underwriting) activities. It is potentially relevant to all (re)insurance contracts irrespective of which sanctions regimes apply. It is, however, for managing agents to determine what information they obtain in order to achieve compliance.

4.2 Scope of financial sanctions

4.2.1 In assessing their risk profile and in setting their procedures, managing agents should take steps to understand how sanctions affect their business. Financial sanctions prohibit indirect (as well as direct) payments or provisions of funds to or for the benefit of

designated persons. This means that the provision of funds to third parties acting on behalf or at the direction or control of designated persons, or to non-designated third parties in order to satisfy an obligation of a designated person, is prohibited.

4.2.2 In the context of reinsurance, the prohibitions against the indirect provision of funds may restrict payments to non-designated cedants where the original insured is designated (or owned or controlled by designated persons)[2]. Other sanctions expressly target the provision of (re)insurance and again this restricts the provision of reinsurance where the original insured is designated (or owned or controlled by designated persons) (irrespective of the position of the cedant).

4.2.3 In addition, managing agents should bear in mind that many sanctions specifically prohibit the participation in activities aimed at circumventing sanctions.

4.3 Identifying the named (re)insured, beneficiaries of cover and recipients of payments

4.3.1 In order to understand to whom they may make funds available and whose funds they are receiving, managing agents may wish to take steps to identify their named (re)insured and all parties covered under a contract of (re)insurance by obtaining appropriate identifying details. This should normally take place during the underwriting of the risk concerned and prior to the risk being bound and/or prior to entering into another business transaction (for example, an investment services transaction). Managing agents should identify those to whom they make payments under in relation to a contract of (re)insurance to ensure that this will not result in a sanctions infringement (in some cases these checks may need to extend beyond the loss payee to third parties such as agents and service providers).

4.3.2 Managing agents may also need to identify those parties who make payments to them (including premium), if this is different from the named (re)insured, to ascertain the position under sanctions.

4.3.3 Where it is not possible to identify all the parties covered under a contract of insurance prior to underwriting, managing agents should adopt processes and procedures to ensure that these parties are identified when they become capable of identification. Managing agents will be expected to demonstrate that these processes and procedures work effectively in practice. Further guidance is provided in relation to particular methods of acceptance in **Part 2**.

4.4 Ownership and control

4.4.1 Financial sanctions may prevent managing agents from making available funds or economic resources to companies (or other unincorporated entities) even when they are not designated, if they are owned or controlled by designated persons.

4.4.2 Managing agents may determine that they require, in appropriate cases, to extend due diligence beyond the mere identity of the named (re)insured to other parties benefitting from cover and/or the recipients of payments. **It is recognised that managing agents will choose to extend their due diligence in this way by reference to the perceived sanctions risk associated with the (re)insured/beneficiary concerned**. Where they choose to do so, managing agents should be aware that ownership or control of an entity will depend on the facts of each case. As HM Treasury has explained, some cases will be clear cut. For example a wholly owned subsidiary is clearly owned and controlled by its parent. However, a publicly listed company in which a designated person (or Iranian

[2] As well as prohibiting payments where the cedant is owned or controlled by designated persons.

person) has a less than 1% shareholding is unlikely to be owned or controlled by such person. Others will not be so clear cut, such as a 45% stake held by a designated person or an Iranian person, entity or body in a company.

4.4.3 When considering this issue, the types of information that may be relevant include:

(a) the size of shareholding, including in comparison to the holdings of other shareholders (for example, if a designated person or an Iranian person holds 40% but no other shareholders hold more than 5%, this may indicate control by the designated person or Iranian person);

(b) the nature of shares held – some shares may carry voting rights while others may not;

(c) the management of the entity and or parent companies (for example the composition of the board of directors);

(d) the entity's Memorandum and/or Articles of Association;

(e) voting/veto rights; and

(f) the ability to exercise power over important matters affecting the company.

4.4.4 In certain circumstances, this analysis may need to be repeated at each stage of the corporate tree until the ultimate beneficial owner is identified.

4.4.5 Occasionally, managing agents may also need to determine whether the entities concerned have entered into any shareholder or other agreement or arrangement which would result in its direction or control being influenced by any other party. If they have, managing agents should seek to understand how direction and control is influenced and by whom and determine whether this poses a sanctions risk. In these cases, this might include obtaining and reviewing a copy of the relevant (shareholder's) agreement. Any other specific facts that indicate that a third party retains de facto control may require investigation (and this may, in any event, be material to the underwriting assessment of the risk concerned).

4.5 **Other information**

4.5.1 Prior to or during underwriting and/or during the course of business, managing agents may be provided with other information which suggests funds may be passed on to a third party, or are being held for the benefit of a third party. Managing agents may need to identify that third party to determine whether sanctions apply to it. If it is considered appropriate, they may also wish to determine the third party's ownership and control.

5. GENERAL DUE DILIGENCE CONSIDERATIONS – TRADE SANCTIONS (INCLUDING EXPORT/TRADE CONTROLS)

5.1 In addition to conducting the financial sanctions due diligence identified above, where managing agents are requested to enter into contracts of (re)insurance which relate directly or indirectly to trade or certain goods or equipment, managing agents should consider whether trade sanctions apply to the activities in which they are requested to participate. Specific guidance on trade sanctions related to military, dual-use and other goods subject to the Export Control Order 2008 is provided in Market Bulletin Y4412.

5.2 Managing agents should take steps and establish effective processes and procedures which ensure that they manage the risk of participating in prohibited or unlicensed

transactions concerning goods, equipment or services on all applicable export control lists (**see Part 4 Section C for further** information on where these lists can be found).

5.3 The following guidance is relevant to all (re)insurance contracts which relate directly or indirectly to trade or to certain goods, equipment or services (irrespective of whether the goods, equipment or services concerned are the entire subject-matter of the (re)insurance concerned or only part of it).

5.4 When setting their due diligence compliance procedures, managing agents should be aware that the definition of an export for the purposes of relevant trade sanctions can be very wide. Goods and equipment do not need to be moved permanently to another location in order to amount to an export. The goods/equipment may only be situated in a certain destination for a limited period of time in order for there to have been an export to which sanctions could apply.

5.5 In order to determine whether trade sanctions might apply to the arrangements in which they become involved, managing agents may wish, where possible, to take steps to identify the following:

(a) the nature of the trade;

(b) the identity of the goods, equipment or services concerned;

(c) the identity of the parties involved in such trade/supplies (to the extent that this has not already been undertaken for the purposes of complying with financial sanctions);

(d) the location or origin of the goods or equipment;

(e) the destinations (including any intermediate destinations) of supplies of such goods or equipment;

(f) the intended use of the goods/equipment and any specification or modification of the goods/equipment; and

(g) the identity of any intermediaries involved in the handling of the goods/equipment concerned.

5.6 In Market Bulletin Y4412, it is explained that managing agents should apply due diligence in determining whether the provision of (re)insurance relating to specific transactions falls under the scope of trade sanctions. As a starting point, this should mean that managing agents and (re)insurance brokers should review the information about the transaction that is normally disclosed to them. In the case of facultative risks, Lloyd's considers that it would be normal to expect that the identity of (re)insured goods/equipment and services would be disclosed to (re)insurers prior to underwriting. In the case of treaty or open risks, managing agents should take steps to gain as precise an understanding as possible as to the nature of the goods/equipment that will be (re)insured under the cover. Managing agents should raise further questions with their prospective (re)insured and obtain all available information to determine the position.

5.7 If any of this information means that the (re)insurer (or his agent) or (re)insurance broker knows or has reason to believe that the provision of (re)insurance will, or may, result in the export of those goods to an embargoed or designated destination (as detailed in Market Bulletin Y4412), then managing agents will need to consider obtaining a trade control licence prior to agreeing to (re)insure the risk concerned. Where this information indicates that goods are being supplied to restricted or designated persons, then the

(re)insurance should not be underwritten. Managing agents should determine whether to include sanctions exclusions and warranties to address the risk arising from trade sanctions (particularly in the case of open or treaty reinsurance covers where the precise identity of (re)insured goods/equipment and services may not be known to (re)insurers prior to underwriting).

6. EVIDENCE - WHAT EVIDENCE IS ACCEPTABLE?

6.1 When setting their compliance procedures, managing agents should assess the risk to them associated with sanctions and determine what they would consider to represent acceptable evidence of the identity, ownership and control of the parties on whom they conduct due diligence and screening and on any trade to which the (re)insurance may relate. Managing agents may determine that they require further and more formal evidence in circumstances where they perceive greater sanctions risk and/or greater risk that the information with which they are being provided is inaccurate, incomplete, misleading and/or falsified. Managing agents are reminded again that any infringements of sanctions leaves them exposed to the risk of a criminal prosecution. By ensuring that they obtain ample and authoritative information, managing agents will ensure that such risk is mitigated to the fullest extent possible.

7. VERIFICATION

7.1 Circumstances may arise where managing agents consider it necessary to verify the information they obtain during the due diligence process. Where this is so, they may choose to do so by obtaining independent authoritative documentary evidence which corroborates the information relating to the named (re)insureds, other parties and/or trade to which the (re)insurance may relate. Lloyd's recognises that managing agents will choose to do so by reference to the perceived sanctions risk associated with the person/entity/activity concerned.

8. DUE DILIGENCE – SOURCES OF INFORMATION

8.1 General

8.1.1 The source of due diligence information is likely to vary dependent on the person/entity/activity in respect of which due diligence is performed.

8.1.2 Managing agents should always ensure that their processes and procedures take into consideration the reliability of their source of information. As described above, verification procedures may be required where there is a material risk that the source of information is inaccurate.

8.2 Brokers

8.2.1 The placing broker may be a useful source of a large proportion of the information required by managing agents to perform due diligence on risks referred to them for underwriting. The broker concerned may have performed similar due diligence checks on its client to ensure its own compliance with sanctions and also to ensure that it is able to procure effective coverage on behalf of its own client. Whilst brokers are likely to be a useful source of information for managing agents, they should not be the only source. Circumstances may arise where managing agents will need to obtain due diligence information through other sources.

8.2.2 **Lloyd's considers that in the first instance it is reasonable for managing agents to request brokers to liaise with their clients to obtain the information managing**

agents require to conduct their sanctions due diligence. Where brokers have obtained such information in order to comply with their own sanctions obligations, managing agents may wish to ask to see that information, but they may also require further information in order to ensure that they comply with their own sanctions obligations. In accordance with their risk-sensitive procedures, managing agents may need to verify that the information remains accurate and complete. Brokers wishing to place business in the Lloyd's Market should ensure that due diligence information is provided to managing agents in sufficient time to enable them to consider it and raise further queries (including liaising with the appropriate licensing authority, for example, HM Treasury or BIS).

8.2.3 Where information is provided by brokers, managing agents should ensure that they are able to rely on the information provided to them. Managing agents may wish to ask the broker for information surrounding how the broker conducted its sanctions due diligence on the client and (re)insurance concerned and how it verified this. This should be case-specific rather than a general assessment of the broker's procedures.

8.2.4 As with other underwriting information, managing agents may also wish to make clear to the (re)insured (through its brokers) that they are entering into the contract on the basis of the information that is provided to them through the broker. Managing agents may also wish to address sanctions compliance in the broker Terms of Business Agreements ("TOBAs") that they enter – for example, they may request brokers to provide them with, and provide some comfort as to, the results of their sanctions due diligence and/or they may request the broker to continue to provide updated information during the term of the relevant (re)insurance contract.

8.2.5 In addition, the Lloyd's Market Association has, jointly with the International Underwriting Association and the London and International Insurance Brokers Association, developed model compliance wording for incorporation into broker TOBAs, which require the observance of applicable sanctions and co-operation between the parties to ensure compliance. Managing agents are encouraged to deploy this wording within their broker TOBAs. This can be found at:

http://www.lmalloyds.com/Web/News_room/BulletinsMembers/LTM2011/LTM11-032-KK.aspx

8.2.6 Managing agents are also encouraged to explain to brokers how sanctions are likely to affect them in connection with individual transactions. Ongoing communication with the broking community is likely to aid efforts to comply with sanctions.

8.2.7 Where brokers are not able to provide managing agents with sufficient information, managing agents should obtain this information from other sources.

9. SANCTIONS EXCLUSIONS AND WARRANTIES

9.1 The use of sanctions exclusion clauses and warranties may be a useful tool for managing agents to mitigate sanctions risk. Given the absolute effect of sanctions, when they apply, **Lloyd's considers the appropriate use of sanctions exclusions and warranties to be a matter of good underwriting practice** (and a means of achieving contract certainty). **Lloyd's expects managing agents to consider the circumstances in which such provisions are likely to be effective and to require their underwriting staff to deploy them as part of their risk-based sanctions compliance procedures**. In doing so, managing agents should consider which terms are likely to be most effective to manage the risk arising and ensure that these clauses are deployed. Managing agents should be aware that inappropriate clauses can create additional and unnecessary sanctions risk.

9.2 Where sanctions exclusions/warranties, if included within a contract of (re)insurance, are likely to have the effect of excluding all (re)insurance risk under that contract, managing agents should not underwrite the contract concerned.

9.3 Managing agents should exercise caution in agreeing to sanctions exclusions or warranties which deviate from market model wordings (or their own internal standard wording). Managing agents' sanctions compliance procedures should always allow for full consideration of the effects of such changes (which may include internal compliance and legal review of such terms) prior to underwriting such contracts. As a minimum, managing agents should ensure that exclusion clauses:

(a) exclude from cover any risk or activity that would expose the managing agent to sanction or penalty under EU, UK or other applicable financial or trade sanctions (including UN Security Council Resolutions); and

(b) exclude liability for managing agents to pay claims or other sums including return premiums (or provide any other benefit under the (re)insurance contract concerned) which would put them in breach of such sanctions.

9.4 **Although managing agents are encouraged to use sanctions exclusion clauses and warranties, these should not be considered to be a substitute for the due diligence measures described in this document**. Managing agents' claims staff should be provided with up to date sanctions due diligence information in order to know whether or not to apply the sanctions exclusion to claims that are presented. Obtaining and keeping up-to-date and accurate due diligence reduces the prospect of inadvertent claims payments in breach of sanctions.

9.5 Where managing agents underwrite (re)insurance contracts containing sanctions exclusions or warranties, they should take steps to understand how the chosen or applicable law and jurisdiction of the contract will interpret such exclusions/warranties, so as to ensure that they have their intended effect. In the event of any doubt as to the treatment of such terms under the chosen law of the contract, managing agents should consider other methods of mitigating sanctions risk and/or may wish to alter the choice of law/jurisdiction of the (re)insurance contract concerned (if this is permissible pursuant to applicable local (re)insurance regulation).

9.6 Managing agents should not offer to underwrite a contract without sanctions exclusions/warranties in order to obtain a competitive advantage, where such a clause is clearly appropriate.

9.7 Managing agents are also encouraged to consider other contractual provisions which they may deploy to manage their sanctions risk – for example, managing agents may wish to include rights of termination in their (re)insurance contracts which are triggered where sanctions apply[3]. They may also wish to include rights of prior-approval before certain risks are ceded to open or treaty covers, and/or rights of audit and inspection, amongst others.

10. SCREENING – WHAT TO DO WITH THE DUE DILIGENCE INFORMATION OBTAINED

10.1 The screening procedures adopted by managing agents will depend on the nature of their business activities and risk profile (and may vary between lines of business dependent on the managing agent's sanctions risk assessment in that business line). In general terms, however, managing agents should:

[3] However, when terminating (re)insurance contracts, managing agents should remain alert to ensure that no return premium is paid to or for the benefit of designated entities.

(a) Check the named (re)insured and all parties benefiting from cover, where identifiable, and all recipients of payments (including, where appropriate, agents and intermediaries) against HM Treasury's Consolidated List of Sanctions Targets, the names of parties against which directions have been issued under the Counter-Terrorism Act 2008 and other applicable financial sanctions target lists[4].

(b) Check the named (re)insured and all parties benefiting from cover, where identifiable, and all recipients of payments are not targeted by non-list based sanctions (including, for example, sanctions against Iran and Syria – as set out in Part 4 Section A of this guidance)[5].

(c) If relevant, check the goods, equipment, activities or services to which the (re)insurance relates against all relevant export control/trade sanctions lists (as set out in Market Bulletin Y4412 and, if relevant, Part 4 of this guidance).

(d) Ensure that possible matches are reviewed by trained staff who are not directly involved in the underwriting or other transaction concerned.

(e) In some cases, further due diligence may be required in circumstances where a sanctions match is ambiguous. Managing agents may require to perform further case-specific checks, where this is the case, to confirm whether the suspected target match is a true match.

(f) Where matches are confirmed to relate to the same person/entity/activity/goods/equipment/services, take appropriate action including:

(i) not underwriting the risk (or the part of the risk concerned), applying specific terms and/or exclusions to the contract concerned, and/or applying for a licence to proceed;

(ii) if the match is identified after underwriting, freezing the account and ensuring that claims, return premiums and other sums are not paid to the person/entity concerned or in relation to the trade, goods, equipment, services concerned[6]; and;

(iii) taking such other steps to manage the risk moving forward, which might include terminating the (re)insurance contract concerned (if the managing agent has such a right) or ensuring that increased vigilance is exercised around the account concerned.

(g) If appropriate, report the matter to the lead and/or following underwriters (via the broker, if required), and Xchanging (if appropriate) and Lloyd's International Regulatory Affairs.

(h) Where it requires to be reported, report the matter to the appropriate authority as soon as possible and as set out in Market Bulletin Y4412.

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4 If managing agents' risk-sensitive procedures require in certain circumstances that they conduct due diligence and screening on directors and beneficial owners of named (re)insureds and other beneficiaries of cover, then those names should be checked against these lists.

5 If managing agents' risk-sensitive procedures require in certain circumstances that they conduct due diligence and screening on directors and beneficial owners of named (re)insureds and other beneficiaries of cover, then those names should be checked against these lists.

6 Further guidance is provided below at paragraph 3 of Part 3 in relation to the measures that might be taken to freeze an account.

(i) Ensure that a written record is maintained of all actions surrounding the assessment of sanctions matches and any reports made.

10.2 Managing agents should keep a written record of their screening procedures. This should contain specific reasons for the frequency of screening and should set out the process for dealing with screening matches and any notifications to the relevant licensing authorities.

10.3 Bespoke screening exercises may be required where additional and/or new sanctions are introduced to ensure that risks already underwritten and/or risks in the underwriting pipeline are checked for compliance with these sanctions.

11. DUE DILIGENCE AND SCREENING – WHEN TO DO IT?

11.1 Introduction

11.1.1 Set out below is some general guidance around when managing agents should consider performing due diligence and screening. This is subject to further more detailed guidance in relation to particular methods of acceptance in Part 2.

11.2 Prior to underwriting

11.2.1 It is for managing agents to determine when to conduct due diligence and screening and the intervals thereafter at which it is conducted in accordance with their risk assessments.

11.2.2 Where it is possible to conduct due diligence and screening during the underwriting of each risk and prior to committing themselves to it, Lloyd's considers that it will be most effective to do so. When managing agents have committed themselves to underwrite a risk, there will likely be less of an incentive for brokers and the (re)insured to provide managing agents with the information necessary to conduct full and effective due diligence and screening (and by which point they may also already be in breach of sanctions). **Where, in accordance with a managing agent's risk-sensitive procedures, due diligence and screening is required to be undertaken prior to underwriting, such due diligence and screening should be conducted at this time**.

11.2.3 Due diligence and screening should be performed in sufficient time to enable steps to be taken to address any issues that arise from it. Managing agents should allow sufficient time for specific queries or licence applications to be considered by the relevant licensing authorities as part of their underwriting and claims procedures. Lloyd's brokers should ensure that risks are presented to managing agents in sufficient time to allow for this.

11.2.4 Managing agents should also ensure that their compliance procedures enable queries (whether arising at underwriting or claims stages or at other times) to be escalated and considered by persons with the appropriate expertise and appropriate level of seniority within the organisation (who are independent and do not have a direct interest in the outcome of the decision concerned).

11.2.5 Certain exceptions to conducting due diligence and screening prior to underwriting a risk may exist under specific (but not all) sanctions legislation[7]. However, managing agents should bear in mind that these exceptions are usually not of general application. They are also subject to change, often at short notice. Managing agents should include these factors in their risk assessment when determining whether to rely on such exceptions.

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[7] For example, HM Treasury has issued General Licence AFU/2011/G1 which recognises that due diligence might not be conducted prior to issuing contracts of (re)insurance to persons/entities designated under the Terrorist Asset-Freezing etc Act 2010, however HM Treasury licences may be subject to withdrawal or change.

11.3 **Post-underwriting**

11.3.1 Managing agents should also be mindful of the risk that their (re)insureds and other beneficiaries of cover or related persons/entities may become designated during the life of a (re)insurance contract. As a result, it may become prohibited to pay claims (or continue with cover or receive premium under it) when to do so would have been permissible at the point of underwriting. It is therefore very important to ensure that due diligence is conducted periodically throughout the run-off of (re)insurance contracts following the managing agent's risk assessment. It is for managing agents to determine whether these processes are best operated by their underwriting, claims or other staff (although the staff chosen should be independent and able to make an objective assessment of the sanctions position).

11.3.2 Managing agents should repeat due diligence and screening at such intervals as the managing agent has determined under its risk-sensitive compliance processes and procedures**. As a minimum, managing agents' risk-sensitive procedures should allow for the performance of further due diligence and screening at the point at which claims or other sums such as return premiums are paid** (or at the point at which other services/benefits – for example, the provision of risk management services – are provided) **and particularly where, due to the nature of the business concerned, no due diligence/screening has previously been possible**. Such screening should take place on the person/entity to whom the claim is being paid (including loss payees) and, if appropriate, other identifiable beneficiaries of cover and/or the payment concerned. **However, where appropriate, managing agents are encouraged to conduct due diligence and screening more frequently than this**.

11.3.3 Where managing agents are participating in (re)insurance contracts on a subscription basis, whether as leading underwriters or following underwriters, they should always take steps to notify any confirmed sanctions matches to the rest of the subscribing market (directly, if possible, but if necessary via the broker) whether such matches are identified prior to underwriting or post-underwriting during the term of the (re)insurance contract concerned.

11.3.4 In particular, managing agents may determine that they should conduct due diligence and screening at the following points:

(a) Amendments or Additions: Managing agents may receive a request to make an amendment to cover concerning the identity of the named (re)insured or other parties benefitting from the cover, or managing agents receive a request to include a new party within the scope of cover.

(b) Renewals: Where managing agents are approached to renew a (re)insurance contract, they should consider whether it is appropriate to repeat sanctions due diligence. Screening at this stage may pick up a mid-term designation of the named (re)insured and/or other beneficiaries of cover. It should not be automatically assumed that the due diligence conducted on the expiring contract remains accurate, although managing agents may adopt systems and processes which reflect the risk associated with renewals – which might, in appropriate circumstances, be confined to a simple confirmation from the (re)insured or its broker that the due diligence conducted on the previous policy remains accurate and complete (provided that this confirmation can be verified, if necessary).

Managing agents should bear in mind that certain sanctions in force at the time of writing (e.g. EU Council Regulation 961/2010 in relation to Iran and EU Council Regulation 36/2012 in relation to Syria – further detail on which is provided at Part

4 Section A of this guidance) prohibit the renewal of certain pre-existing (re)insurance contracts that are otherwise permitted to be run-off. In these cases, managing agents should specifically conduct due diligence and screening to ensure that such (re)insurance contracts are not renewed in breach of these sanctions.

(c) Ongoing Provision of Information: Managing agents may be provided with information during the run-off of a (re)insurance contract which may be relevant to their sanctions compliance. For example, treaty reinsurers may be provided with bordereaux or information of the risks ceded to a treaty in which they participate on an ongoing basis after underwriting. Managing agents may deploy a risk-based approach to determine whether they wish to undertake due diligence and screening on this information and take action in relation to any risks that are discovered (although they should be aware at all times of the absolute effects of sanctions – if the information provided would give rise to knowledge or a reasonable cause to suspect an infringement of sanctions existed).

11.3.5 When managing agents already hold due diligence information for the relevant person/entity on file (from their pre-underwriting due diligence), they may not need to update that information unless they consider there is a risk that it may have changed or become out-of-date.

11.3.6 **For covers where the (re)insured or other beneficiaries of cover (or the goods/activities to which cover relates) are hard or impossible to identify prior to underwriting, as a general rule managing agents should conduct due diligence and screening on those persons/activities as they are identified (as appropriate and in accordance with the managing agent's risk-sensitive procedures)**. They should also ensure that they exercise additional care around the operation of their due diligence procedures prior to the payment of claims. Managing agents may wish to mark their files on their systems accordingly to highlight this additional risk to their claims teams.

11.3.7 Managing agents may also decide, in view of their business and risk profile, to screen their underwriting business when further designated persons, entities or activities are added to, or where existing designated persons, entities or activities are updated on, the sanctions lists which apply to them.

11.3.8 In the event that comprehensive sanctions regimes target further countries that are applicable to the managing agent concerned, the managing agent should conduct additional due diligence and screening exercises in light of such sanctions.

12. MISCELLANEOUS DUE DILIGENCE AND SCREENING CONSIDERATIONS – OTHER ISSUES

12.1 Managing agents may also need to perform due diligence and screening in the following situations (although this is not an exhaustive list):

12.2 **Parties for whom the named (re)insured has assumed an obligation to insure**

12.2.1 If such parties are unknown at the time of underwriting, but managing agents are obliged to accept/include such parties within cover, then managing agents may need to deploy sanctions exclusions and warranties within the policy concerned to mitigate the risk of infringement of sanctions.

12.3 **Transferability of cover and/or the assignment of the proceeds of claims**

12.3.1 Managing agents should conduct due diligence/screening on the potential beneficiaries of such payments. Managing agents should also consider whether the use of sanctions/exclusions can mitigate these risks. Where assignments have been made, managing agents may need to conduct further due diligence/screening on the assignee (and should consider whether to make the requested agreement or acknowledgement).

12.4 **Insuring security in assets**

12.4.1 Where the owner of the property is designated under sanctions (or where the assets are subject to trade sanctions), managing agents may wish to consider whether it is permissible to proceed to underwrite such risks for the financing banks. This analysis may depend upon the precise terms of the (re)insurance contract concerned.

12.5 **Joint ventures**

12.5.1 Managing agents may need to consider the sanctions risks associated with (re)insuring such entities and whether to conduct due diligence on joint venture partners.

12.6 **Complex structures**

12.6.1 Managing agents should be alert to the possibility that those targeted by financial sanctions will use complex arrangements to hide their identity and protect their funds from sanctions (for example, trust arrangements). In the case of trust arrangements, managing agents may need to identify the settlor of the trust, the trustees, the beneficiaries and/or any person/entity which has an interest in the reversion/remainder of the trust.

12.7 **Set-off**

12.7.1 Managing agents should bear in mind that the practice of set-off – i.e, the setting-off of balances owed between the managing agent and its (re)insured can also expose the managing agent to sanctions infringements. This remains the case even where a net balance remains owed to the managing agent after the set-off.

13. COMMENTARY ON RISK AREAS IN CERTAIN BUSINESS LINES

13.1 **Payments that operate so as to discharge the liability of a designated person/entity**

13.1.1 In certain circumstances, payment to a non-designated person/entity may infringe sanctions where doing so discharges a liability of a designated person/entity. Managing agents might therefore wish to understand whether a liability claims payment will discharge the liability of a third party, and if so, take steps to identify that party in accordance with the guidance set out above.

13.2 **Loss payee clauses**

13.2.1 Managing agents should be aware that loss payee clauses may operate so as to result in the payment of a claim directly or indirectly to or for the benefit of a designated person. When including such provisions in their insurance contracts, managing agents may wish to assess the risk that such a payment could be made and should take steps to ensure that this does not happen.

13.3 **Subcontractors**

13.3.1 Where liability covers extend to subcontractors of the named (re)insured, managing agents may wish to consider taking steps to ensure that they identify and conduct due diligence on the subcontractor concerned.

13.4 **Master/Group Policies**

13.4.1 General guidance on Master/Group Policies is provided in Market Bulletin Y4535. Managing agents should conduct due diligence and screening on the policyholder and all identifiable covered parties, and their activities, prior to underwriting in accordance with their risk-sensitive procedures. It may not always be possible to identify all covered parties at the underwriting stage (and in this context, the guidance at paragraphs 2 and 3 of Part 2 may be relevant). Managing agents should consider deploying sanctions exclusions and warranties in these contracts where they are bound to accept all additional covered parties declared to the cover by the policyholder after inception.

13.5 **Reinsurance**

13.5.1 Cut-through clauses

Managing agents should be aware that cut-through provisions in a reinsurance contract may create additional exposure to infringement of sanctions.

13.5.2 Fronting arrangements

Where managing agents enter into arrangements whereby a carrier acts as a front on their behalf, they should ensure that those arrangements allow them to conduct sanctions due diligence and screening in accordance with their risk-sensitive processes. To the extent that managing agents delegate authority to the fronting entity to conduct sanctions due diligence on their behalf, the guidance contained in paragraph 4 of Part 2 should be followed. Where managing agents wish to conduct due diligence for themselves, in order that the front can avoid unreinsured losses, if possible, original risks should be referred to the managing agent concerned before they are insured by the front.

13.5.3 Compulsory arrangements

When underwriting international business, certain jurisdictions/territories may maintain local requirements for the participation of a local insurer in the insurance contract concerned, for example they may require the mandatory cession of a proportion of a reinsurance risk to a local or regional reinsurer or may require that managing agents deal with certain intermediaries or other entities on a mandatory basis. Where this takes place, managing agents should ensure that these risks are underwritten in such a manner as permits them to conduct due diligence and screening in accordance with their risk-sensitive processes and procedures. Managing agents may also need to conduct due diligence and screening on their co-(re)insurers in circumstances where they may be passing funds to this entity.

PART 2 – DUE DILIGENCE AND SCREENING CONSIDERATIONS BY METHOD OF ACCEPTANCE

INTRODUCTION

Part 2 contains guidance on pre and post underwriting sanctions due diligence and screening procedures broken down by reference to the different methods by which a risk can be accepted. These sections are neither exhaustive nor prescriptive, as the precise actions required in each case will rely on the risk-sensitive due diligence compliance procedures each managing agent sets.

It is for managing agents to determine for themselves what information they seek to obtain through the due diligence process for screening (and for this purpose, the information provided in Part 1 to this Guidance may be useful), the timing and frequency of any due diligence and screening they perform and the sanctions regimes against which they screen. These procedures will be determined by reference to each managing agent's assessment of the risk of it entering into transactions which would infringe sanctions.

1. BUSINESS WHERE THE (RE)INSURED (AND OTHER BENEFICIARIES) CAN BE IDENTIFIED PRIOR TO INCEPTION (OPEN MARKET DIRECT AND FACULTATIVE (RE)INSURANCE CONTRACTS)

1.1 For this method of acceptance, the pre and post underwriting considerations in paragraph 11 of Part 1, will be relevant. This means that due diligence and screening on the named (re)insureds and related parties, agents and intermediaries, those other identifiable parties who benefit from cover and, if applicable, the activities to which cover relates, should take place **prior to entering into the contract concerned** in accordance with risk assessment.

1.2 Managing agents should then repeat such due diligence and screening as set out in paragraph 11.3 of Part 1.

1.3 It is anticipated that the broker will be the primary source of due diligence information for managing agents. Managing agents should ensure that they take into consideration the guidance on dealing with brokers set out in Part 1 to this Guidance.

1.4 In certain exceptional cases, it may not be possible to obtain sufficient due diligence information on all the named (re)insureds (or other beneficiaries of cover) and/or the activities to which cover relates prior to underwriting. In these cases, managing agents should assess the sanctions risk to them in proceeding. Managing agents should also assess whether sanctions risk can be mitigated by deploying sanctions exclusions or warranties. Managing agents should subject these decisions to internal scrutiny and appropriate approval (through a referral process to their compliance/legal/management teams, if necessary).

1.5 If, having assessed the risk, managing agents decide to proceed, they should ensure that their reasons are robust and that they document them accordingly.

1.6 **To justify this course of action Lloyd's would normally expect:**

(a) **the reasons for not obtaining this information to be compelling;**

(b) **appropriate senior personnel within the managing agent to have objectively assessed the risks associated with not obtaining the information prior to underwriting and to have determined these to be low (and documented such consideration/decision accordingly); and**

(c) **the managing agent to have:**

(i) adopted specific and proportionate measures in the relevant (re)insurance contract to mitigate sanctions risk (for example, the inclusion of sanctions exclusions); and

(ii) documented a plan to conduct due diligence and screening as soon as practicable.

1.7 **Post-Underwriting considerations for following underwriters**

1.7.1 Where a managing agent is participating on these covers as a following underwriter, it may also wish to ensure that an appropriate level of authorisation (and notice) is required for post placement alterations to the (re)insurance contract concerned pursuant to the terms of the slip subscription agreement (for example, the General Underwriters Agreement ("GUA")), where they consider that such changes may give rise to a sanctions exposure to them. If appropriate, these requirements should be included within the slip subscription agreement (including the GUA stamp, if appropriate) and in the relevant section of the slip. Leading underwriters and other agreement parties should take steps to ensure that such alterations are notified to the parties requesting notification in accordance with the subscription agreement in advance of such alterations taking place and in sufficient time to allow following underwriters to consider the sanctions risk.

2. BUSINESS WHERE THE (RE)INSURED (AND OTHER BENEFICIARIES) CAN BE IDENTIFIED PRIOR TO INCEPTION BY THE LEADER ONLY OR SPECIFIED AGREEMENT PARTIES

2.1 For certain classes of business, the (re)insured or other beneficiaries of cover (or the activities to which cover relates) may be capable of identification by the leading underwriter/managing agents only such as prior submit binding authorities (or by other specified agreement parties or brokers administering lineslips) at the time the risk is bound, but not by other underwriters/managing agents.

2.2 **Parties who can identify the (re)insured/beneficiaries - leading underwriter or specified agreement parties**

2.2.1 Where a managing agent is participating in a contract of (re)insurance underwritten under a lineslip, a prior-submit binding authority or other “lead only/agreement party” facility as a leading underwriter or agreement party, then the managing agent should conduct due diligence and screening for its own compliance in accordance with its risk-sensitive procedures prior to underwriting, as described above.

2.3 **Following underwriters who cannot identify the (re)insured/beneficiaries before a risk is bound**

2.3.1 Where a managing agent proposes to participate in such a contract as a following underwriter, then that managing agent should take steps to assess the sanctions risks associated with the arrangement **before agreeing to participate** in it and act accordingly.

2.3.2 Following their risk assessment, following underwriters are likely to face a number of considerations:

(a) Where following managing agents’ risk assessment indicates that sanctions due diligence and screening should be conducted pre-bind: following underwriters should assess whether they can rely on the due diligence/screening being performed by the leading underwriter or not or whether they can require the entity

to which authority has been delegated to conduct pre-bind due diligence/screening on their behalf. If the answer to these questions is "no", the following underwriter should consider whether (i) they can perform such due diligence and screening themselves (which might mean that risks written under the lineslip or binding authority would have to be written on an open market basis); (ii) other factors mitigate the risk to a sufficient degree (for example the inclusion of sanctions exclusion clauses and termination clauses (bearing in mind that this will not obviate the need to conduct due diligence and screening)); and/or (iii) they should, in the circumstances, enter into the arrangement at all.

In this respect, the considerations set out at paragraphs 4.2.1 to 4.2.5 below may be relevant.

(b) Where following managing agents' risk assessment indicates that due diligence/screening could take place post-bind: following underwriters should consider whether they should conduct further due diligence/screening beyond those checks conducted by the leading underwriter and/or or whether they can require the entity to which authority has been delegated to conduct post-bind due diligence/screening on their behalf. This might necessitate a check with the lead on what due diligence/screening is taking place. If they determine that they do need to do so, they should ensure that sufficient due diligence/screening is undertaken post-bind and this may require incorporating specific procedures into the lineslip or binding authority agreement which will enable them to conduct due diligence/screening in accordance with their risk-sensitive procedures. They should communicate such requirements to the broker.

In this respect, the considerations set out at paragraphs 4.2.1 to 4.3.2 below may be relevant.

2.3.3 Both lead and following managing agents should then repeat due diligence and/or screening in accordance with the guidance at such intervals as are set in their risk-sensitive compliance procedures. **Again, as a minimum, managing agents should consider whether to conduct further due diligence and screening at the point at which claims or other sums such as return premiums are paid** (or at the point at which other services/benefits – for example, the provision of risk management services – are provided). Further guidance on this is provided at paragraph 11 of Part 1 of this guidance.

2.4 **Brokers administering lineslips**

2.4.1 All managing agents (whether leaders or followers) should ensure that they take into consideration the guidance on dealing with brokers set out in paragraph 8 of Part 1 of this guidance. Managing agents should bear in mind that it is not possible to outsource or otherwise shift responsibility for ensuring compliance with sanctions regimes. However it is possible to rely on others to perform sanctions due diligence and screening. As such, managing agents may agree with the broker administering the lineslip for the broker to conduct due diligence and screening of risks on behalf of all of the managing agents participating on the contracts concerned. Where they do so, managing agents participating in such arrangements should ensure that the broker conducts due diligence and screening in accordance with their requirements. Managing agents should bear in mind that if the broker conducts inadequate screening, they will be exposed to committing sanctions infringements and may not be able to rely on any knowledge-based defence (if an adequate procedure would have identified such concerns). The most effective method of ensuring that brokers conduct adequate due diligence and screening is likely to be

through the use of clear, detailed and specific clauses setting out such procedures in full, which are included within the lineslip. These clauses will need to specify which sanctions laws require consideration. Managing agents should retain a right to terminate the lineslip immediately in the event of breach of the provisions set out above (and cancel such risks as they require to ensure sanctions compliance). Managing agents should also take steps to check that due diligence and screening is conducted in accordance with their requirements (through audits, if required).

2.4.2 Where due diligence and screening is not to be conducted by the broker, managing agents should follow the general guidance and procedures set out above, and their own risk-sensitive compliance procedures.

2.5 **Sanctions exclusions/warranties (leader-only prior-submit binding authorities and lineslips)**

2.5.1 When underwriting risks under these methods of acceptance, managing agents should consider whether to deploy sanctions exclusions and warranties to mitigate the risk of sanctions infringements. General commentary on such provisions is provided in paragraph 9 of Part 1 to this Guidance. In particular, following underwriters should take steps to ensure that the lineslip or binding authority agreements require that offslips/declarations or certificates contain adequate exclusionary/warranty wording for their own sanctions compliance purposes and take steps to communicate any additional requirements to the broker.

3. BUSINESS WHERE THE IDENTITY OF THE (RE)INSURED (AND OTHER BENEFICIARIES) OR THE PRECISE ACTIVITIES TO WHICH COVER WILL RELATE ARE UNKNOWN, OR WHERE ONLY LIMITED IDENTIFICATION IS POSSIBLE

3.1 Managing agents should be aware that covers such as treaties, marine open cargo or risks where other (re)insureds can be added post-inception can be susceptible to sanctions infringements. **Managing agents should conduct due diligence and screening on identifiable (re)insureds and related parties and other identifiable beneficiaries of the cover and their activities prior to underwriting in accordance with risk assessment**. However, Lloyd's recognises that it may be very difficult to determine the risks that will attach to such covers prior to underwriting them (and it may be difficult to identify all potential beneficiaries of cover or activities to which the cover relates prior to underwriting such covers). Notwithstanding this difficulty, and taking into account the risks that sanctions present, managing agents should always take steps to review the underwriting information presented to them and raise reasonable and proportionate queries regarding the risks that are likely to attach to such covers to determine the sanctions risk associated with the cover concerned. In this respect, a review of risks attaching to prior years of the contract might assist.

3.2 **Managing agents should always maintain procedures to conduct due diligence and screening on (re)insureds and other beneficiaries of the cover post-underwriting and their activities as soon as those parties/activities become capable of identification.**

3.3 **Managing agents are strongly recommended to deploy sanctions exclusions and warranties within these contracts and maintain ongoing vigilance surrounding the risks that attach to them.** Except where there is a risk that the contract may trigger

sanctions which prohibit the provision of cover[8], managing agents may choose in appropriate circumstances (and where their risk-assessment justifies this) to adopt a policy of specific due diligence and screening post-underwriting. **In this case, screening should take place prior to making claims payments under or in relation to such contracts, unless managing agents become aware of information which may give rise to a sanctions risk prior to this stage** (in which case due diligence and screening should take place at this point in time, in addition to due diligence and screening at the claims stage). Where it is reasonable and proportionate to do so, managing agents may wish to review bordereaux of risks attaching to such (re)insurance contracts for sanctions risks. Adopting such an approach should not, however, prevent due diligence and screening on identifiable (re)insureds, other beneficiaries of cover or their activities prior to underwriting.

3.4 In addition to considering sanctions exclusions and warranties, managing agents are encouraged to consider other provisions which may mitigate the risk of inadvertent infringement of sanctions risks including, for example: (i) requiring a right of prior approval before risks attach to an open cover; (ii) requiring rights of audit or inspection of the (re)insured (or other beneficiaries of cover) or (re)insured risks or of the cedant's sanctions risk management processes; or (iii) requiring rights of termination in the event that sanctions become applicable to the contract concerned.

3.5 In the case of treaty reinsurance, managing agents may wish to obtain as much detail as possible surrounding the measures taken by their cedants to mitigate their own inwards sanctions risks as this may be relevant to reinsurers' own sanctions compliance and the likelihood that reinsurers will be asked to reinsure sanctioned risks.

3.6 **Where a UK regulated broker is managing the facility**

3.6.1 Where a broker is managing such a facility, it is likely to be the primary source of due diligence information for managing agents. Managing agents should ensure that they take into consideration the guidance on dealing with brokers set out in paragraph 8 of Part 1 of this guidance.

3.6.2 Again, managing agents should bear in mind that it is not possible to outsource or otherwise shift responsibility for ensuring compliance with sanctions regimes. However in some cases it may be possible for managing agents to agree with the broker administering the facility that it will conduct due diligence and screening on risks on behalf of all of the managing agents participating on the contracts concerned. In this context, the guidance at paragraph 2.4.1 above to this guidance may be relevant. In addition, the guidance covering full delegated authorities in paragraph 4 below should be taken into consideration and the managing agents participating in such arrangements should ensure that the broker/coverholder conducts due diligence and screening in accordance with their requirements.

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[8] In which case, managing agents should conduct screening for these risks prior to underwriting (as well as post-underwriting) and should not underwrite such risks and/or take steps to ensure that such risks are not included within cover. For example, such covers, at the date of this bulletin, are those that may extend to "Iranian persons" or "Syrian persons"; or that relate to the import into the EU, purchase or transport of Syrian crude oil or petroleum products; covers that may have been issued to persons/entities designated under the Terrorist Asset-Freezing etc Act 2010; and covers to which a direction under the Counter Terrorism Act 2008 may apply (and certain US sanctions); where ongoing vigilance is required in view of the nature of the sanctions that apply to these persons/activities, and trade sanctions (where a trade control licence has not been/cannot be obtained). Please see Part 4 below for commentary on EU sanctions against Iran and Syria, the Counter Terrorism Act 2008 and Terrorist Asset-Freezing etc Act 2010. Managing agents are also reminded of the Lloyd's Market Direction not to underwrite Iranian Refined Petroleum Risks as defined in Market Bulletin Y4409 (and should bear in mind that further EU sanctions against the Iranian crude oil and petrochemical sector are being implemented.)

3.6.3 Where due diligence and screening is not to be conducted by the broker, managing agents should follow the general guidance and procedures set out in Part 1 above, and their own risk-sensitive compliance procedures.

3.6.4 Managing agents are strongly encouraged to ensure comprehensive sanctions exclusion and/or warranty wording is included on all documents and certificates issued by such parties.

3.6.5 In practice paragraphs 3.6.1 to 3.6.4 mean that **prior to entering into such arrangements**:

(a) Managing agents should perform an assessment of the risks posed to them by sanctions.

(b) Managing agents should assess whether the broker can perform due diligence and screening in accordance with their requirements.

(c) If the answer to (b) is “yes”, the considerations in paragraph 8 of Part 1 above and at paragraph 4 below in relation to delegated authorities will be relevant in relation to pre- and post-underwriting activities.

(d) If the answer to (b) is “no”, managing agents should perform due diligence and screening pre- and post-bind themselves. The terms of the contract concerned should support the full and timely provision of information by the broker to support these activities. If this is not possible, the managing agent should consider whether to enter into the arrangements at all.

(e) Managing agents should consider whether to require the inclusion of comprehensive sanctions exclusion and/or warranty wording on documents and certificates issued by such parties.

3.7 **Where an unlicensed, non-insurance intermediary or overseas party is managing the facility and issuing certificates to (re)insureds or adding and deleting (re)insureds within the terms of the policy**

3.7.1 Where unlicensed, non-insurance intermediary or overseas parties e.g. shipping agents or freight forwarders are managing such facilities and issuing certificates to (re)insureds or including (re)insureds within the terms of the policy, managing agents should exercise even greater caution. Again, the considerations in relation to brokers in paragraph 8 of Part 1 above and in relation to full delegated authorities in paragraph 4 below will be relevant.

3.7.2 In practice, similar procedures are set out at paragraph 3.6.5 should be followed when assessing the risk associated with the arrangement and the ability of the unlicensed insurance intermediary to manage sanctions risk. In addition, managing agents should ensure heightened and ongoing scrutiny (including audits, if appropriate) of such arrangements is undertaken and that greater importance is attached to (i) ensuring exclusionary wording is included in all documentation issued by such parties; and (ii) the managing agent concerned retaining a right to terminate such arrangements and/or cancel certificates attaching to such facilities where they consider there to exist an unacceptable risk of infringing sanctions. Managing agents may wish to terminate such arrangements where they are concerned that the steps outlined above are not being followed by such entity and should ensure that the contractual arrangements provide them with such a right.

3.7.3 Unless:

(a) their assessment of sanctions risk to which they will be exposed is very low; or

(b) Managing agents can, under the terms of the policy, retain a right to conduct due diligence and screening on risks/certificates attaching to such facilities and, where necessary, reject or apply conditions to them (in their absolute discretion) before they incept;

Lloyd's considers that managing agents should (i) ensure that full and effective sanctions exclusion and/or warranty wording is included on all documents and certificates issued by such parties; and (ii) include a right of termination in respect of all risks attaching to such contracts in all documents and certificates issued by such parties.

4. BUSINESS WHERE BINDING A RISK IS FULLY DELEGATED (FULL BINDING AUTHORITIES, CONSORTIA AND OTHER ARRANGEMENTS)

4.1 General

4.1.1 It is important to bear in mind that when managing agents delegate authority to a third party to underwrite and/or handle claims, they remain responsible for their compliance with sanctions. This means that any infringement of sanctions by the person to whom authority has been delegated could result in the managing agent committing an offence and being exposed to the risk of prosecution.

4.1.2 **Lloyd's therefore expects managing agents to take steps to ensure that those to whom they delegate underwriting and/or claims handling authority take steps to address both their own sanctions compliance and also the sanctions compliance of the managing agent**[9]. This might include maintaining due diligence and screening procedures established using a risk-based assessment of the exposure of the managing agent to sanctions when underwriting through the person/entity concerned. **This should involve implementing those procedures that would have been performed by the managing agent itself if it were to perform such checks**. Managing agents should ensure that these parties conduct such activities to at least the same standard the managing agent itself would have achieved, had it performed the activity itself.

4.2 Pre-underwriting

4.2.1 In practice, this means that **prior to entering into such arrangements**, managing agents should perform an assessment of the risks posed to them by sanctions when participating in those arrangements. In making this assessment, the managing agent should consider a number of factors including those listed at paragraph 2.1 to Part 1 of this guidance. The ability of the entity to which the managing agent proposes to delegate underwriting or claims handling authority to conduct due diligence/screening as required by the managing agent is likely to be relevant to this assessment.

4.2.2 In situations where managing agent's risk-sensitive analysis indicates that due diligence and screening should take place prior to binding risks, there are two possibilities:

(a) Where the entity to which the managing agent proposes to delegate underwriting or claims handling authority can conduct the due diligence and screening in

[9] Managing agents should only ensure that those acting under delegated authorities/claims handling authorities take steps to address their own international sanctions compliance when acting on behalf of the managing agent. An entity's ability to comply with those sanctions which apply to it in other business activities conducted on behalf of other parties is not of direct relevance to a managing agent, however may be indicative of that party's overall compliance culture and ability to comply when acting on behalf of the managing agent concerned.

accordance with the managing agent's requirements: the most effective method of achieving this is likely to be through the use of clear, detailed and specific clauses setting out such procedures in full, which are included within the contract pursuant to which delegated authority is granted. These clauses will need to specify which sanctions laws require consideration. Managing agents should retain a right to terminate the delegated authority immediately in the event of breach of the provisions set out above. Managing agents may also wish to require the entity to which they delegate authority to use sanctions exclusion/warranty wording in the (re)insurance contracts/certificates they issue (the wording should be specified in the template certificates and other insurance documents issued under the delegated authority). Managing agents should also take steps to check that due diligence and screening is conducted in accordance with their requirements (through audits, if required).

(b) If the entity to which the managing agent proposes to delegate underwriting or claims handling authority **cannot** perform such tasks (at all or to the required standard), or does not agree to such requirements: Managing agents should consider whether: (i) they can perform such due diligence and screening themselves (which might mean that the arrangement would have to be written on a prior-submit basis); (ii) other factors mitigate the risk to a sufficient degree (for example, including exclusion and termination clauses (bearing in mind that this will not obviate the need to conduct due diligence and screening)); and/or (iii) they should, in the circumstances, enter into the arrangement at all. Where managing agents are to perform such due diligence/screening themselves, they should ensure that specific wording is included in the contract pursuant to which authority is delegated enabling them to request and obtain sufficient and timely information from the entity to which they delegate authority for this purpose.

4.2.3 Where managing agents determine that they wish to perform sanctions due diligence and screening on risks underwritten through their underwriting agents prior to those risks being bound themselves, they should ensure that such checks take place before risks are bound (and that the managing agent has a right to reject and/or impose other mandatory requirements on the agent in dealing with these risks in the event that it determines that sanctions may apply – for example, using sanctions exclusions/warranties). Managing agents should also ensure that ongoing due diligence and screening is conducted in accordance with the managing agent's risk-sensitive sanctions compliance procedures (and should audit the agent's compliance, if required).

4.2.4 In situations where managing agent's risk-sensitive analysis indicates that due diligence and screening could take place after binding risks, again, managing agents should ensure that there are adequate procedures in place to support due diligence/screening when it takes place.

4.2.5 Managing agents should also consider as part of their risk-sensitive procedures whether to require those to whom they delegate underwriting authority to deploy sanctions exclusions and warranties within the terms of the contracts that they underwrite on managing agents' behalf (and ensure that this is appropriately recorded in the underwriting authority granted). If they determine that they should do so, managing agents should ensure template certificates (and other insurance documents issued under the delegated authority) contain such sanctions exclusion/warranty wording.

4.3 **Post-underwriting**

4.3.1 Managing agents should also ensure that ongoing due diligence and screening is conducted in accordance with the managing agent's risk-sensitive sanctions compliance procedures.

4.3.2 In each of the scenarios set out above, managing agents should ensure that adequate processes and procedures exist and are fully and properly documented in the relevant agreement, to enable the performance of due diligence and screening in accordance with their risk-sensitive compliance procedures. The guidance set out at paragraphs 11.3.1 to 11.3.8 of Part 1 above may be relevant in this respect. Again, if these activities are to be performed by the entity to which the managing agent has delegated claims handling and/or administrative authority, those arrangements should be fully and properly documented in the delegated authority agreement. Managing agents may wish to retain rights to audit the activities of those to whom they delegate authority and may also wish to incorporate rights to terminate the delegated authority in the event of breach of the sanctions due diligence/screening requirements.

4.4 **Local sanctions applicable to agent/coverholder**

4.4.1 As mentioned above, managing agents should take steps to ensure that that those to whom they delegate underwriting and/or claims handling authority address the risk arising from local sanctions regimes when acting on behalf of the managing agent. Even if these sanctions regimes do not expose the managing agent to the risk of committing direct infringements, managing agents should not ignore them. Managing agents may still be exposed to the commission of ancillary infringements and/or may be exposed to reputational risk associated with breach. Failure to comply with local sanctions may indicate that the party to whom these activities have been delegated is not conducting due diligence or screening properly. Again, an effective method of ensuring this would be to include specific clauses in the binding authority agreement and by auditing the party's compliance with those obligations.

5. CLAIMS

5.1 **As mentioned in Part 1 above, Lloyd's expects that all managing agent's risk-sensitive procedures will allow for the performance of further due diligence and screening for sanctions risks prior to the payment of claims or other sums under a contract of (re)insurance**. The precise checks that each managing agent will perform and the information which is checked will be determined by each managing agent's risk-sensitive sanctions compliance procedures (which should take into account all relevant factors), however screening is likely to focus on the person/entity to whom the claim is being paid (including loss payees and where appropriate agents and intermediaries) and, if appropriate, other identifiable beneficiaries of cover and/or of the payment concerned. To the extent that managing agents already hold information in relation to the parties which they require to check, they may not need to conduct further due diligence before re-screening (in accordance with their screening procedures) provided that they determine there is no risk that the due diligence information against which they will conduct further screening has become inaccurate or dated.

5.2 **Claims paid under the Lloyd's Claims Scheme**

5.2.1 Where a managing agent is the sole (re)insurer on a contract, it should perform due diligence and screening in accordance with its risk-sensitive compliance procedures in the normal manner **prior to agreement of the claim concerned**.

5.2.2 Where the managing agent is co-insuring the (re)insured in the subscription market, the leading underwriter and claims agreement parties should perform their own checks for their compliance **prior to agreement of the claim concerned** and therefore prior to making any such payment. Where lead underwriters and claims agreement parties identify sanctions matters affecting such claims or payments, they must immediately inform all following underwriters of the matter providing sufficient detail to each following underwriter to enable them to understand the position[10]. Where lead underwriters hold contact details for following underwriters, they should contact them direct. Where they do not, they should make notification through the broker (and may also wish to place a message on the Electronic Claims File). They should consider whether to check with the broker that this has been received by the following market. Lead underwriters and claims agreement parties should take such steps as they can to answer any questions posed by following underwriters and to obtain any further information from the broker for the contract concerned that following underwriters may require for their own sanctions compliance purposes (**prior to agreement of the claim concerned**). Similar procedures should take place where following underwriters identify sanctions matters (which the rest of the subscribing market is unaware of).

5.2.3 Where a managing agent is participating as a following underwriter, that managing agent should determine, in accordance with its risk-sensitive procedures, whether it should take steps to understand what due diligence and screening has been performed by the lead. If the follower already holds current sanctions due diligence information on file, then they may not need to liaise with the lead for further due diligence (provided there is no risk that that information has become obsolete). However, they will need to take steps to notify the lead that they require notice of claims in order to perform such checks prior to the lead recording any claims agreement on the Electronic Claims File.

5.2.4 When claims are presented, following underwriters may determine, based on their consideration of the lead's review, that no further due diligence is required. Managing agents are not expected to duplicate due diligence/screening unnecessarily, however Lloyd's would, as a minimum, expect them to satisfy themselves that it has been undertaken and take steps to review and satisfy themselves that the leading underwriter's conclusions on the application of sanctions are accurate. As before, following underwriters should ascertain that sanctions apply to them in the same manner as the lead.

5.2.5 Where following underwriters require to perform further due diligence (and have specifically indicated this to the leading underwriter), leading underwriters are reminded that under the Lloyd's Claims Scheme they have a duty to act in the best interests of the following underwriters. Lloyd's considers that this requires leaders, prior to agreeing claims (on behalf of themselves and following underwriters), to:

(a) take reasonable steps to assist Lloyd's following underwriters in obtaining such reasonable further due diligence as they require; and

(b) refrain from agreeing claims (at least on behalf of the following underwriters concerned) until they have received confirmation from those following underwriters that they are in a position to pay the claim.

5.2.6 To the extent that following underwriters identify sanctions matters specific to them, they should share these details with the lead and instruct the lead as to how to proceed on

[10] Where managing agents determine that they should file a Suspicious Activity Report with the Serious Organised Crime Agency in relation to these matters under the Proceeds of Crime Act 2002 or the Terrorism Act 2000, then they should take care to ensure that they do not commit a "tipping off" offence (see paragraph 4.7 of Part 3 below).

their behalf. This should take place via direct contact with the leading underwriter, where they have its contact details, otherwise notification should be made through the broker. In cases where direct contact with the lead is not made, the following underwriter concerned should take steps to ensure that their message has been received and is being actioned.

5.2.7 Managing agents should ensure that specific consideration is given to the application of any sanctions exclusions and warranties included within cover at this time. Again, following underwriters should make sure that the lead understands how such provisions are likely to apply to the following underwriters concerned.

5.3 **Claims paid by a coverholder or third party administrator**

5.3.1 Where managing agents have entered into arrangements where coverholders or third party administrators are to settle claims on their behalf, they should ensure that those entities perform additional due diligence and screening in accordance with their sanctions compliance processes and procedures. The guidance on delegated authorities set out above in paragraph 4 is likely to be relevant..

PART 3 – MISCELLANEOUS COMPLIANCE PROCEDURES

1. TRAINING, INTERNAL REPORTING AND AUDITING

1.1 Managing agents should ensure that they implement and maintain effective and rigorous training procedures designed to ensure that all staff, but especially underwriters and claims staff, understand how sanctions apply to their company and in a personal capacity to themselves (which may differ). This training should also give staff an understanding of the managing agent's risk-sensitive compliance procedures. The nature of the training may well vary dependent on the class of staff concerned. Such training should be formal and should be recorded. It should be administered on a regular basis. A culture of sanctions compliance should be endorsed and demonstrated by the management of managing agents.

1.2 Managing agents should also implement and maintain effective and rigorous procedures whereby any queries concerning the application of sanctions can be discussed internally with the appropriate legal and/or compliance personnel with expertise in sanctions, allowing sufficient time for a thorough and rigorous due diligence process to be conducted. Managing agents should also ensure that they operate procedures that require additional scrutiny and approval of arrangements that are exposed to greater than usual sanctions risk. Managing agents should ensure that staff of sufficient seniority consider such arrangements.

1.3 Managing agents are advised to consider establishing internal procedures which encourage and aid the reporting in a timely fashion of: (i) requests from third parties to engage in activities which would infringe sanctions; and (ii) actual or suspected violations of sanctions. Managing agents may also wish to consider reporting certain sanctions compliance matters to their audit committees (or equivalent entities) and may wish to include such compliance reporting into materials that are presented for consideration by their board of directors.

1.4 Managing agents should ensure that their sanctions compliance processes and procedures are fully documented, kept regularly updated and are regularly reviewed. Managing agents are advised to consider subjecting their sanctions compliance processes and procedures to internal audit, testing and gap analyses on an intermittent basis to ensure that they are operating as they should.

2. SCREENING SOFTWARE

2.1 There are a number of software products available to assist with screening for sanctions. Managing agents should determine whether they require screening software based on their sanctions risk profile. Not all managing agents will require the use of automated procedures for certain, or all, of its business lines and may only carry out a manual check, however, Lloyd's considers that a managing agent would have to have strong reasons not to use such a system. This decision and the reasons for it should be recorded in writing.

2.2 Where managing agents do elect to use an automated screening software package, they should ensure that it is tailored to their business and risk profile. They should ensure that the software highlights potential matches very clearly and at the appropriate stage of processing so as to minimise the risk of the potential match being missed.

2.3 Managing agents should also ensure that this software is properly calibrated, so that it performs a thorough search, but does not return an excessive amount of false positive hits. In this respect, managing agents should consider whether to screen for non-exact matches to sanctions targets, where the data (whether in the official lists or the managing

agent's own records) is misspelled or incomplete. These are sometimes referred to as "fuzzy matches". Managing agents should take into account in their risk assessment the additional review work a greater level of false positive matches may generate.

2.4 Managing agents should also ensure that they have adequate disaster management procedures to deal with failure of these systems. Managing agents should audit and test the operation of these automated systems on a periodic basis to ensure that they operate as intended.

3. FREEZING MEASURES

3.1 Where, from their sanctions due diligence and screening, managing agents identify an actual match to persons/entities contained on HM Treasury's Consolidated List of Sanctions Targets (or against whom measures have been taken under the Counter-Terrorism Act 2008), to the export control/trade sanctions lists and/or to any other applicable financial sanctions, they may need to freeze the account concerned and ensure that claims are not paid to the person/entity concerned or in relation to the trade/goods/equipment/services concerned.

3.2 There is no set way to achieve this, however, managing agents may wish to consider undertaking the following steps (although further action may be justified in individual cases):

(a) marking on their systems (and their hard copy files, if appropriate) in an appropriate and prominent manner, that the account is the subject of sanctions and that no activity is to take place on the account without the approval of those responsible for the managing agent's sanctions compliance, and notifying such a match to an appropriately senior member of staff;

(b) ensuring that any funds held on behalf of, or intended for, the sanctions target, or in relation to the trade/goods/equipment/services concerned are transferred into a separate account (clearly and prominently marked as frozen on the grounds of sanctions) and/or that other measures are taken to mitigate against the risk of inadvertent payments, and ensuring that these procedures, when implemented, cannot be inadvertently overridden;

(c) instructing the managing agent's underwriting and claims teams not to process any endorsements, amendments, terminations or other alterations to cover and not to process any claims or pay any other sums (including return premiums or profit share payments) or provide any other benefits, without the approval of those responsible for the managing agent's sanctions compliance;

(d) notifying HM Treasury, the Export Control Organisation and/or any other relevant regulatory/licensing authority, as appropriate, and within the timeframes required by law and/or that entity;

(e) considering whether to continue to receive any instalments of premium that may be payable in the future in relation the account;

(f) considering whether they can accept notification of a claim on the account (and/or whether any sanctions exclusion/warranty applies);

(g) notifying the followers/co-insuring managing agents and/or Lloyd's International Regulatory Affairs, as set out above; and/or

(h) retaining a written record of the investigation of the sanctions match, the decisions taken and any agreed actions.

4. REPORTING SANCTIONS "HITS" OR BREACHES OF SANCTIONS

4.1 Managing agents are encouraged to liaise with all relevant licensing authorities where they are in doubt as to the extent of the due diligence they should conduct in individual cases or whether sanctions apply to the activities in which they propose to engage. They should consider whether to approach the appropriate licensing authority in advance for guidance or for a licence to proceed with their activity. LIRA is happy to assist managing agents with such enquiries/liaison.

4.2 Where they act as part of a subscription market, managing agents are encouraged to co-ordinate licence applications. It is possible for licence applications to be made on behalf of multiple parties – underwriters intending to make such application are should contact the remainder of the subscribing market to determine whether they need to participate. Lloyd's accredited brokers may also want to participate in the licence application and where they do so will be expected to assist in the process.

4.3 General guidance on reporting obligations of managing agents is set out in Market Bulletin Y4117. Managing agents should be aware that HM Treasury and/or other enforcement agencies should be informed as soon as practicable should managing agents know or suspect that an offence under sanctions has been committed either by themselves or by a sanctions target. Managing agents risk committing an offence if they do not do so. Managing agents' internal reporting procedures should allow for reporting to HM Treasury as soon as practicable. Managing agents are also reminded that certain matters may need to be notified the FSA if it is something of which the FSA would normally expect notice.

The relevant contact details are as follows:

HM Treasury: AFU@hmtreasury.gsi.gov.uk and 020 7270 4558 or 020 7270 5454;

Asset Freezing Unit, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

For matters in relation to trade controls and Export Control legislation, contact:

BIS: eco.help@bis.gsi.gov.uk; and lu3.eca@bis.gsi.gov.uk; Tel: 020 7215 4594; Fax: 020 7215 4539 or 020 7215 2635;

Export Control Organisation, 3rd Floor, 1 Victoria Street, London SW1H 0ET

4.4 If, as part of their due diligence and screening, managing agents become aware that an offence has been committed by other parties – for example, they may become aware of an infringement of sanctions when assessing the terms of an expiring contract in which they are being asked to participate, but in which they have not previously participated - managing agents should consider whether to report this.

4.5 If managing agents determine that HM Treasury or other enforcement agencies should be notified, steps should also be taken to report the matter to Lloyd's International Regulatory Affairs. When they are part of a subscription market, managing agents reporting in this way should take steps to liaise with the rest of the subscribing market (through the broker, if required).

4.6 Managing agents should consider whether more than one licensing authority may regulate their activities.

4.7 Managing agents may also need to report sanctions infringements to the Serious Organised Crime Agency ("SOCA") under the Terrorism Act 2000. Should they determine they need to do so, managing agents should ensure that in reporting to HM Treasury or other enforcement agencies and Lloyd's, and (if applicable) following underwriters or other co-insuring managing agents, they do not commit a "tipping off" offence.

PART 4 – OTHER SANCTIONS REGIMES AND US SANCTIONS

SECTION A

1. SPECIFIC SANCTIONS REGIMES

Set out below is additional guidance on specific sanctions regimes which is current as at 03/02/2012. It should be noted that these regimes will vary over time and managing agents should therefore be aware that the information below is subject to change.

1.1 **Iran**

1.1.1 Managing agents should be aware that EU Regulation 961/2010, as implemented in the UK by the Iran (European Union Financial Sanctions) Regulations 2010, restricts the provision of (re)insurance to Iranian persons (as defined in that legislation). Further detail on the provisions of that legislation is set out in Market Bulletin Y4463. However, managing agents should be aware that the definition of what amounts to an Iranian person includes natural or legal persons acting on behalf or at the direction of the Iranian government or Iranian companies. Managing agents may need to ensure that their due diligence and screening procedures identify these persons. Many of the usual checks may be relevant, however managing agents may need to extend these checks beyond identity, ownership and control, to look at business relationships to which the person/entity concerned is party. For example, managing agents might wish to determine whether the person/entity concerned is an agent or employee of an Iranian person.

1.1.2 Managing agents are also reminded of Lloyd's Market Direction Y4409, which requires that managing agents ensure that no contract of (re)insurance is entered into (or existing contracts amended/endorsed) on behalf of the members of a syndicate managed by it where it has actual knowledge or should have known that an Iranian Refined Petroleum Risk[11] would be (re)insured under that contract. Managing agents should establish reasonable and proportionate due diligence processes to ensure that they do not underwrite such risks.

1.1.3 Managing agents should be aware of the fact that further EU sanctions against the Iranian oil and gas sector are being implemented. These sanctions are likely to include a ban on the import, purchase and transport of Iranian crude oil and petroleum/petrochemical products as well as related finance and (re)insurance. At the time of writing, this legislation was undergoing review at EU level and will be the subject of a LITA Alert, when it comes into force.

1.2 **Syria**

1.2.1 Managing agents should be aware that EU Regulation 36/2012, which has direct effect in the UK, restricts the provision of insurance and reinsurance related directly or indirectly to:

(a) the import (into the EU) of crude oil or petroleum products originating in Syria or exported from Syria;

(b) the purchase of crude oil or petroleum products located in Syria or originating in Syria;

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[11] As set out in Market Bulletin Y4409, an Iranian Refined Petroleum Risk is one where the interest or property to be insured or reinsured under the contract of insurance or reinsurance covers the shipment of refined petroleum to Iran at any time during the period of the contract.

(c) the transport of crude oil or petroleum products if they originate in Syria or are being exported from Syria to another country.

1.2.2 A list of what amounts to “crude oil or petroleum products” is set out in an Annex to EU Regulation 36/2012. Managing agents should take steps to identify whether, in entering into a (re)insurance contract, it is likely to relate directly or indirectly to such activities in relation to “crude oil or petroleum products”. Managing agents should bear in mind that these restrictions apply even where the product concerned is not located in Syria (if it originates in Syria) and where the (re)insurance relates to a purchase or transport of such goods, it does not matter that the purchase/transport does not take place in or into the EU. When entering into (re)insurance contracts which may relate to such goods, managing agents should take steps to determine whether they are located in/exported from Syria and/or whether they are of Syrian origin (whatever their current location and destination).

1.2.3 Further, EU Regulation 36/2012 (as implemented in the UK by the Syria (European Union Financial Sanctions) Regulations 2012) prohibits the provision of (re)insurance to Syrian persons (as defined in that legislation). The definition of Syrian persons includes the State of Syria and its government, public bodies, corporations or agencies and any natural or legal persons when acting on behalf of or at the directions of the Syrian government. As with Iranian persons, managing agents may need to ensure that their due diligence and screening procedures identify these persons. Many of the usual checks may be relevant, however managing agents may need to extend these checks beyond identity, ownership and control, to look at business relationships to which the person/entity concerned is party (for example an employment relationship).

1.2.4 Managing agents should also consider whether to deploy sanctions exclusions or warranties in the relevant (re)insurance contract where they consider it likely that such risks may otherwise be covered under it.

1.3 **Counter Terrorism Act 2008**

1.3.1 Managing agents are referred to Market Bulletin Y4355 for further detail on the Counter Terrorism Act 2008. Additionally, they are reminded that directions issued by HM Treasury may require them to cease all business transactions and business relationships with specified persons/entities. This could include terminating any existing (re)insurance contracts with those persons/entities and ensuring that no such contracts are entered into for the period of the direction.

1.4 **Terrorist Asset-Freezing etc Act 2010**

1.4.1 The Terrorist Asset-Freezing etc Act 2010 came into force on 17 December 2010 and amongst other things provides for the imposition of asset freezes on persons/entities designated under EC Council Regulation 2580/2001 or by HM Treasury on the grounds that they are suspected to be involved in terrorist activities.

1.4.2 The Act prohibits the provision of "financial services" to persons/entities designated under it. "Financial services" include the provision of (re)insurance, insurance broking activities and all services auxiliary to (re)insurance. This means that it is prohibited for managing agents to issue (re)insurance covers to or for the benefit of persons/entities designed under the Act (or provide auxiliary services to them). Managing agents should note that HM Treasury has issued General Licence AFU/2011/G1 which recognises that due diligence might not be conducted prior to issuing contracts of (re)insurance to persons/entities designated under the Act, however HM Treasury licences may be subject to withdrawal or change.

1.4.3 Managing agents should bear in mind the restrictions set out in this Act when setting their risk-sensitive sanctions due diligence and screening procedures.

SECTION B

2. ADDITIONAL GUIDANCE FOR US PERSONS

2.1 Managing agents should be aware that US sanctions may apply to their activities. US sanctions predominantly apply where it can be said that the person concerned is a "US Person". Who, or what amounts to a "US Person" for the purposes of US sanctions can vary dependent on the regime concerned, however the following broad principles can be drawn.

2.2 Am I a "US Person"?

2.2.1 The most important US sanctions for managing agents are those implemented and enforced by the US Treasury Department's Office of Foreign Assets Control ("OFAC"). OFAC administers a variety of country specific and issue specific sanctions. The oldest of these sanctions programs tend to be the broadest. Thus, under its three oldest programs, Cuba, Iran, and Sudan, OFAC has imposed a comprehensive trade and business embargo. OFAC's newer sanctions programs tend to be "list based," prohibiting US Persons from engaging in trade or transactions with persons designated by OFAC and included on OFAC's list of Specially Designated Nationals ("SDNs") and Blocked Persons.

2.2.2 With the exception of OFAC's Cuba program, the OFAC sanctions are directly applicable only to US Persons, defined to include US citizens and permanent residents (green card holders) wherever located, companies incorporated under US law, including their (unincorporated) foreign branch offices and persons physically present in the United States.

2.2.3 The US embargo of Cuba applies more broadly than the other OFAC sanctions programs in that it applies, not only to US Persons as defined above, but also to non-US companies that are owned or controlled by such US Persons, e.g. foreign subsidiaries of US companies. The EU has objected to this extraterritorial application of the US sanctions against Cuba. In 1996, the EU adopted European Council Regulation 2271/96, which effectively prohibits EU companies from refusing to do business with Cuba in deference to the US embargo. This obviously places EU subsidiaries of US companies in a difficult position if they are asked to participate in a transaction involving Cuba. Managing agents confronted with this situation should always take legal advice.

2.2.4 Most managing agents would likely not be considered US Persons for purposes of the OFAC sanctions. Managing agents should be aware, however, of the ways in which US authorities have extended the reach of US sanctions to penalize companies that are not themselves US Persons. First, all OFAC sanctions programs include a prohibition on US Persons "facilitating" prohibited transactions. As stated in OFAC's Iran Regulations:

"*No United States Person, wherever located, may approve, finance, facilitate or guarantee any transaction by a foreign person where the transaction by that foreign person would be prohibited by this part if performed by a United States Person or within the United States*." 31 CFR § 560.208.

2.2.5 Thus, if a US company or a US citizen participates in, approves or authorizes a transaction with a country or person sanctioned by OFAC, or provides any form of incidental services such as insuring, financing, or negotiating a transaction, the US company or US citizen would violate the prohibition upon facilitation. This is true for any US citizen or resident employed by a managing agent. In short, if managing agents plan to engage in transactions with countries or persons sanctioned by OFAC (but which are

permissible under EU/UK law), it is critically important that no US Person has any role or involvement, however incidental.

2.2.6 Second, the US government has prosecuted non-US Persons who conspire with US Persons to violate the OFAC sanctions regulations. For example, in United States v. McKeeve the appellant, a British citizen, was found guilty of conspiring to violate the US embargo of Libya, based upon an agreement the appellant had with a US exporter to ship US-origin computers to the Libyan government through Malta. The appellant argued that he could not be found guilty of violating the Libyan embargo regulations because they only applied to US Persons. The court disagreed, at least with respect to the charge of conspiracy, noting that "*as long as [the appellant or his co-conspirator] knew the locus of the equipment and knew that US law prohibited its export to Libya, the ensuing agreement with the appellant had an unlawful design sufficient to animate the federal conspiracy statute.*" Applying this analysis to the case before it, the court found evidence that the appellant's co-conspirator was aware of US export restrictions and purposefully sought to evade them, and the appellant performed an overt act in furtherance of the conspiracy when he purchased the equipment from the US company and attempted to ship it to Libya. Therefore non-US Persons can be criminally indicted if in fact they conspire with US Persons to violate OFAC sanctions.

2.2.7 Finally, in four recent cases, the US charged non-US banks for "causing" violations of the OFAC's Iran sanctions and for violating applicable provisions of New York State law by routing funds transfers originating with Iranian banks through the US banking system after removing from the funds transfer instructions all references to the Iranian source of the funds. The amounts paid by these banks to settle the charges brought against them were substantial, running into hundreds of millions of dollars. These cases indicate that non-US companies are exposed to being prosecuted by the US authorities for causing violations of US sanctions laws when dealing with US counterparties.

2.2.8 As noted above, managing agents should be aware that US sanctions may apply to all of their employees that are US citizens or residents (green card holders), wherever they are located. This is entirely separate to the question as to whether US sanctions apply to the managing agent itself. As such, where employees that are US citizens or green card holders are involved (or likely to be involved) in an activity, managing agents should consider taking steps to ensure that they consider whether US sanctions apply and include due diligence in their compliance procedures in respect of that activity.

2.2.9 Managing agents should be aware that even if they are not US Persons, as set out above, those with whom they deal may be. Managing agents should always be aware of the risks associated with their counterparties being US Persons. Such risks may vary dependent on the sanctions concerned, but could include having the transaction concerned being blocked or being subject to censure by authorities in the US. For example, the risks to managing agents may be particularly acute where they purchase reinsurance from US Persons.

2.3 **Other situations in which US sanctions may become relevant**

2.3.1 Even if they are not a "US Person", managing agents may need to consider the potential implications of US sanctions on the activities in which they engage. In general terms, US sanctions can become relevant in the following ways:

(a) Transactions in US dollars: All international funds transfers denominated in US dollars clear through banks in the US. Some OFAC sanctions programs require that US banks "block" funds if a sanctions target has any interest in the funds. These cases lead to losses and disputes about who should bear them. Other

OFAC sanctions require that US clearing banks reject funds transfers instead of blocking them. In these cases, however, the person initiating the funds transfer can be charged with having "caused" US banks to violate the OFAC regulations, as noted above. Managing agents should therefore be mindful of US sanctions when engaging in US dollar denominated transactions and may wish to check the payee/recipient and/or any party who may benefit from the payment concerned to assure that none are included on the OFAC list of SDNs. They may also wish to check that the transaction concerned is not subject to a comprehensive country embargo.

(b) Transactions related to US-origin goods: US export control laws "follow" US-origin goods even after they have been exported from the US. Thus, if a US exporter requires an export license as a condition of exporting a supercomputer to Russia, a UK company likewise requires a US export license to export that US-origin supercomputer from the UK to Russia. Virtually all exports of uniquely military equipment of US-origin require a US export license. The analysis for products that are not uniquely military is more nuanced. Whether a US export license is required depends upon the item being exported, the country of the end user, the identity of the end user and the product's intended end use. Managing agents must be mindful of the possible need to obtain a US export license when engaging in transactions that relate to the cross-border movement of US-origin goods.

(c) Iran Sanctions Act and CISADA - US sanctions against Iran: The Iran Sanctions Act **("**ISA**")** is explicitly targeted at non-US companies. As originally enacted in 1996, it authorised the imposition of sanctions against companies that agreed to make investments in Iran's petroleum and petrochemical sectors. It was amended in the summer of 2010 by a law known as CISADA that both expanded the list of potential sanctions and expanded the list of sanctionable activities to include:

(i) Insuring the sale or transportation of refined petroleum products to Iran or the sale of goods, services, technology or support that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products;

(ii) Selling or transporting refined petroleum products to Iran or financing such sales;

(iii) Selling, leasing or providing to Iran goods, services, technology or support that could directly and significantly facilitate the maintenance or expansion of Iran's petroleum refining capacity or Iran's imports of refined products.

Managing agents are specifically referred to the market direction set out in Market Bulletin Y4409.

2.3.2 Managing agents should exercise extreme caution when considering involvement with a transaction that has any connection with Iran. US sanctions against Iran now include several distinct but overlapping OFAC programs and, for non-US Persons, the ISA. The OFAC programs have themselves become increasingly complex and stringent. Managing agents are encouraged to seek competent legal counsel to advice upon the possible US sanctions impact before undertaking any commitments that involve Iran.

2.3.3 Further guidance on the additional due diligence and screening procedures managing agents who are "US Persons" should take will be included in the US sanctions country-specific guidance notes found on the Lloyd's Crystal Tool.

SECTION C

3. USEFUL SOURCES OF MATERIAL

UN

http://www.un.org/Docs/sc/

EU

http://eeas.europa.eu/cfsp/sanctions/index_en.htm

HM Treasury

http://www.hm-treasury.gov.uk/fin_sanctions_index.htm

British Foreign and Commonwealth Office

http://www.fco.gov.uk/en/about-us/what-we-do/services-we-deliver/export-controls-sanctions/

Department for Business Innovation and Skills

http://www.bis.gov.uk/exportcontrol
http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1078151991

Code for Crown Prosecutors

http://www.cps.gov.uk/publications/docs/code2010english.pdf

FSA Website and 2009 Survey/Guidance

http://www.fsa.gov.uk/pubs/other/Sanctions_final_report.pdf

Lloyd's Crystal

http://www.lloyds.com/The-Market/Tools-and-Resources/Tools-E-Services/Crystal

Financial Action Task Force

www.fatf-gafi.org

US Treasury

www.ustreas.gov/offices/enforcement/ofac/programs/

OFAC

www.treas.gov/offices/enforcement/ofac/