



EU Sanctions: Iran Regulation 961/2010, its interpretation, and its impact on insurance and reinsurance

15 November 2010

On 25 October 2010, the European Union Foreign Affairs Council approved the final form of Regulation No 961/2010 (the Regulation), introducing further restrictive measures against Iran.

The Regulation entered into force on its publication in the Official Journal of the European Union on 27 October. It replicates the asset freezing measures contained in Regulation No 423/2007 and implements (with variations) the additional restrictive measures set out in Council Decision 2010/413/CSFP of 26 July 2010. The Regulation also repeals Regulation 423/2007. The UK has given criminal force to the Regulation by amending its 2007 Regulations with effect from 27 October 2010.

The sanctions introduced by the Council Decision and brought into force by the Regulation are considerably broader and more stringent than those previously in place against Iran, and are no longer focused directly on Iran's nuclear weapons programme. They affect Iran's trade and energy, financial and transport sectors, and contain specific restrictions regarding the provision of insurance and reinsurance to Iranian entities.

Article 26

Article 26 contains the main prohibitions on the provision of insurance or reinsurance. Its final form is different to that published in the draft of the Regulation, which was made available in late August. The main prohibition in Article 26 provides as follows:

- 1) It shall be prohibited:
 - a. to provide insurance or reinsurance to:
 - i. Iran or its Government, and its public bodies, corporations and 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).
 - b. to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibition in point (a).

"Iranian person, entity or body" is defined as including any legal person, entity or body, inside or outside Iran, owned or controlled directly or indirectly by an Iranian entity or person.

As in the draft, Article 26 allows provision of insurance, including health and travel insurance, to individuals acting in their private capacity. Further exceptions have been added, for the provision of:

- Compulsory or third party insurance to Iranian persons, entities or bodies based in the European Union;
- Insurance to the owner of a vessel, aircraft or vehicle chartered by an Iranian person, entity or body (with the exception of sanctioned entities) – and acting at the direction of an Iranian entity will not bring the insurance within the prohibition if it is merely for the purposes of docking, loading, unloading or safe transit of a vessel or aircraft temporarily in Iranian waters or airspace; and
- Reinsurance of such insurances.

The Regulation prohibits the extension or renewal of insurance and reinsurance agreements concluded before the entry into force of the Regulation, but it does not prohibit compliance with agreements concluded before that date. It is important to bear in mind that some payments may not be permitted under Article 16(3) of the Regulation, which prohibits the making available of funds, directly or indirectly, to those persons or entities whose assets are frozen by the Regulation.

Due diligence defence

Under Article 32 of the Regulation, it is a defence to any infringement by an entity if they did not know, or had no reasonable cause to suspect, that their actions would infringe the prohibition.

HM Treasury Financial Sanctions / Counter Illicit Finance Notice

On 27 October 2010, when the Regulation came into effect, HM Treasury published notice that sets out guidance on the financial sanctions aspects of the Regulation. This notice also clarifies the stance HM Treasury will take on the sanctions and their enforcement. In their guidance, HM Treasury have stated that the ban applies to Iranian companies, and to a company owned or controlled by an Iranian company, including subsidiaries of Iranian companies outside Iran. The prohibition also applies to the provision of insurance or reinsurance to any person when acting on behalf of an Iranian entity: for example, a company official. The prohibition does not apply to the provision of insurance to an Iranian resident in his or her private capacity.

Interpretation of prohibition of reinsurance

HM Treasury has interpreted the prohibition on reinsurance in a restrictive manner. Its interpretation is that the ban applies not only to contracts of reinsurance provided by an EU reinsurer to Iranian entities and others caught by Article 26, but also to contracts of reinsurance where the reinsurer is aware that the underlying insured is a person or entity caught by Article 26, regardless of where the insurer is based. It is therefore important to consider incorporating a suitable exclusion clause in reinsurance as well as direct insurance contracts.

The Regulation and compulsory (re)insurance facilities

As mentioned, Article 26 expressly does not prohibit compliance with agreements concluded before 27 October 2010. But what about such (re)insurance agreements under which the (re)insurer binds itself to accept new risks undertaken by the (re)insured during the coverage period? Take for example a quota share reinsurance placed issued to a Malaysian insurer, 12 months at 1 June 2010. If that insurer writes an Iranian risk today and cedes it under the reinsurance, does the prohibition bite? This is one of several areas of the Regulation that are open to interpretation. We are awaiting further guidance from HM Treasury.

Further information

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