

## European and US Sanctions: Extraterritorial hazard for non-EU/US entities

The last three years has seen a rapidly evolving array of EU and US economic and trade sanctions. The states subject to sanctions are often rich in natural resources and deeply engrained in international trade. They include Iran and Syria - responsible for significant global supplies of oil and gas products; and states in Africa, holding metal and mineral resources. These industries are deeply affected by sanctions.

### WHY NON-EU/US ENTITIES SHOULD TAKE NOTE

Although these sanctions mainly target EU and US companies, some US measures can apply to any entity/person around the world. Equally importantly, many non-EU/US (re)insurers will have regular dealings with EU/US entities, for example:

- having EU/US reinsurers;
- transacting business in US Dollars or using the EU or US banking system;
- (re)insuring products subject to EU or US trade controls; or
- employing EU/US agents or staff.

Sanctions can have a dramatic effect on such business including an inability to recover from reinsurers, blocked or rejected transactions, reputational exposure, or worse, direct enforcement action from foreign regulators. Sanctions cannot be ignored by non-EU/US entities on the grounds that the rules do not apply to them. In principle all EU/US sanctions create such risks, but we set out below some of the most topical measures that confront the (re)insurance industry.

Sanctions can also be removed presenting business opportunities (for example, those against Myanmar/Burma and Zimbabwe). Knowing what is permissible for your EU and US partners is important especially where some restrictions remain.

### HOW WE CAN HELP

Our global team can offer a seamless cross-jurisdictional advisory service to suit your company's needs. Our well-connected teams are situated in the most significant legislative centres enabling us to provide you with the most up-to-date insight with significant experience in dealing with local regulators and enforcement agencies. We have experience in:

- preparing internal policies, underwriting and claims due diligence procedures;
- providing in-house training to underwriters, claims and legal and compliance staff;
- drafting sanctions exclusions and warranty wordings and drafting sanctions provisions for agency and other non-risk carrying agreements;
- advising on sanctions compliance for specific transactions;
- advising on handling possible sanctions infringements, including internal investigations and representing clients subject to enforcement action; and
- obtaining licences from regulators to engage in otherwise prohibited activities.

[www.hoganlovells.com](http://www.hoganlovells.com)

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see [www.hoganlovells.com](http://www.hoganlovells.com). LIB02/#3882563

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney Advertising.

© Hogan Lovells 2013. All rights reserved.



### Key Contacts

#### London

##### **Jamie Rogers**

[jamie.rogers@hoganlovells.com](mailto:jamie.rogers@hoganlovells.com)  
+44 20 7296 5795

##### **Victor Fornasier**

[victor.fornasier@hoganlovells.com](mailto:victor.fornasier@hoganlovells.com)  
+44 20 7296 5423

#### Brussels (European Union)

##### **Lourdes Catrain**

[lourdes.catraïn@hoganlovells.com](mailto:lourdes.catraïn@hoganlovells.com)  
+32 2 505 0933

#### Washington DC

##### **Jeanne Archibald**

[jeanne.archibald@hoganlovells.com](mailto:jeanne.archibald@hoganlovells.com)  
+1 202 637 5740

##### **Beth Peters**

[beth.peters@hoganlovells.com](mailto:beth.peters@hoganlovells.com)  
+1 202 637 5837

##### **Aleksandar Dukic**

[aleksandar.dukic@hoganlovells.com](mailto:aleksandar.dukic@hoganlovells.com)  
+1 202 637 5466

#### Shanghai

##### **Andrew McGinty**

[andrew.mcginTy@hoganlovells.com](mailto:andrew.mcginTy@hoganlovells.com)  
+86 21 6122 3866

##### **Anna Elshafei**

[anna.elshafei@hoganlovells.com](mailto:anna.elshafei@hoganlovells.com)  
+86 21 6122 3803

For the second year running Hogan Lovells has been voted the top insurance and reinsurance law firm in the London Market and in the EU – *Reactions* 2012 and 2013

## **SELECTED EU AND US SANCTIONS MEASURES CREATING PARTICULAR EXPOSURES FOR NON-EU/US (RE)INSURERS**

Certain (US) measures below have extraterritorial effect and apply to (re)insurers around the world. The EU measures and other US measures below only apply to EU/US entities, however they still affect non-EU/US organisations who deal with them. They can expose non-EU/US organisations to unreinsured losses or having financial or business interests blocked/ rejected which can cause financial loss. They can also create reputational exposure and, potentially, direct regulatory action.

### EU Measures

#### *Iran*

EU Council Regulation 267/2012 (as amended) sets out sanctions which apply to the import, purchase or transport of Iranian crude oil, petroleum products, petrochemical products and LNG and related (re)insurance. The application of these sanctions is not well-defined and can prohibit EU (re)insurers from becoming associated - even indirectly - with numerous activities related to these products outside of Iran, where they are of Iranian origin. It also prohibits the provision of (re)insurance to Iranian entities (and those owned or controlled by Iranian entities or acting on their behalf) – these sanctions cut through (re)insurance structures and would apply where the cedant is not Iranian.

EU Sanctions against Iran can also restrict coverage related to shipments of key energy sector equipment to Iranian entities or for use in Iran. They can also restrict coverage for shipments of Iranian raw materials/metals including graphite (for example). In addition, a comprehensive package of EU sanctions exists against the Iranian shipping sector and certain port operators/authorities. These impose tight restrictions in relation to any activities which have any connection to this sector.

#### *Syria*

EU Council Regulation 36/2012 (as amended) contains a very similar package of sanctions against Syrian crude oil and petroleum products as for Iran. Again, the application of these sanctions is not well circumscribed and they can prohibit EU (re)insurers from becoming associated - even indirectly - with numerous activities related to these products outside of Syria, where they are of Syrian origin. EU Syrian sanctions also contain similar restrictions applying to the (re)insurance of Syrian entities. These cut through (re)insurance structures as described above.

#### *Asset Freezes (Iran, Syria, North Korea, Democratic Republic of Congo, Somalia, Sudan and others)*

The EU (and EU Member States) maintain packages of economic sanctions which prohibit the making available directly or indirectly of economic resources or funds to various designated entities and individuals. These apply even where the contemplated activity (eg, paying a claim) only has an indirect connection to the entity/individual in question. The sanctions apply to corporate entities indirectly owned or controlled by such designated entities and individuals and again cut through reinsurance structures.

### US Measures

#### *Iran*

The Comprehensive Iran Sanctions and Divestiture Act of 2010 (as amended) creates a suite of sanctions against Iran which have extraterritorial effect. In particular, CISADA enables the US Government to impose restrictive measures on entities/persons globally where they have been found to have engaged in sanctionable activities with Iran's energy sector. These include making investments that could contribute to Iran's ability to develop petroleum resources; providing goods, services, technology, information or support that could enhance Iran's domestic production of refined petroleum products; or exporting refined petroleum products to Iran (or providing goods, services, technology, information or support that could enhance Iran's ability to import refined petroleum).

More recently, legislative developments in the US with respect to Iran under the Iran and Syrian Threat Reduction Act of 2012 and the Iranian Freedom and Counterproliferation Act of 2012 have extended the effect of other comprehensive US sanctions (the Iranian Transactions and Sanctions Regulations) to (re)insurers around the world. From 1 July 2013, the IFCPA will create exposure for (re)insurers where they provide underwriting services for which US sanctions have been imposed. Since virtually all transactions with any Iranian nexus are prohibited under US law, these sanctions will have dramatic implications for (re)insurers wherever they are located.

#### *Other Comprehensive Regimes (Syria, Sudan, Cuba and North Korea)*

The US maintains a broad package of sanctions measures against each of the countries listed above. These generally prohibit US entities/persons from engaging in activities with any nexus to these countries. (Re)insurers who are not themselves US entities will still need to consider these sanctions if they deal with US persons because those persons will have to comply with US law. This could result in the non-US (re)insurer suffering the losses/exposures identified above.

#### *Specially Designated Nationals ("SDNs")*

The US maintains an extremely long and detailed list of persons and entities with whom those subject to US law are restricted from transacting business. Generally, these apply to corporate entities indirectly owned or controlled by such designated entities and individuals and again cut through reinsurance structures.

