

MARKET BULLETIN

REF: Y4463

Title	Iran – EU Sanctions
Purpose	To provide the Market with guidance on complying with sanctions against Iran following the implementation of EU Regulation No 961/2010
Type	Event
From	Andy Wragg, International Regulatory Affairs 020 737 6387 andy.wragg@lloyds.com Rachael Penny, International Regulatory Affairs 020 7327 6380 rachael.penny@lloyds.com
Date	20 January 2011
Deadline	Effective immediately

The purpose of this bulletin is to consolidate guidance previously issued by Lloyd's in a series of LITA alerts, following the implementation of the EU Regulation No 961/2010 ("The Regulation") on restrictive measures against Iran and to provide further clarification where possible. The content of this bulletin has been reviewed by HM Treasury ("HMT").

Background

The [Regulation](#) was published and in effect on 27 October 2010. Its purpose is to implement measures set down in an EC Council Decision of 26 July 2010. Whilst the Regulation is dated 25 October, it comes into force on the date of publication, i.e. 27 October 2010. HMT has also published [additional guidance](#) on the Regulation on 27 October 2010.

1. Insurance Restrictions

The re/insurance prohibitions are set out under Article 26 of the Regulation. It is prohibited to **re/insure**:

- **New contracts, renewal of or extensions to existing contracts of re/insurance** for:
 - i) Iran or its Government, and its public bodies, corporations or agencies;
 - ii) an Iranian person, entity or body other than a natural person, or;

- iii) a natural person or a legal person, entity or body when acting on behalf or at the direction of a legal person, entity or body referred to in i) or ii) above

(NB: persons falling within category iii) could be located outside of Iran)

This means that the re/insurance prohibition will apply to Iranian companies and or to companies owned or controlled by an Iranian company, which could include a subsidiary of an Iranian company located outside of Iran.

The prohibition also applies to natural persons but only if they are **not acting** in a private capacity, so if an official of an Iranian company acting on behalf of his/her company, applied for re/insurance, this would not be permitted.

Re/insurance exemptions apply to:

- compulsory or third party insurance such as motor, public and employers' liability to Iranian persons, entities or bodies located in the EU;
- provision of re/insurance to Iranian individuals acting in a "private capacity" except if they are designated as subject to an asset freeze. This could include health, travel and or household re/insurance.
- re/insurance of owners of vessels, aircraft or vehicles, **where chartered by a person, entity or body, described in i) and ii) above** provided that person, entity or body is not subject to an asset freeze.

It should be noted that if a vessel or aircraft (with no Iranian association/connection) temporarily docks, loads or transits through Iranian waters or airspace, it is not subject to Iranian jurisdiction or said to be at the direction of the Government or of any Iran person, entity, body defined above.

The re/insurance prohibition relates to the provision of insurance to any person/entity falling within the prohibited categories (set out above) of the Regulation. It does not prevent the provision of insurance to a person/entity falling outside of the prohibited categories, who is trading with an Iranian person/entity – as the insurance provision, which is deemed to be the relevant transaction, does not relate to the Iranian person/entity.

2. Existing Contracts prior to 27 October 2010

Contracts for Iranian persons as defined above but which **incepted prior to 27 October 2010** may run their course. However, they cannot be extended or renewed or contracts bound in relation to them under a binding authority, after this date. This means that individual contracts, which incept after 27 October 2010 but attach to a binding authority contract arranged prior to 27 October 2010 are not permitted.

3. Extensions

As referenced above, the Regulation states that extensions to existing contracts of re/insurance (for the prohibited categories) are not permitted. HMT has confirmed that this requirement applies where the extension to an existing contract is outside the terms agreed when the contract came into force and which would therefore alter and increase the scope of re/insurance coverage that was agreed. Such requests to extend would be seen as optional or at the discretion of the underwriter and would not be permitted.

In some cases however, the terms of the contract agreed may oblige a re/insurer to accept additional risks or extensions to an existing contract i.e. without any option. There may therefore be policies where a re/insurer is legally bound to underwrite any risk falling within the terms of an existing contract, such as under obligatory treaty reinsurance. In this case, even if the risks incept after 27 October 2010 they are permitted.

If managing agents wish to obtain clarification about a specific policy extension, they should contact the Asset Freezing Unit of HMT. Their contact details are: AFU@hmtreasury.gsi.gov.uk or 020 7270 5454.

4. Coverholders

As noted above, individual contracts bound after 27 October 2010 off existing binding authority contracts would be considered separate contracts and not allowed. Managing agents should therefore ensure that coverholders are made aware of the provisions of the Regulation and that they are not permitted to bind underwriters to re/insure any relevant contracts after 27 October 2010.

5. Circumvention

Any attempt to knowingly and intentionally circumvent the re/insurance restrictions is prohibited.

6. Reinsurance

The prohibition regarding reinsurance applies to reinsurance contracts provided by an EU reinsurer to any Iranian insurance company (regardless of the identity of the original insured) and to any reinsurance where the underlying insured is an Iranian company, regardless of where the insurer is based.

7. Sanction Clauses

Many managing agents are now inserting a sanctions limitation and exclusion clause (LMA Clause 3100) into their policy wordings in order to prevent the extension of a prohibited service to sanctioned countries, entities or individuals.

Whilst the insertion of a sanctions exclusion may provide contractual certainty for underwriters in specified circumstances in relation to relevant sanctions legislation, it does not remove a managing agent's regulatory obligation to carry out or have performed on their

behalf due diligence appropriate to the type of contract in question and to ensure that that it is evidenced accordingly.

8. Due Diligence

Under the [FSA's SYSC requirement 3.2.6](#), firms are expected to establish and maintain effective systems and controls for countering the risk that firms might be used to further financial crime. It is therefore expected that due diligence should be carried out to ensure that managing agents are not re/insuring entities/persons which are prohibited under international sanctions legislation.

Whilst Lloyd's is intending to review the question of due diligence in respect of international sanctions in a wider context, it is advocating that managing agents use a simple confirmation process in order to fulfil their due diligence obligations regarding Iranian sanctions.

This confirmation, most likely obtained from the placing broker, must affirm that the risk does not involve any Iranian entities/persons as per the definitions provided under Article 26 of the Regulation and that any additional risks falling within these categories must be immediately referred to underwriters for assessment. This type of confirmation will be particularly relevant to Global policies where not all risk details are known at the beginning of the policy period.

However this confirmation must not be a substitute for any due diligence the managing agent is obliged to conduct, or deter managing agents from reviewing information made available to them (e.g. bordereaux or information advised under a treaty reinsurance programme) that would identify the re/insureds under the contract. Omitting to examine a list of re/insureds for sanctioned persons/entities that has been made available to a re/insurer, could amount to a breach of the Regulation.

Following syndicates may also wish to clarify what due diligence has been carried out by the lead and/or broker and obtain confirmation that it has been conducted, documenting appropriately to demonstrate satisfaction that the required compliance process has been followed. HMT has advised that it does not expect managing agents to duplicate due diligence that has already been carried out if they are able to satisfy themselves of its existence and evidence accordingly.

The Regulation does not require managing agents to carry out due diligence beyond what is normally expected in the underwriting process, however if a piece of information or lack of information raises a concern, managing agents should extend the level of due diligence normally carried out to alleviate these concerns.

Continued due diligence during the life and run off of a contract is also important to ensure that payments, particularly claims and returns premiums are not made to sanctioned entities/persons. If it is suspected that a transaction may have breached applicable sanctions legislation, managing agents are reminded of the requirement that they should

notify HMT as soon as possible, ensuring that Lloyd's International Regulatory Affairs is also notified.

As referenced in section 7 above, managing agents may still consider it appropriate to include a sanctions clause as well as obtaining the due diligence confirmation described.

9. Knowledge Defence

The knowledge defence in the Regulation (Article 32(2)) serves as a protection for re/insurers, provided they have carried out their due diligence requirements properly.

If a managing agent has carried out due diligence to the extent that it is able to for a particular transaction and there is no evidence or suspicion that it has re/insured a prohibited transaction, the defence within the Regulation can be relied upon, if it transpires that the transaction involved providing re/insurance to a sanctioned person/entity. It is therefore important to demonstrate compliance with due diligence requirements and document accordingly, should this issue arise.

10. Reporting to HMT

Managing agents are reminded of the requirement that all financial institutions and other bodies and persons in UK should notify HMT of any transactions relating to the individuals and entities subject to asset freezing provisions under the Annexes to the Regulation as also previously advised in our earlier alerts. The Asset Freezing Unit's details are provided under section 3 of this bulletin. If a managing agent requires assistance in reporting a breach to HMT or would like to talk through their concerns with Lloyd's, please contact International Regulatory Affairs as per the details at the end of the bulletin.

11. Criminal Offences

On 11 December 2010, The [Iran \(European Union Financial Sanctions\) Regulations \(SI 2010/2937\)](#) came into force. This piece of legislation makes breaches of certain prohibitions within the Regulation, criminal offences in the UK.

Under the Schedule to SI 2010/2937, there is a reporting obligation that a relevant institution must inform HMT as soon as practicable, if it knows or has reasonable cause to suspect that a person is a designated target and/or if a person has committed an offence by breaching any of the provisions of the Regulation and the information on which the knowledge or suspicion is based has been obtained during the course of the relevant institution carrying on its business.

12. Oil and Gas Restrictions

There are prohibitions on the provision of key equipment and technology relating to oil and gas to Iranian persons or for use in Iran and related financial, technical or brokering services are also prohibited. Insurance is not specifically mentioned under this restriction and the definitions within the Regulation for technical assistance and brokering services do not include insurance transactions. Financial assistance is not defined in the Regulation but export credit insurance is included in its definition in other sanctions legislation. If managing agents wish to obtain clarity about a specific transaction, HMT have advised that they should be contacted for assistance.

HMT has confirmed that the re/insurance prohibitions under Article 26 do not apply to re/insuring the export and import of oil and gas to and from Iran provided the re/insurance is not for the benefit of Iranian persons, entities or bodies. However please see section 13, as Lloyd’s has directed that re/insuring imports of refined petroleum into Iran is not permitted.

13. Lloyd’s Direction – Restriction of Imports of Refined Petroleum into Iran

As advised above, the oil and gas restrictions do not restrict the import of refined petroleum into Iran or the insurance thereof (provided the coverage is for the benefit of non-Iranian persons etc) but managing agents are reminded of the Direction issued by Lloyd’s with effect from 9 July requiring that **“no contract of insurance or reinsurance 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 would be insured or reinsured under that contract”**. This direction was issued on 8 July 2010 under [Market Bulletin Y4409](#) and is still in force.

14. Transfer of Funds

There are requirements within the Regulation under Article 21 that the transfer of funds (e.g. claims and premiums) TO and FROM an Iranian person, entity and body must be notified to and or authorised by HMT in advance, if the amount exceeds a certain limit. These are:

Value	Requirement
More than €10,000 but less than €40,000	A transfer of funds between these two limits must be notified to HMT in advance of the transaction taking place. It does not matter what the transfer relates to. Approval is not required.
€40,000 or more	Transfers relating to foodstuffs, medical equipment, healthcare, or humanitarian purposes need only be notified in advance to HMT but transactions for any other purpose within these monetary limits must be authorised by HMT in advance.

The requirement would apply to existing contracts or to exempt re/insurance contracts if claims or premiums within the above limits are to be transferred to or from:

- (a) the State of Iran or any public authority thereof
- (b) any natural person **in** or **resident in** Iran (i.e. can include foreign persons in Iran temporarily or foreign and Iranian persons residing in Iran **but not an Iranian person outside of Iran**)
- (c) any legal person, entity or body having its registered office in Iran (could also include an overseas branch of an Iranian company i.e. located outside of Iran)
- (d) any legal person, entity or body inside or outside Iran, owned or controlled directly or indirectly by a), b) or c).

This requirement applies regardless of whether €10,000/€40,000 is a single transfer or a number of related transfers for the same risk which accumulate to over €10,000/€40,000.

15. Notifications to HM Treasury

Prior notifications of EUR10,000 or more can be submitted to HMT at any point prior to the transfer actually being made. Whilst firms are not legally required to wait for an acknowledgement regarding the notification, firms will wish to ensure that the prior notification has been sent before proceeding with the transfer. To assist with this, HMT has introduced an auto-acknowledgement for email notifications.

The Regulation sets out the parties responsible for notifying and or obtaining authorisation when transferring funds to or from an Iranian person. HMT's Guidance in relation to the transfer of funds also sets this out. This will usually be the payer or the party distributing the funds to the Iranian person.

It is HMT's preference to receive a single notification/authorisation request per transaction. Therefore Lloyd's considers that it would be more efficient if this is sought at an earlier stage in the transaction and that the lead syndicate (with assistance from the broker, if appropriate) co-ordinates notifications to HMT ensuring that all following syndicates are informed.

Under the Regulation, if no objection to an authorisation request has been received within 4 weeks, then the authorisation is deemed to be granted.

16. Xchanging Checks

Xchanging (on both the XIS and XCS sides) is investigating what, if any, internal process changes it needs to implement in order to comply with its direct obligations under the Regulations. Xchanging will issue its own bulletin to the Market in due course to communicate what checks and/or process changes it will be putting in place.

The sole purpose of any such checks will be to meet Xchanging's obligations under the Regulations. However, it is important to note that these will be limited in scope and will not be a substitute for or amount to an outsourcing of any obligations that a managing agent or other party has under the Regulations.

17. Deferred Premium Instalments

As the Market is aware, the Regulation contains asset freezing provisions, where designated persons are subject to financial restrictions. Funds and economic resources must be frozen and cannot be made available directly or indirectly unless they fall into a category allowing authorisation by HMT. For any existing contracts where the re/insureds are subject to asset freezing provisions, there may be a deferred premium instalment arrangement where premium instalments are yet to be paid but which will be automatically triggered at certain instalment dates.

In order to ensure that these payments are stopped, Xchanging can correct the automation and cancel deferred instalments. It is preferable for the broker to instruct Xchanging to initiate this process, which can be done by submitting a "Corrections Request Form". These forms can be found on the Xchanging Insurance Portal. To access the Portal, please copy and paste the web link below into your browser:

<https://insuranceportal.xchanging.com/cms/main/menu/1%20-%20Technical%20Information/Premium%20Correction%20Guidelines>

If you require assistance in accessing the Portal, please email:
servicecentre@xchanging.com

Please note that this process is not just applicable to this Regulation. It will also apply to other deferred premium transactions where parties are subject to asset freezing provisions under other sanctions legislation.

If the managing agent wishes to contact Xchanging directly to request that deferred instalments be stopped, they should email their request to:
premium.corrections@xchanging.com

18. Delinked Transactions

It is possible that delinked transactions may have been set up for re/insureds, who are subject to asset freezing provisions but have not been linked (i.e. premium amounts have not been settled). In order to ensure that no monies move in respect of such transactions, Xchanging should be instructed, as above, to cancel them. For more information on delinked transactions please refer to the [London Market Group's user guide](#).

General enquiries relating to processing at Xchanging (XIS and XCS) should be directed to:
servicecentre@xchanging.com or 0870 380 0830.

Lloyd's Contact Details

Andy Wragg
International Regulatory Affairs
Tel: 020 7327 6387
Email: andy.wragg@loyds.com

Rachael Penny
International Regulatory Affairs
Tel: 020 7327 6380
Email: rachael.penny@loyds.com.

Lloyd's International Trading Advice
Tel: 020 7327 6677
Email: LITA@loyds.com