

MARKET BULLETIN

REF: Y4412

Title	Export Control Order 2008
Purpose	To inform Lloyd's Managing Agents and Lloyd's Brokers of the requirements of the Export Control Order 2008
Type	Event
From	<p>Andy Wragg International Regulatory Affairs 020 7327 6387 andy.wragg@lloyds.com</p> <p>Rachael Connor International Regulatory Affairs 020 7327 6380 rachael.connor@lloyds.com</p>
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Deadline	N/A
Related links	See Appendices, 1, 2, 3, 4, 5

Introduction

Lloyd's has been working in conjunction with the Lloyd's Market Association ("LMA") and London and International Insurance Brokers Association ("LIIBA") to assess the impact of the Export Control Order 2008 on re/insurance and specifically on the Lloyd's Market.

A Working Group with representation from all three organisations was established in order to clarify a number of re/insurance specific enquiries and to formulate consolidated guidance. This guidance has been prepared according to the Working Group's interpretation of the Export Control Order 2008 ("the Order") and replaces Market Bulletin Y4314 dated 14 September 2009. It also includes details regarding successful negotiations with BIS to develop a one licence solution for re/insurance transactions.

The scope of the guidance is intended primarily for the Lloyd's Insurance Market but it could be applicable to the London Insurance Market. However, it is not intended for third parties outside of the re/insurance industry or as general guidance on Export Control legislation and commentary is therefore limited to the part of the Order which has a direct impact on re/insurance activity (rather than on export activity). Although not formally endorsed, the guidance has been reviewed by the Department for Business, Innovation and Skills ("BIS") who administer the licensing process for Export Controls. The guidance is separated into a number of sections with a summary below followed by expanded guidance set out in the appendices listed overleaf.

SUMMARY OF KEY GUIDANCE POINTS

Export control legislation came into force in March 2004 and was consolidated into the Export Control Order 2008.

- The Order, **in part**, applies to the movement of controlled (military) goods between two overseas countries.
- The part of the Order applying to the movement of arms and military goods between two overseas countries (not to the import or export of such goods to and from the UK) can also impact re/insurance activity carried out by UK individuals or UK companies, no matter where they are located.
- The Order impacts on UK individuals and UK companies operating anywhere in the World or persons who are operating within the UK involved in the promotion, supply and trade of these goods (commonly referred to as “trafficking and brokering”).
- It can also apply to UK persons whose sole involvement is the transportation, financing, **provision of insurance and reinsurance**, general advertising and promotion of these goods, the scope of which is set out under Trade Controls in Part 4 of the Order.
- Controlled goods are subject to trade controls, which means that trading in them (including re/insurance) require where appropriate a licence. Controlled goods are categorised into 3 types.
- Category A classified as controlled goods of the greatest concern and the most undesirable type must be licensed for movement between overseas countries with no exception. However BIS advise that there is little legitimate trade in such goods and it is unlikely that a licence will be granted to trade in them.
- Category B and C goods require a licence where their movement is from one overseas country to a country which is designated as an embargoed destination.
- Embargoed destinations, current as at 13/07/10, are shown in the table in Appendix 1 and are subject to change from time to time and also at BIS’ website link: <http://www.businesslink.gov.uk/bdotg/action/layer?r.s=m&r.l4=1084292055&r.l1=1079717544&r.lc=en&r.l3=1084100244&r.l2=1084228483&topicId=1084100244&r.i=1084302562&r.t=RESOURCES>
- Trading (including where required the provision of re/insurance) without a valid licence is a criminal offence and could result in financial penalties and or imprisonment up to a maximum of 10 years. Such penalties may also cause a firm to suffer from reputational damage.
- Where the parties to a contract of re/insurance have identified that the contract is subject to trade controls, the parties should not proceed until a valid licence has been obtained and all parties to the transaction should be advised accordingly.
- If an authorised re/insurance licence is revoked by BIS (during the currency of a re/insurance contract) insurers must cease providing re/insurance **immediately**. (See Appendix 2, page 10 for full requirements.)
- A licence is required at the point that the contract is agreed by subscribing re/insurers (as opposed to the quotation stage).

- Parties to the transaction should carefully review the information that is normally disclosed in order to determine whether or not the Order applies and a licence is required.
- Where relevant information becomes known after the transaction has incepted there is no need to apply for a licence but a report should be made to Serious Organised Crime Agency ("SOCA") under "Project Brass" for intelligence purposes.
- Re/insurers may want to consider warranting that cover is dependent on a licence being in place.
- Your Compliance Department should be consulted if there is any uncertainty about whether a licence is needed.
- Licences for re/insurance transactions can be obtained by one UK party, a Head Licensee, in the re/insurance chain under a Group Licence. Details are provided at Appendix 2, page 8.
- The Head Licensee (i.e. the person responsible for applying for a licence) can be the first UK broker in the chain.
- Reports of any breaches of the Order must be marked "Project Brass" and made immediately to HMRC to Mr Vivian O'Horo, HMRC, 100 Parliament Street, Westminster, London SW1A 2BQ. Telephone: 020 7147 0476.
- Where breaches are reported, the person reporting the breach should ensure that all parties to the re/insurance transaction are informed in order that they consider making their own separate disclosures as required by law. All subscribing re/insurers/managing agents and the Lloyd's placing broker should also be made aware of disclosures to ensure a consistent approach.
- Whilst an overseas entity would not be subject to the Order, managing agents need to consider whether a coverholder's and or service company's actions could create liability for a UK parent or principal company. Insurance agency relationships have not been tested by enforcement action and there is therefore a lack of clarity and practical advice regarding this subject. Nevertheless informal legal advice indicates that it is a subject that all parties to an insurance transaction should consider.
- Further information regarding SOCA is provided at Appendix 3.
- **Appendices**
- Appendix 1- Legislation, embargoed countries, controlled goods and reporting.
- Appendix 2 – Licensing including one licence proposal.
- Appendix 3 - Other Compliance Issues including reporting to SOCA, claims and use of exclusions, coverholders and service companies.
- Appendix 4 – Further Information.
- Appendix 5 - The terms and conditions relating to the Group Licence

If further information on this subject is required, please contact Andy Wragg at andy.wragg@lloyds.com or on 020 7327 6387, Rachael Connor at Rachael.connor@lloyds.com or on 020 7327 6380 or LITA at lita@lloyds.com or on 020 7327 6677.

APPENDIX 1**EXPANDED GUIDANCE ON EXPORT CONTROLS*****Legislation and background***

Since March 2004 the movement of controlled (military) goods between two overseas countries has been subject to UK legislation under part of the Order. The Order http://www.opsi.gov.uk/si/si2008/uksi_20083231_en_1 came into force on 6 April 2009 but effectively updates and consolidates the legislation which has been in force since 2004.

The part of the Order which applies to the movement of arms and military goods between two overseas countries (not to the import or export of such goods to and from the UK) can impact re/insurance activity. It affects UK individuals and UK companies operating anywhere in the World or persons acting within the UK who are involved in the promotion, supply and trade of these goods. It can also apply to UK persons whose sole involvement is the transportation, financing, provision of insurance and reinsurance, general advertising and promotion of these goods.

The military goods captured by the Order are known as “controlled goods” as trading in them, including re/insurance, is permitted as long as, where appropriate, a licence has been obtained. Controlled goods are categorised into 3 types which have varying licensing requirements. Licences are administered by and obtained from the Export Control Organisation (“ECO”) within the Department for Business, Innovation and Skills (“BIS”) (formerly BERR/DTI). Further information about obtaining a licence is set out at Appendix 2.

HM Revenue and Customs (“HMRC”) is responsible for enforcing the legislation and investigating any breach. Breaches of the legislation must be immediately notified to HMRC. Details of how to report breaches are set out below.

Trading (including the provision of re/insurance) without a valid licence is a criminal offence and could result in financial penalties (civil as well as criminal) and or imprisonment up to a maximum of 10 years.

Embargoed Destinations

Some overseas countries are subject to arms embargoes imposed by the EU, UN or Organisation for Security and Co-operation in Europe (“OSCE”). Embargoed destinations are specified in the Order at Parts 1 and 2 of Schedule 4 as amended and also on the BIS website link shown in the paragraph below. Iraq, Liberia, Sierra Leone and Somalia are also considered to be embargoed destinations and Guinea was added as an embargoed destination on 11 November 2009. The Order sets out that regardless of the category of controlled goods, any supply or delivery of such goods to these regions is prohibited unless a licence has been granted. As an embargoed country, it also means that a licence must be obtained (without exception) for the transport, financing, reinsurance and insurance, advertising and promotion of all categories of controlled goods.

The current list of embargoed destinations is set out in the table below which is subject to change but correct as at 13/07/2010.

Armenia	Azerbaijan	Burma/Myanmar	Democratic Republic of Congo	Democratic People's Republic of Korea/North Korea
Guinea	Iran	Iraq	Ivory Coast	Lebanon
Liberia	Sierra Leone	Somalia	Sudan	Zimbabwe

The countries subject to arms embargoes change from time to time but an up to date list of embargoed destinations can be found on the Businesslink website (which is a new site for the majority of the ECO's website pages) at the link below:

- <http://www.businesslink.gov.uk/bdotg/action/layer?r.s=m&r.l4=1084292055&r.l1=1079717544&r.lc=en&r.l3=1084100244&r.l2=1084228483&topicId=1084100244&r.i=1084302562&r.t=RESOURCES>

Please note that China and India (although listed on the link above) are not embargoed destinations for the purposes of trade controls. With effect from 29 March 2010, Uzbekistan has been removed as an embargoed destination, Rwanda was listed as an embargoed country until 12 December 2008 and Lloyd's has recently been notified that Bosnia and Herzegovina was also listed as an embargoed destination from 3 March 2004 to 6 March 2006.

The addition or removal of embargoed destinations is notified by BIS by way of an email alert. Managing agents and brokers should subscribe to the "Notice to Exporters" subscription service to keep up to date with any amendments to the legislation. The email address to subscribe to is: web.comments@bis.gsi.gov.uk. General information regarding the content of Notices to Exporters is found on BIS' newly updated website at the following link: <http://www.bis.gov.uk/policies/export-control-organisation/eco-notices-exporters>.

In addition, International Regulatory Affairs has updated Crystal so that each embargoed country is linked to the relevant page on BIS' website. International Regulatory Affairs will ensure that any new notifications of embargoed countries are updated on Crystal and that an email notification is sent out via Lloyd's e-alert system.

Controlled Goods

The goods subject to the trade controls are categorised by 3 types.

Category A goods

- Category A goods (having the highest level of sensitivity) need a licence to provide re/insurance for their movement between any overseas country **with no exception**. This requirement applies to the movement of Category A goods to all overseas countries not just countries which are designated as embargoed. Generally speaking Category A goods are instruments of torture/cluster munitions and trading in them is inherently undesirable. A full list of Category A goods can be found in Schedule 1, part 1 of the Order at: http://www.opsi.gov.uk/si/si2008/uksi_20083231_en_7#sch1.
- For any re/insurance contract involving Category A goods, BIS must be contacted in advance for advice. There is little legitimate trade in Category A goods and a licence application may be determined without the specifics of particular transactions being known. **In virtually all cases, it is unlikely that a licence will be granted.**
- Enquiries to BIS regarding Category A goods should be submitted to lu3.eca@bis.gsi.gov.uk or by telephone to Paul Nott, 020 7215 4481.

Category B and C goods

- Category B and C goods need a licence to provide re/insurance for their movement from one overseas country to another overseas embargoed destination. Category B goods listed in Schedule 1, part 2 of the Order http://www.opsi.gov.uk/si/si2008/uksi_20083231_en_8#sch1-pt2 are of heightened concern but in which there is legitimate trade, such as small arms and light weapons, long range missiles and MANPADS (Man Portable Air Defence Systems).

- Category C goods are not separately listed but are included within the full list of military goods on Schedule 2, parts 1: http://www.opsi.gov.uk/si/si2008/uksi_20083231_en_8#sch2 and 2: http://www.opsi.gov.uk/si/si2008/uksi_20083231_en_10 of the Order. BIS advise that any items on the full military list which are not extracted into Category A and B, (i.e. listed on Schedule 1 (parts 1 and 2)) are classified as Category C. This would also include portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance and certain riot control agents.
- Enquiries to BIS regarding Category B & C goods should be submitted to lu3.eca@bis.gsi.gov.uk or by telephone to Paul Nott, 020 7215 4481. BIS advise that it will only be able to advise through these channels if the enquirer knows the applicable category of goods for the items being insured.

Trade control licences are only required for goods specified in Category A, B and C of the Order, as amended. Goods which are not specified as such but are being sought for use in embargoed destinations, by military-related end users or otherwise, are not subject to UK trade controls. For example, the foreign procurement of non-military helicopters by the Iraqi MOD would not fall within the scope of the trade controls.

Reporting

The legislation dates back to March 2004 and managing agents and brokers should be aware of their duty to report breaches from that time period.

Managing agents should note that HMRC will not permit Lloyd's to disclose breaches on their behalf. Reports of breaches of the Order must be made immediately by the party involved to HMRC. Reports, entitled "Project Brass" should be made in writing to:

- Mr Vivian O'Horo, HMRC, 100 Parliament Street, Westminster, London SW1A 2BQ.
Telephone: 020 7147 0476.

We are aware that a number of managing agents have completed a review of their records and reported historical breaches made inadvertently to HMRC. It is strongly recommended that managing agents ensure that other subscribing syndicates are informed (either by the broker or itself, if appropriate) of any report being made to HMRC in order that there is a consistent approach. If a managing agent does not view a risk to be a breach and particularly where it is aware that another managing agent has disclosed the matter as a breach, it should ensure that it has documented its decision not to disclose, stating the reasons why.

Voluntary disclosures should be comprehensive and should explain what happened, why it happened, the steps taken to rectify the situation to avoid future recurrences and any aggravating or mitigating circumstances including legal arguments.

Lloyd's recommends that all subscribing re/insurers, including the London Company Market, ensure that all re/insurance parties to the transaction are aware of any voluntary disclosures that are made. This may be best achieved by the London broker ensuring all parties are notified. International Regulatory Affairs Department should also be advised of any potential breach relating to a Lloyd's policy or a co-insured policy.

The Market is also reminded that although there is no specific obligation in the FSA Handbook requiring firms to notify the FSA of an ECO breach, Principle 11 requires firms to keep the FSA advised of any relevant issues of which they would normally expect notice.

Other compliance issues that may need consideration if a breach is identified are set out in Appendix 3.

APPENDIX 2

LICENSING

When is a licence required?

The trade controls only apply to re/insurance that relate to particular transactions; that is the specific movement of Category A goods from one overseas country to another or the specific movement of Category B or C goods to an embargoed destination. For a transaction to fall under the trade controls, the specifics (controlled goods, source and destination countries) must be determinable from documentation that is normally disclosed as part of the re/insurance transaction. Therefore for transactions re/insuring Category B and/or C goods exported from an overseas country to an embargoed destination, in order to obtain a licence, **all** of the features of type of goods, source and destination must be known.

Re/insurance contracts such as annual hull and aviation policies and other types of re/insurance which are not specific to particular transactions do not fall within the scope of the licensing requirements. An example of a contract where a lack of information will make it unlikely that a licence can be applied for would be an open cargo re/insurance cover or a treaty reinsurance with worldwide territorial limits where the destinations and/or the types of military goods are not specified and an annual aviation hull policy where it is unspecified as to the destinations and whether any military goods are being carried.

Regardless of the identity of the insured, there are no transactions involving embargoed destinations which are exempt from trade control licence requirements, even if they are being carried out on behalf of organisations such as the UN or US forces for peacekeeping missions or to the government or state departments of embargoed destinations.

When to apply for a licence?

BIS has advised that a licence is required at the point that **agreement** is given to re/insure a transaction. This will be at the point an underwriter puts down his/her line. Therefore, there is no legal requirement to have a licence in place at the time of quoting.

Due diligence

Parties should apply due diligence in determining whether the provision of re/insurance relating to specific transactions falls under the scope of the trade controls. In practice, this means that re/insurers and re/insurance brokers should review the information about the transaction that is normally disclosed to them. 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 removal of those goods from one third country to another (as applicable to any overseas country in respect of Category A goods and to embargoed destinations in respect of Category B and C goods), then a trade control licence may be required.

Knowledge

Where information about a specific transaction becomes known after the relevant movement of goods, which would fall under the trade controls, has occurred (e.g. via a declaration to an open cargo cover or binding authority) BIS advise that these transactions are not considered to be in breach of the licensing requirements of the Order. This is because the information relating to the specifics was not known at the time that the re/insurance was agreed to and therefore there would have been inadequate information to grant a licence or apply for one. However, for intelligence purposes, HMRC has requested that these transactions are reported to the Serious Organised Crime Agency ("SOCA") under "Project Brass." If information becomes available during the currency of the contract which would have required a licence application had it been known at inception, parties to the re/insurance transaction will be on notice that transactions subject to trade controls could form part of the contract and therefore may need to make appropriate enquiries to find out if future transactions will require a licence.

Obtaining a Group Licence – one licence per transaction

A major development since guidance was previously issued by Lloyd's has been the successful negotiation with BIS to develop a solution of only requiring one licence for a re/insurance transaction subject to trade controls. The licensing process, as set out in the Order, requires that each UK entity/person, involved in facilitating a re/insurance transaction subject to trade controls, needs to obtain a licence in order to proceed. For re/insurance transactions, particularly involving a subscription market, this would potentially involve a large number of entities, all submitting the same information and application. BIS has therefore agreed an option whereby only one licence per transaction is required, which would be granted to a Head Licensee with Sub Licensees covered by the licence.

The Working Group has consulted BIS on the practical steps that would be required for a one licence process within a subscription market and has agreed a set of terms and conditions that all parties consider are workable. The key features and some practical processes to assist their implementation are bulleted below. A full set of the terms and conditions is attached at Appendix 5. (For the avoidance of doubt the Group Licence process relates to re/insurance transactions subject to trade controls and not to any other elements of the export control legislation.)

If the application is for a Group Licence, this should be made clear under "Further Information" on the application form. The option for a licence to cover a group of underwriters and brokers exists for both types of trade control licence that are available, although the Standard Individual Trade Control Licences are most appropriate for insurance transactions. (See overleaf.)

- A Head Licensee is required, who will be responsible for:
 - registering on the SPIRE¹ system (prior to applying),
 - applying for the licence in relation to the proposed re/insurance,
 - maintaining full records of the re/insurance transaction, Sub Licensees and related licence details.
- The Head Licensee must be a UK person/entity but could be located overseas.
- The consensus of the Working Group is that the first UK broker in the chain is best placed to act as Head Licensee. In certain cases this may not be the London broker if a UK retail broker is in the chain.
- Other parties involved in the re/insurance transaction, including subscribing insurers to be covered by the licence, will be known as Sub Licensees. Where a Head Licensee is the Lloyd's broker, then a re/insurer's stamp on the slip will serve as evidence of the insurer's status as Sub Licensee. Where the Head Licensee is a UK retail broker then the provision of evidence of cover (including security) by the placing broker, identifying the subscribing insurers will serve as evidence of both the placing broker and the subscribing insurers' status as Sub Licensees. However this needs to be fulfilled within 30 days and responsibility falls to all Sub Licensees to ensure this has happened. The purpose of this is to ensure that BIS, who has the right to audit the records relating to a licence, can easily ascertain the identities of all licensees for a particular transaction. The process of notification from Sub Licensees to Head Licensee is a matter for underwriters and brokers to decide upon. It does not have to be a formal letter of notification but could be by way of email.
- BIS has agreed that a copy of the complete Underwriting Slip, showing the identities of the subscribing market would serve as good notice to them in terms of their audit process. BIS agreed that once a licence is obtained, it could form part of the documentary evidence of the Slip, for underwriters to note during the broking process and satisfy themselves that the transaction is compliant before confirming their agreement to insure.

¹ SPIRE is the Export Control Organisation's (ECO's) fully electronic system for processing strategic export licence applications. It is the main system that exporters or parties subject to trade controls need to use to apply or register for an export/trade control licence for military or dual-use products.

- The licence obtained will reflect the coverage and period under the re/insurance contract.

Applying for a licence

There are two different types of licences that the Group Licence option may be used for. These are the Standard Individual Trade Control Licence (“SITCL”) and the Open Individual Trade Control Licence (“OITCL”). As mentioned previously a SITCL is more likely to be suitable for insurance transactions.

A SITCL is specific to a named licensee and authorises involvement in trading a set quantity of specific goods between a specified source country and a specified destination country with a named consignee (where applicable) and end-user. SITCLs will normally be valid for two years. Upon expiry either by time or because the activity has taken place the licence ceases to be valid. Should further similar activity take place, a further licence must be applied for. A SITCL can licence multiple insurance transactions but the nature and scope of such licences means that the transactions must fall within the same defined parameters such as the same goods, consignor, consignee, end user details and end use purpose and country of origin and destination.

An OITCL is a more general permit but again specific to a named licensee. It authorises involvement in trading specific goods between any number of source countries and destination countries and named consignees (where applicable) and end users and can also be used for multiple transactions. It can be valid for as long as five years. However BIS will need to know information regarding the country of origin, destination and or specified consignor, consignee and end-user and BIS therefore advise that they should be contacted before the submission of an OITCL application to discuss further. If an OITCL application is rejected, it will need to be resubmitted as a SITCL application.

Under Trade Control licences, there are also two Open General Trade Control Licences (“OGTCLS”) which entities subject to trade controls can register to use but neither authorises the provision of insurance related to the movement of Category A goods or the supply of any Category A, B or C goods to embargoed destinations. Therefore applicants should only register for a SITCL or discuss the suitability of an OITCL with BIS.

There is a minimum set of information required by BIS to process an application, namely:

- The details and nature of the goods. At the very least, BIS will need to know which categories of goods are being insured but more detail, such as knowing the calibre of ammunition, types of weapons, types of military vehicles and details of military communication equipment including quantities will result in quicker processing of applications.
- The location of the goods.
- The name and address of the end user (and consignee where applicable).
- The intended end-use, e.g. peace-keeping operations in country X.
- The period over which the insurance or reinsurance takes place.
- Supporting documentation from the end user corroborating information on the application.

If any of the above information is not available, it will not be possible to complete and submit a trade licence application.

Persons seeking a licence (which in the case of re/insurance transactions will be the Head Licensee) must contact BIS and apply for an on-line licence in advance of the transaction. BIS aims to process SITCL applications within 20 working days and BIS recommends that a minimum of 60 working days is allowed for OITCL applications. As the circumstances in which insurance parties need to obtain a trade control licence apply to the most sensitive transactions, such as involving Category A goods or an embargoed destination, the time for approving applications may be longer to assess the identity of the end user of the items and the end use itself. BIS also advises that a lack of detail regarding the goods will slow down the application process.

Lloyd's recognises that these timescales may be unrealistic when dealing with certain insurance transactions and we will continue to explore with BIS the possibility of reducing the length of time a licence application takes.

For transactions involving an embargoed destination, relevant UK, EU and UN legislation will be reviewed to ensure that a licence for the insurance of the supply of goods can be issued under the terms of the embargo. A licence may be withdrawn or refused, if insufficient information is provided to make this determination.

A link to BIS' web page regarding the licensing process is found at:

<http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1083024851&r.s=as&r.l4>

The web site also has a guide relating to trafficking and brokering (trade controls) which is available at:

<http://www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&r.l1=1079717544&r.lc=en&r.l3=1084572098&r.l2=1084228483&topicId=1084556140>.

- There is also a telephone helpline of 020 7215 4594 or email: eco.help@bis.gsi.gov.uk. Enquiries can also be directed to Paul Nott of BIS at 020 7215 4481 or to lu3.eca@bis.gsi.gov.uk
- If uncertain whether the goods involved fall within the scope of the trade controls, i.e. if military, paramilitary or other special goods, these enquiries should be submitted via the ECO's electronic licensing system (SPIRE) as an Electronic Rating Enquiry
- A link to SPIRE can be found at: <https://www.spire.bis.gov.uk>. Companies can also register on SPIRE in advance of a licence application. Registration allows companies to nominate specific users and keep track of any licences that are being applied for, therefore allowing companies to control who within the organisation is submitting applications.
- If it is established that the goods are controlled goods, the matter will then be referred to the appropriate department in the Licensing Unit of the ECO to assess if a licence is required.

Licence revocation

On occasion, authorisation for a licence may be withdrawn by BIS either by temporary suspension (whilst further investigation is carried out) or permanently. Such revocations or suspensions can be a response to a change in circumstances and therefore be unforeseeable at the time the licence was issued and also occur without prior warning. If a licence authorisation is withdrawn, all parties authorised under the Licence will be subject to the revocation. BIS will notify the Head Licensee and ensure that the Head Licensee notifies any Sub Licensees.

If a claim occurred after the date of inception but before any notification of a licence revocation (e.g. mid way through a shipment) BIS advise that the claim can be dealt with and payment can be made even if the handling of this occurs after the licence is revoked.

If however a loss occurs after the date of licence revocation, underwriters would be in breach of the Order if they continued to provide insurance coverage and therefore no claims payments could be made. Insurers may therefore wish to consider whether warranting that cover is dependent on a licence being currently in force might provide further protection in such an eventuality. Further comment on warranties and exclusions is set out in Appendix 3.

APPENDIX 3

OTHER COMPLIANCE CONSIDERATIONS

SOCA referrals

Where a violation of a trade control has been self reported to HMRC by a managing agent/broker, HMRC advise that entities may wish to make a suspicious activity report to SOCA in addition to the voluntary declaration to HMRC but this is a matter for the individual company to decide.

However HMRC require intelligence on any transactions that are presented to managing agents or brokers where it appears that a breach of the ECO has occurred. Reports in this regard should be made to SOCA and entitled "Project Brass". SOCA's web site is www.soca.gov.uk. IRA can assist parties in making disclosures to SOCA.

On a case by case basis, certain transactions subsequent to an export control breach may need consent from SOCA and managing agents may wish to consider obtaining legal advice if this situation arises.

Exclusionary Language/Warranties

It is considered that an exclusion clause does not avoid the need to conduct appropriate due diligence nor does it exempt UK persons from their obligations under the legislation and is therefore unlikely to provide a defence against a breach of the Order. However a warranty which states that coverage is subject to a valid licence being in force may be beneficial in the event of a licence being revoked, as mentioned previously (see page 10).

Service Companies and Binding Authorities

Whilst an overseas entity would not be subject to the Order, managing agents need to consider whether a coverholder or service company's actions could create liability for them. This is particularly the case should there be shared UK back office functions, controls and/or payment mechanisms. Insurance agency relationships have not been tested by enforcement action and there is therefore a lack of clarity and practical advice regarding this subject. Nevertheless, informal legal advice indicates that it is a subject that all parties to an insurance transaction should consider.

APPENDIX 4

FURTHER INFORMATION

It is appreciated that the above guidance may not cover every eventuality and it is strongly recommended that any additional clarification is obtained directly from BIS.

As referenced above, BIS has an informative website, which has detailed guidance regarding compliance, obtaining licences and frequently asked questions. Links to this web site and other relevant organisations are listed below.

If further information on this subject is required, please contact Andy Wragg at andy.wragg@lloyds.com or on 020 7327 6387, Rachael Connor at Rachael.connor@lloyds.com or on 020 7327 6380 or LITA at lita@lloyds.com or on 020 7327 6677.

Links to web sites:

- ECO's home page

<http://www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&r.l1=1079717544&r.lc=en&topicId=1084228483>

- ECO web site – list of embargoed countries

<http://www.businesslink.gov.uk/bdotg/action/layer?r.s=m&r.l4=1084292055&r.l1=1079717544&r.lc=en&r.l3=1084100244&r.l2=1084228483&topicId=1084100244&r.i=1084302562&r.t=RESOURCES>

- HMRC's web site

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageImport_Home

- SOCA's web site

www.soca.gov.uk

APPENDIX 5

GROUP LICENCE – TERMS AND CONDITIONS

Authorisation

Subject to the conditions set out below, the Secretary of State, in exercise of powers conferred by article 26 of the Export Control Order 2008, authorises:

- (a) the person named in box [1] of this licence (“the head licensee”); and
- (b) any other person (each an “additional licensee”)

to arrange or provide insurance related to the movement of the goods described in box [13], from the [exporter] specified in box [5] to the [consignee] specified in box [7], during the period ending with the date shown in box [3].

The arrangement and provision of such insurance is described in this licence as “the insurance activity”.

Conditions

1. Nothing in this licence authorises any activity outside the United Kingdom which is prohibited by the law of any of the territories where that activity is to be carried out, or any exportation of any goods from the United Kingdom.
2. Nothing in this licence authorises the arrangement or provision of insurance in relation to any activity if the person arranging or providing insurance:
 - (a) has been informed by a competent authority, or knows, that the activity may breach any sanctions imposed by the United Nations, the European Union or the Organisation for Security and Co-operation in Europe; or
 - (b) has grounds for suspecting that the activity may breach any such sanctions unless, having made all reasonable enquiries into the activity, the person is satisfied that it will not.
3. If:
 - (a) the head licensee or an additional licensee (“the licensee”) enters into a contract of insurance; and
 - (b) the contract of insurance contains provisions (“the relevant provisions”) that would make it unlawful for the licensee to enter into it were it not for this licence

the licensee must ensure that the relevant provisions will cease to have effect from the time of this licence’s expiry or revocation. The licensee may nevertheless enforce rights or comply with obligations that have arisen under the relevant provisions in relation to any event taking place before the time of the expiry or revocation.
4. No additional licensee may participate in the insurance activity [for more than [30] days] unless it informs, or has already informed, the head licensee, in writing, of the following:
 - (a) the additional licensee’s name and address;
 - (b) the additional licensee’s intention to participate or continue participating in the insurance activity.
5. If the head licensee receives, or has already received, the information specified in condition 4 in relation to an additional licensee, the head licensee must send a copy of this licence to the relevant additional licensee.

The head licensee must comply with this requirement before the end of the period of [14] days beginning with the later of the date of this licence and the date the head licensee received the information specified in condition 4 in relation to the relevant additional licensee.

6. The registration requirement in article 28 of the Export Control Order 2008 does not apply.

7. The head licensee and each additional licensee must keep the following records in relation to the insurance activity:
 - (a) a description of their participation in it;
 - (b) the dates of their participation in it; and
 - (c) the other records specified in article 29(2) of the Export Control Order 2008.
8. For the avoidance of doubt, the head licensee and the additional licensees may agree that the records required by this licence will be kept by one or more of them on behalf of the rest. However, no such arrangement will prevent any of them from being liable to prosecution if the records are not kept.
9. The records required by this licence must be kept for at least 4 years from the end of the calendar year in which the insurance activity concluded and the head licensee and the additional licensees must permit them to be inspected and copied by any person authorised by the Secretary of State or the Commissioners.
10. If the head licensee receives notice of the revocation of this licence the head licensee must immediately send a copy of the notice to each of the additional licensees from whom the head licensee has received the information specified in condition 4. The head licensee and each additional licensee must also send a copy of the notice to any other person they believe is likely to be affected by it.

Standard conditions

- A. This licence shall not affect a prohibition or restriction in any legislation other than the legislation under which this licence was issued.
- B. This licence may not be transferred and may be modified or revoked at any time by the Secretary of State.
- C. This licence is valid when printed only if signed and stamped by an official of the Department for Business, Innovation and Skills.

General Notes

Details of any change to export control legislation can be found at www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/index.html

The box numbers used on the licence form follow those in the model annexed to Council Regulation (EC) No. 428/2009.

Unless the context otherwise requires, any expression used in this licence shall have the meaning it bears in the Export Control Order 2008.

Warning: Failure to comply with any conditions attaching to this licence may lead to prosecution under the Export Control Order 2008.