

# Sanctions – The impact on club cover

## Sudan

### US sanctions

The Office of Foreign Assets Control maintains a list of Specially Designated Nationals (SDNs) targeting the Sudanese Government, government officials and entities associated with them. Under Executive Order 13067, dated 7 November 1997 all property and interests of the Government of Sudan located in the US or within the control of a US person are blocked. This blocking includes individuals and entities that are owned or controlled by, or act on behalf of, the Government of Sudan anywhere in the world, as well as individuals and entities determined by the US Treasury Department to be included in the term "Government of Sudan".

These individuals and entities are incorporated into OFAC's list of SDNs. The SDN list, however, is not exclusive. Any US individual or organisation engaging in transactions with foreign nationals must take reasonable care to make certain that such foreign nationals are not owned or controlled by or acting on behalf of a SDN, regardless of whether or not they appear on the SDN list.

Additional action was taken with Executive Order 13400 of 26 April 2006 when the US imposed strict sanctions against persons responsible for the violence in Darfur. Four individuals were identified in the Annex of EO 13400 which gave the Secretary of the Treasury authority to further block the property and interests of property of persons determined to meet certain criteria. Furthermore US persons are prohibited from engaging in any transactions or activities related to the petroleum or petrochemical industries in Sudan without authorisation from OFAC. This prohibition extends to the entire territory of Sudan, including Southern Sudan. The prohibition also includes facilitation by US persons of such transactions or activities undertaken by non-US persons.

### EU sanctions

The European Union adopted Council Regulation (EC) No 131/2004 on 26 January 2004. This regulation prohibits the supply of technical or financial assistance aimed at facilitating military operations in Sudan and included restrictions on the supply of military equipment.

### UN sanctions

By the adoption of UNSCR 1591 (2005) on 29 March 2005, the UN imposed certain travel restrictions and asset freezes on a list of designated individuals.

The targets of these freezes and bans have been chosen by the Security Council Committee established pursuant to the resolution. The same targets were deemed to be hampering the peace process constituting a threat to stability in Darfur and the region, committing human rights violations and violating measures set out in previous Resolutions (related primarily to an arms embargo).



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As the articles in this *Standard Bulletin* have made clear, EU Council Regulation 267/2012 prohibits the export and transport of Iranian crude oil and petroleum products with effect from 1 July 2012. Some members based and operating outside of the EU may believe that these EU regulations have no bearing on what they do, so long as they export and/or transport the products to countries outside the EU. In a sense that is true, as such a member may not be in breach of EU sanctions.

However, pursuant to the provisions of Articles 11 1(d) and 12(2) of the Regulation, the club is, as from 1 July 2012, prohibited from providing insurance cover to any member(s) in respect of voyages transporting crude oil or petroleum products if they originate in Iran, regardless of whether the final destination of the cargo is within or outside of the EU. This is because the club itself is based and operates within the EU. The position is the same for all insurance providers based or operating within the EU. It also impacts on the reinsurance facilities available to insurers based outside the EU, if their reinsurance for example is placed with the London market (as is the International Group's general excess of loss reinsurance contract). Furthermore, the carriage of such crude oil or petroleum products will trigger the club's cover provisions relating to sanctions.

Extracts from the relevant exclusion provisions under the club's rules are as follows:

- a. Rule 4.8: "No claim is recoverable if it arises out of [the ship] ... being employed in an unlawful, prohibited or sanctionable carriage, trade, voyage or operation, or if the provision of insurance ... is unlawful, prohibited or sanctionable..."
- b. Rule 6.22: "The member shall in no circumstances be entitled to recover from the club that part of any liabilities which is not recovered by the club from [pooling agreement partners or reinsurers] ... by reason of any sanction, prohibition or adverse action against them by a state or international organisation..."

c. Rule 17.2(5): “A member shall cease to be insured by the club in respect of any ship entered by him if ... the ship is employed by the member in a carriage, trade or on a voyage which will thereby in any way howsoever expose the club to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation, unless the managers shall otherwise determine.”

Similar rules apply under the Standard Offshore Rules. Rule 17.2(5) means cover for a ship automatically ceases when the relevant breach of sanctions puts the club at risk of being penalised.

The Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA) enacted by the US Government permits the Secretary of State to designate non-US persons for their interactions with Iran. CISADA applies a strict liability regime to contracts which directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products, including insurance contracts. If a person (or company) becomes designated then certain prohibitions apply, which essentially deny that person (or company) the use of the US financial system. These prohibitions could be applied to the club as the insurer of a member involved in such trade. Clearly, the application of such prohibitions would be devastating to the club as it accounts in US dollars.

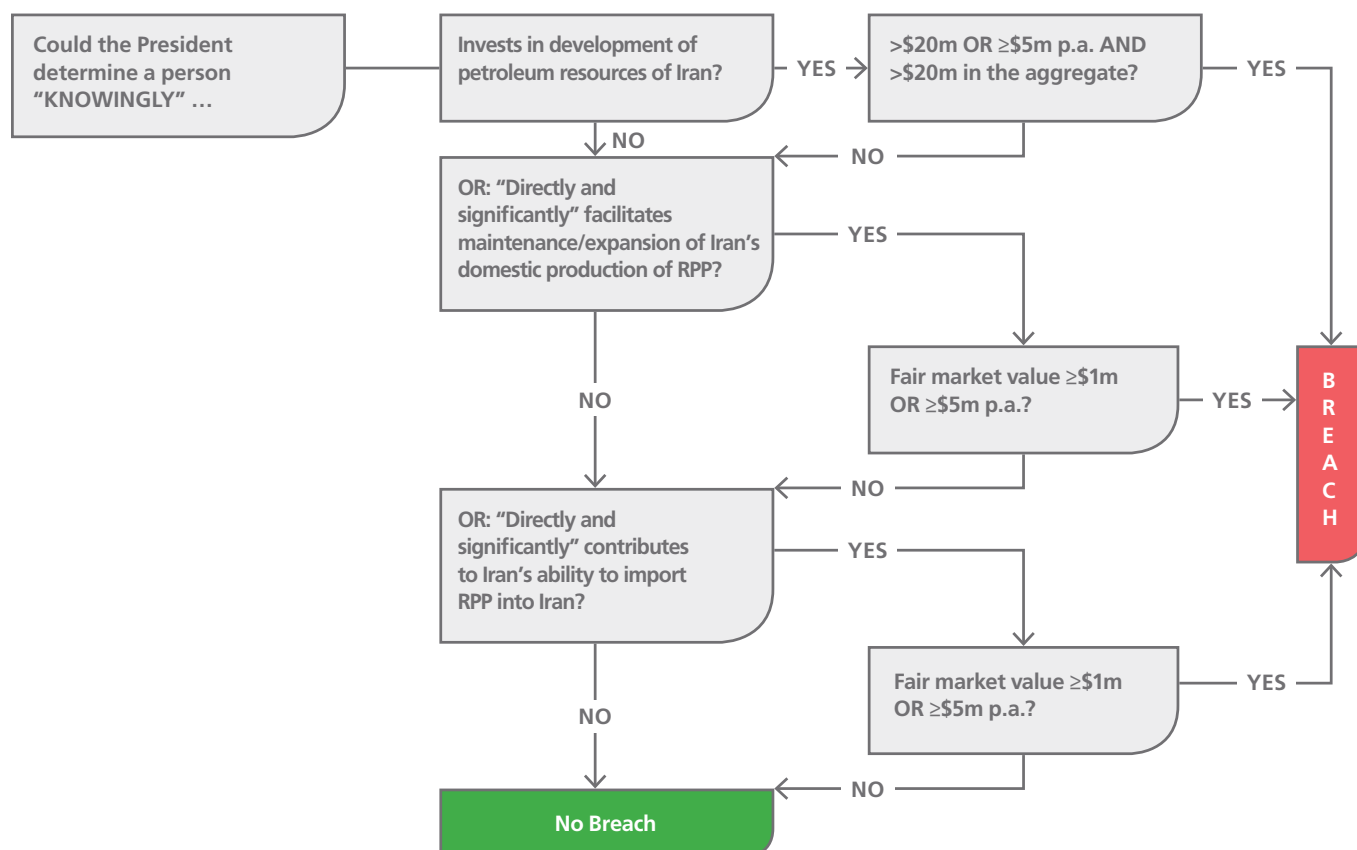
Rules 4.8 and 6.22 have the effect of disallowing or reducing a claim arising out of a sanctionable trade. These rules for example apply when a non-EU member lawfully carries Iranian crude or petrochemical products. Each carriage will have to be looked at on a case-by-case basis, but given the direct prohibition against providing insurance for such trade, club cover will not respond.

In light of the above, member(s) who may lawfully continue to carry such cargoes and who wish to do so should make alternative liability insurance or financial security arrangements with insurers or state/ sovereign guarantee schemes or other financial providers that are not subject to the prohibitions contained in the Regulation. If members are intending to perform such voyages, they are recommended to notify the club in advance of performance and upon completion of the voyage.



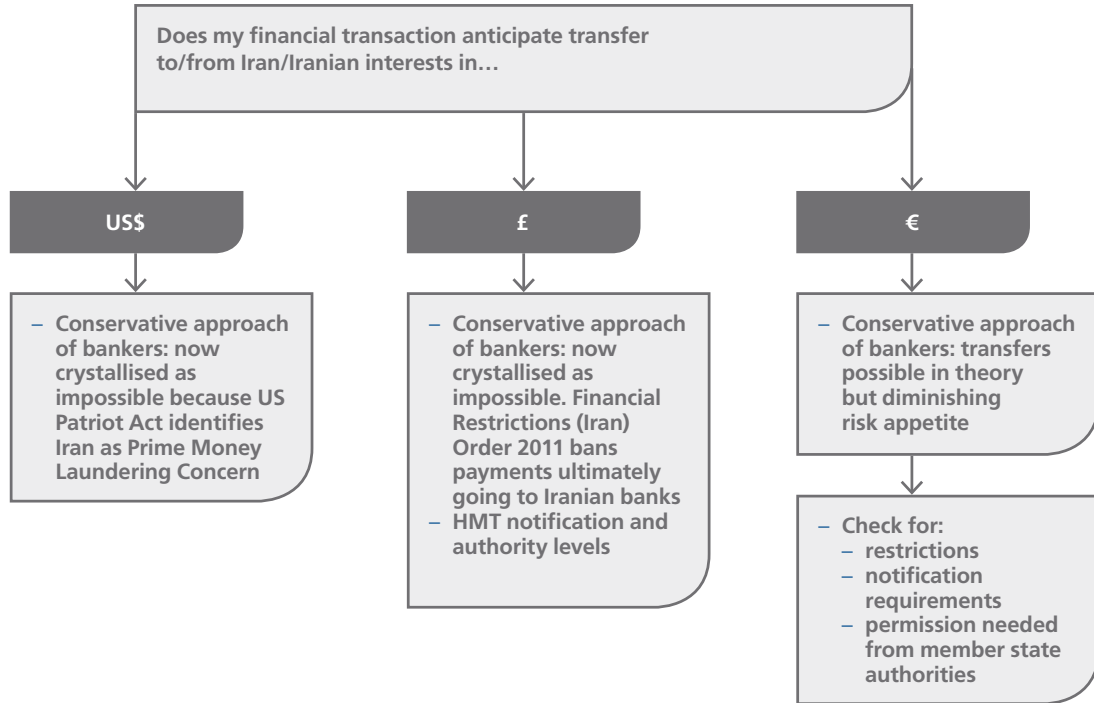
## US CISADA

### Overview



### Movement of monies

The transfer of funds, even with very tenuous links to sanctioned trades, entities, individuals or countries, has become increasingly difficult.



### US Executive Order 13590

#### Overview

