

Special Edition: Sanctions

Setting the Standard for
Service and Security

July 2013

Governments continue to impose complex sanctions regulations as a means of implementing their foreign policies. This is particularly the case for the USA and EU.

Governments, individuals, entities, industries, goods and ships are targeted. Financial and technical support is often restricted, as too is the provision of insurance services. Often the regulations are opaquely worded, which is aimed at discouraging those who are risk averse.

Governments are likely to increase the use of sanctions as a means of applying leverage. Additional targeted sanctions against Iran's energy, shipping and shipbuilding sectors are now applicable as of 1 July 2013.

Potential penalties go beyond 'mere' fines. Individuals face the risk of imprisonment. Entities and individuals can be designated, forcing their contractual partners to make stark choices in relation to ongoing business relationships. Reputations are at stake. Members are urged to keep their sanctions compliance procedures up to date; these should be robust and proactive.



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United States



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Recent 2013 OFAC enforcement actions

The Department of Treasury Office of Foreign Assets Control (OFAC) statistics show a marked increase in OFAC's enforcement of sanctions programmes over the past three years. In 2012 alone, OFAC reported 16 penalties or settlement actions against organisations and individuals totaling over US\$1bn. So far in 2013, OFAC has reported 14 penalties or settlements totaling over US\$4m (see the table below for a short summary of all 2013 OFAC enforcement actions to date).

For the maritime insurance industry, the most significant settlement this year has been with an insurer for apparent violations of the Cuban Assets Control Regulations, the Sudanese Sanctions Regulations and the Iranian Transactions Regulations. The insurer was cited for processing a total of 42 P&I insurance claims, issuing seven Letters of Undertaking (LOUs) and six letters of indemnity as security or countersecurity for LOUs involving Cuba, Sudan and/or Iran. OFAC noted that the insurer had actual knowledge or reason to know that some P&I claim activity and LOUs involved sanctioned countries and that the insurer is a sophisticated commercial entity.

The total base penalty amount for the apparent violations was US\$1,729,000. However, OFAC agreed that the insurer could pay US\$348,000 to settle its potential liability. OFAC reported that several mitigating factors existed. The insurer's conduct did not appear to have been wilful or reckless, the P&I claims and LOUs may have been licensable at the times the transactions occurred, and the insurer took appropriate remedial action following the violations.

2013 OFAC enforcement information to date

Date	Entity	Sanctions programme in apparent violation	Description of sanctionable activity	Apparent violation amount	OFAC settlement amount
28 June 2013	Intesa Sanpaolo S.p.A.	Cuban Assets Control Regulations, the Sudanese Sanctions Regulations and the Iranian Transactions Regulations	Intesa maintained a customer relationship with Irasco, an Italian company that is owned or controlled by the Government of Iran. Intesa failed to identify Irasco as meeting the definition of the Government of Iran in the Iranian Transactions Regulations and did not take appropriate measures to prevent the bank from processing transactions for or on behalf of Irasco that terminated in the USA or with a US person. Separately, Intesa processed approximately 120 transactions to or through the USA that involved Cuba or Sudan.	US\$9,362,000	US\$2,949,030
27 June 2013	Wells Fargo Bank	Foreign Narcotics Kingpin Sanctions Regulations	Wells Fargo maintained accounts for, and processed, 58 transactions on behalf of an individual designated pursuant to the Foreign Narcotics Kingpin Designation Act.	US\$37,996	US\$23,937
12 June 2013	ATP Tour, Inc.	Iranian Transactions Regulations	ATP approved, facilitated, and in some instances made, 18 salary payments to an individual who is ordinarily resident in Iran, for services rendered and expenses incurred in connection with ATP tournaments that the individual had officiated.	US\$135,000	US\$48,600

The imposition of sanctions is often a question of whether the action is considered 'significant'. OFAC has confirmed in recent guidance that it considers a number of factors to determine whether conduct is significant enough for the imposition of sanctions.

For further information regarding OFAC enforcement actions, visit the [US Treasury website](#).

When a sanctions violation comes to OFAC's attention, OFAC has five options:

1. Take no action
2. Send a cautionary letter
3. Find a violation
4. Impose a civil penalty
5. Refer the matter for criminal prosecution.

Enforcement action by OFAC does not automatically mean that an entity will be added to the US Treasury's list of Specially Designated Nationals (SDNs). However, reputational issues may have a wider commercial impact. Sanctions issues have been widely publicised and commercial entities should have reasonable systems in place to prevent breach of relevant sanction legislation. Current or potential contractual partners may be reticent to entertain continued commercial relationships if there is a risk that breach of sanctions may in turn provoke investigations by authorities and risk potential contamination of their reputation.

Date	Entity	Sanctions programme in apparent violation	Description of sanctionable activity	Apparent violation amount	OFAC settlement amount
9 May 2013	American Steamship Owners Mutual Protection and Indemnity Association, Inc.	Cuban Assets Control Regulations, the Sudanese Sanctions Regulations and the Iranian Transactions Regulations	The club processed three P&I insurance claims involving Cuba. The club processed 18 P&I insurance claims and issued six LOU involving Sudan. The club processed 21 P&I insurance claims, one LOU and issued five letters of indemnity as security or countersecurity for a LOU involving Iran.	US\$1,729,000	US\$348,000
25 April 2013	Toyota Motor Credit Corporation (TMCC)	Foreign Narcotics Kingpin Sanctions Regulations	TMCC maintained a loan account for, and processed instead of blocked, 26 loan payments on behalf of a person whom OFAC designated a Specially Designated Narcotics Trafficker.	US\$26,000	US\$23,400
12 April 2013	SAN Corporation	Iranian Transactions and Sanctions Regulations	SAN sold nutritional supplements to an entity in Kuwait with knowledge that such goods were intended for end use in Iran.	US\$25,000	US\$22,500
21 March 2013	Maritech Commercial Inc.	Weapons of Mass Destruction Proliferators Sanctions Regulations	Maritech provided fuel inspection services on board five vessels affiliated with the Islamic Republic of Iran Shipping Lines that had been identified by OFAC on the SDN List and, although renamed, were identifiable by their International Maritime Organization (IMO) numbers.	US\$32,000	US\$20,800
5 March 2013	EGL, Inc.	Cuban Assets Control Regulations and the Iranian Transactions Regulations	EGL's foreign affiliates engaged in 280 transactions in which they provided freight forwarding services with respect to shipments to and from Cuba. Affiliates of EGL acted as the freight forwarder of 10 shipments containing oil rig supplies to an oil drilling rig located in Iranian waters.	US\$206,889	US\$139,650
22 February 2013	Bank of Guam	Iranian Transactions Regulations	Bank of Guam originated a US\$2,265 wire transfer on behalf of a customer destined for a trading company in the United Arab Emirates. The payment was for delivery charges related to the shipment of furniture and other items to Iran.	US\$20,000	US\$27,000
22 February 2013	Tung Tai Group	Cuban Assets Control Regulations	Tung Tai entered into contracts to buy and sell Cuban-origin scrap metal.	US\$65,000	US\$43,875
21 February 2013	American Optisurgical, Inc. (AOI)	Iranian Transactions and Sanctions Regulations	AOI exported, or attempted to export, unlicensed medical goods and services to Iran or to a person in a third country with knowledge that the goods were intended for Iran.	US\$449,000	US\$404,100
1 February 2013	Offshore Marine Laboratories (OML)	Iranian Transactions Regulations and Executive Order 13382	OML exported to a company in the United Arab Emirates eight shipments of spare parts and supplies intended for supply to an offshore oil drilling rig located in Iranian waters.	US\$167,000	US\$97,695
18 January 2013	Dal-Tech Devices, Inc.	Iranian Transactions Regulations	Dal-Tech, a distributor of microwave radio frequency devices, made an unlicensed sale and export of radio frequency measurement devices to Austria with knowledge that the items were intended for trans-shipment to Iran.	US\$500,000	US\$10,000
2 January 2013	Ellman International Inc.	Iranian Transactions Regulations	Ellman sold and exported medical equipment to Iran.	US\$426,000	US\$191,700

'Significant' US laws

On 3 June 2013, President Obama signed a new Executive Order (EO) entitled, 'Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA) and Additional Sanctions with Respect to Iran'. Also on 3 June, OFAC issued guidance on the new EO in the form of Frequently Asked Questions (FAQs). The EO takes effect on 1 July 2013. The new EO and FAQs clarify many issues left unclear by the prior EO 13622 in effect since July 2012.

Specifically, the IFCA imposes sanctions against any person who provides significant financial, material, technological or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of any person determined to be a party of the energy, shipping or shipbuilding sectors of Iran or determined to operate a port in Iran. Previously, EO 13622 imposed sanctions upon those who knowingly engaged in a significant transaction for the purchase or acquisition from Iran of petroleum, petroleum products or petrochemical products.

Furthermore, §1244 of IFCA imposes sanctions on any person who provides significant goods and services to or for the benefit of any Iranian person on the SDN list.

The OFAC FAQs now provide guidance as to the meaning of significant in these provisions. OFAC will consider the following when determining whether transactions, financial services and financial transactions are significant.

- The size, number, and frequency of the transactions
- The type, complexity and commercial purpose of the transactions
- The level of awareness of management and whether the transactions are part of a pattern of conduct
- The nexus of the transactions and blocked persons
- The impact of the transactions on US statutory objectives
- Whether the transactions involve deceptive practices
- Whether the transactions solely involve the passive holdings of Central Bank of Iran (CBI) reserves or repayment by the CBI of official development assistance or the transfer of funds required as a condition of Iran's membership in an international financial institution
- Other relevant factors that the Secretary of the Treasury deems relevant.

Additional clarification for the maritime industry

The new EO issued on 3 June 2013 revises the earlier EO 13622 with respect to Iran's petroleum and petrochemical industries. EO 13622 imposed sanctions for anyone who knowingly engaged in a 'significant transaction for the purchase or acquisition' from Iran of petroleum, petroleum products or petrochemical products. That EO did not specifically refer to transportation or shipping services. However, at the time, it was widely believed that the EO would be interpreted to include such activities.

The new EO issued on 3 June 2013 confirms that 'purchase or acquisition' includes 'purchase, acquisition, sale, transport or marketing'.

With respect to the terms 'energy shipping and shipbuilding sectors', OFAC has now provided the following anticipated definitions for these terms under the IFCA:

Anticipated definitions for activities involving the exploration, extraction, production, refinement or liquefaction of petroleum, natural gas or petroleum products in Iran in relation to the IFCA	
Energy sector of Iran	Anticipated to include activities involving the exploration, extraction, production, refinement or liquefaction of petroleum, natural gas or petroleum products in Iran.
Shipping sector of Iran	Anticipated to include activities involving the transportation of goods by seagoing vessels, including oil tankers and cargo vessels, flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered or operated directly or indirectly by the Government of Iran.
Shipbuilding sector of Iran	Anticipated to include activities involving the construction of seagoing vessels, including oil tankers and cargo vessels, in Iran.

Anticipated description of 'good and services' when used in connection with Iran's energy, shipping or shipbuilding sectors	
Energy sector	<ul style="list-style-type: none">– Iran's ability to develop its domestic petroleum resources– The maintenance or expansion of Iran's domestic production of petroleum products– Iran's ability to import or export petroleum or petroleum products.
Shipping sector	<ul style="list-style-type: none">– The provision of crude and product tankers to Iran– The provision of registry, flagging or classification services of any kind– The supervision of and participation in the repair of ships and their parts– The inspection, testing and certification of marine equipment materials and components– The carrying out of surveys, inspections and audits, and the issuance, renewal or endorsement of the relevant certificates and documents of compliance, as they relate to ships and shipping– Any other goods or services relating to the maintenance, supply, bunkering and docking of vessels flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered or operated directly or indirectly by, or for or on behalf of the Government of Iran or an Iranian person.
Shipbuilding sectors	<ul style="list-style-type: none">– The building and refit of vessels– The provision or refit of items such as steam turbines, marine propulsion engines, other gas turbines for marine propulsion, ship or boat propellers and blades, and direction-finding compasses and other navigational instruments and appliances solely for the maritime industry– Other goods used in connection with the building and propulsion of vessels– Technical assistance and training relating to, and financing of, the building, maintenance or refitting of vessels.

Accordingly, it now appears that the sanctions are primarily designed to hamper Iran's ability to transport goods on ships owned, chartered, operated or controlled by it in any way. Members are advised to exercise caution and be guided accordingly.



Potential penalties for breach of sanctions

Penalties for violating US sanctions vary widely and are dependent upon a number of factors. Most often the penalties are of a monetary nature. However, non-monetary penalties can also be selected. The EO signed on 2 June 2013, clarifies the types of non-monetary penalties that can be imposed for violations of the IFCA. The below chart details these penalties.

If the Secretary of State or the Secretary of the Treasury has determined that sanctions shall be imposed on a person pursuant to the IFCA, the Secretary may select one or more of the sanctions set forth below:

- i) Prohibit any US financial institution from making loans or providing credits to the sanctioned person totaling more than US\$10,000,000 in any 12-month period, unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities
- ii) Prohibit any transactions in foreign exchange that are subject to the jurisdiction of the US and in which the sanctioned person has any interest
- iii) Prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the USA and involve any interest of the sanctioned person
- iv) Block all property and interests in property that are in the USA, that subsequently come within the USA, or that are or subsequently come within the possession or control of any US person (including any foreign branch) of the sanctioned person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn or otherwise dealt in
- v) Prohibit any US person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person
- vi) Restrict or prohibit imports of goods, technology or services, directly or indirectly, into the USA from the sanctioned person
- vii) Impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of a sanctioned person the sanctions described above, as selected by the Secretary of State or the Secretary of the Treasury, as appropriate.

Sanctionable cargo

The EO signed 2 June 2013 sanctions any person who knowingly sells, supplies or transfers, directly or indirectly from Iran, the following:

- **Precious metal:**
 - Includes silver, gold, base metals, platinum, iridium, osmium, palladium, rhodium and ruthenium.
- **Graphite, or raw or semi-finished metals:**
 - OFAC offers extensive guidance as to what materials are considered graphite, or raw or semi-finished metals. It should be noted that this list includes items such as steel, aluminium metal, titanium, beryllium, boron metal, copper infiltrated tungsten metal, magnesium metal, molybdenum metal, meptunium-237 metal, nickel metal and plutonium.
- **Goods used in connection with Iran's automotive sector:**
 - Defined as goods used in connection with Iran's automotive sector, including those goods that contribute to (i) Iran's ability to research, develop, manufacture and assemble light and heavy vehicles; and (ii) the manufacturing or assembling of original equipment and after-market parts used in Iran's automotive industry.

As with other sanctions, US attorneys have advised that this prohibition is likely to be interpreted to capture the carriage or transportation of such goods.



European Union



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Update on EU sanctions

Ambit of EU sanctions

The EU has imposed autonomous sanctions beyond those imposed by the UN. The purpose of the sanctions is to bring about a change in the activities of those targeted, in line with the objectives of the EU's Common Foreign and Security Policy (CFSP). These apply only within the EU's jurisdiction, which covers:

- All EU territory
- All EU nationals (wherever they are located, worldwide)
- All companies and organisations incorporated under the law of any EU member state (worldwide, including branches in non-EU countries)
- Any ship (or aircraft) under the jurisdiction/flag of any EU member state
- Any business done wholly or partly within the EU.

Even where the ship, the parties and other aspects of a particular trade otherwise may have no connection to the EU, the sanctions may still affect non-EU members. This is because EU sanctions are now increasingly directed towards others, such as insurers. Consequently, International Group (IG) clubs and reinsurers that are constituted under the law of an EU member state will not be able to insure a ship for a voyage in breach of such sanctions. Even where clubs are based outside the EU, they may be affected by the IG pooling/reinsurance arrangements and their own individual reinsurances (i.e. where such reinsurers are subject to these EU sanctions).

How are EU sanctions implemented?

In practice, EU sanctions are imposed through a decision of the European Council (i.e. the leaders of the EU member states). Such a decision is directly binding on the EU member states. Certain sanctions, such as arms embargoes and travel bans, must then be implemented at a national level (as these fall within the competence of the individual member states). However, economic measures such as assets freezes and export bans are implemented at an EU level through regulations of the European Council. These regulations usually come into force the day following publication and are directly binding on all EU nationals and entities. Penalties for breaching EU sanctions are imposed at a national level. For example, under English law, breaches may result in a fine of an unlimited amount and/or a two-year prison term.



Useful sources

We have issued a series of web alerts in relation to EU sanctions. The most recent alerts summarise the position in respect of Iran, Syria and North Korea, and may be found on our [website](#). The European Commission maintains a list of all of the current EU sanctions, which may be found on the [EU's website](#). The [UK Government's website](#) on sanctions contains links to pages on the different regimes. The financial sanctions pages maintained by the UK Treasury include the consolidated list of [asset freeze targets](#).

Asia Pacific



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Additional sanctions on Iran – Singapore, Malaysia, Japan, Korea, Australia and New Zealand

In our *Standard Bulletin, Sanctions special edition*, December 2010 we reported on the position of certain countries in Asia Pacific in respect of the UN Resolutions on Iran culminating with UN Resolution 1929 (2010). We update the position here and are also reporting for the first time on the position in Singapore, Malaysia and New Zealand.

Article 25 of the UN Charter requires Member States to accept and implement the decisions of the UN Security Council including the binding decisions in such resolutions. The purpose of the resolutions are to respond to Iran's proliferation of nuclear and ballistic missile programmes and development of nuclear weapon delivery systems. These resolutions are mainly asset freezing, prohibition of financial services or assistance to the Iranian government, Iranian banks and other designated entities or persons and the prohibition of travel by designated persons as well as an arms embargo.

The US and EU have issued more extensive sanctions, some of which apply extra-territorially. We thought it opportune to briefly look at the position today of some of the countries in the region and the extent to which they have expanded upon the UN sanctions with their own additional sanctions under their national law.



Singapore

Singapore has enacted the UN Resolutions on Iran. The Monetary Authority of Singapore Act (Chapter 186) penalises any financial institution which contravenes this Act with fines of up to S\$1m. The United Nations Act (Chapter 339) sets out the restrictions on export and import of goods and technology, the use of Singaporean ships or aircraft to procure certain items and the provision of technical and specialised training which would contribute to the proliferation of sensitive nuclear activities to any Iranian citizen. Any breach is punishable with a fine not exceeding S\$100,000 or imprisonment not exceeding five years or both. The Strategic Goods (Control) Act prevents the transfer of technology or goods capable of being used to develop produce or acquire weapons of mass destruction. This Act is not Iran specific but its prohibitions would nonetheless apply in respect of Iran. Contraventions are punishable by a fine of S\$50,000 or imprisonment of up to 12 months or both.

Malaysia

Malaysia similarly has enacted the UN Resolutions on Iran through their Strategic Trade Act and has consolidated other UN Sanctions (for example, in respect of Libya, Al Qaeda and the Taliban) under the Central Bank of Malaysia Act 2009 and the Anti-Money Laundering and Anti-Terrorism Financing Act 2001. Under Malaysian legislation citizens are required to disclose to the government if they have knowledge of any assets owned by designated persons or entities. Any Malaysian citizen or company that breaches sanctions may be punished with a fine of MYR1m or imprisonment of up to two years or both.

Japan

We previously reported on the enactment of UN Resolution 1929 by the Foreign Exchange Trade Act. However, at that time, no penalties were put in place. There has since been an increase in the number of sanctioned Iranian banks (21), entities (345) and persons (109). Appropriate criminal fines can range from JPY10,000 to JPY1m and criminal imprisonment can be between one and three years.

South Korea

There have been no further developments in South Korea since our last report. As previously advised, UN Resolution 1929 has been implemented by 'Specific Measures against Iran' issued by the Korean government in five areas of industry (Finance, Trading, Energy, Transportation and other Supplementary measures). Interestingly, the penalties are administered by the respective minister of the industry concerned and penalties may consist of fines or suspension of business activities.

Australia

Australia has added further and more stringent sanctions to the UN Resolutions already in force by local legislation to supplement UN Resolution 1929. The Autonomous Sanctions Act 2011 puts in place further restrictions in relation to the transportation of Iranian oil, gas and petrochemical products, prohibitions on commercial transactions in respect of the Iranian petrochemical industry and certain sectors of Iranian oil and gas industry, the importation of crude oil, petroleum and petrochemical products from Iran and the prohibition of the import or export of certain goods to Iran. Breaches by individuals will be punishable by fines of either three times the value of the relevant transaction or A\$425,000 whichever is greater and/or imprisonment of up to 10 years. For corporations the fines are either three times the value of the relevant transaction or A\$1.7m whichever is greater.

A draft of proposed further additional sanctions (the Autonomous Sanctions Amendment Regulations 2013) can be found on the website of the **Australian Department of Foreign Affairs and Trade**. No implementation date has been set but it is expected to be within July/August 2013. If it is not amended by the public consultation process, it will be far more stringent than existing Australian legislation and will be quite similar to the USA's IFCA 2012. These additional sanctions will extend restrictions to the export of graphite, raw and semi-finished metals, naval equipment and technology, software of integrating industrial processes and vessels designed for the transport or storage of oil, gas or petrochemical products. It will also impose restrictions on providing services to Iranian oil tankers or cargo vessels, and restrictions on the construction, or participation in the construction, of a new oil tanker for Iran, an Iranian person or an Iranian entity.

New Zealand

The respective UN Resolutions on Iran have been implemented by New Zealand's regulations pursuant to their United Nations Act 1946. On conviction, individuals face imprisonment of up to 12 months. Additionally, fines may be imposed up to NZ\$10,000 for an individual and NZ\$100,000 for companies.

Conclusion

With the exception of Japan and Australia, there have been no significant developments in the region but it is clear that countries and their nationals who trade globally cannot be seen to be flouting US and EU sanctions and risk the imposition of severe penalties and business disruption which come with such breaches.

Web alerts

The Standard Club issues a variety of publications and web alerts on topical issues and club updates. Keep up to date by visiting the News section on our website www.standard-club.com

The Standard Bulletin is published on behalf of The Standard Club Ltd by the managers' London agents:

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