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STANDARD BULLETIN

SETTING THE STANDARD FOR SERVICE AND SECURITY

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SANCTIONS SPECIAL EDITION

Kieron Moore: Legal Director, Standard Club
Telephone: +44 20 3320 8855
E-mail: kieron.moore@ctcplc.com

IN THIS ISSUE

INTRODUCTION

In this special edition of the *Standard Bulletin* we aim to provide an update in respect of sanctions generally with a focus on recent legislative developments targeted at Iran. We are grateful to our contributors for their articles and input.

Governments have altered their approach to sanctions. Rather than "merely" banning direct trade, governments have now restricted access to finance, credit and insurance. These provide effective levers to limit the economic resources available to designated entities and to increase their cost of doing business. The use of unclear language in recently enacted laws has kept industry alert and the authorities may rely upon members' natural conservatism and aversion to risk to minimise trade or contact with Iran.

US authorities' investigations into sanctionable conduct continue, coupled with identification of further individuals and entities as a means of keeping pace with designated entities' deceptive practices. Legislation is unlikely to be static; further restrictions are possible, combined with on-going diplomatic efforts at engagement with Iran, together with outreach to other states to persuade them not to backfill any vacuum left by US and EU companies' withdrawal from Iranian trade.

Breach of sanctions may expose a member to severe criminal penalties. Violations of US law are subject to both criminal and civil penalties. Penalties for breach have risen dramatically. Conduct that could have attracted a civil penalty of $11,000 in 2006 may now attract criminal fines of up to $1m and/or 20 years imprisonment. Perhaps of greater significance is the threat to a member's business reputation following breach of sanctions. The lists of sanctioned countries and individuals will vary between states, as too will the relevant sanctionable conduct and defences, if any. These lists are subject to on-going amendment. Sanctionable conduct by a member may result in being named on such a list, which could then lead to a cascade effect whereby the member is then named on other states' lists. Members are advised to closely monitor the relevant lists and avoid business dealings with any entity listed.

No one can afford to ignore sanctions, but it is vital to be aware of the layers of sanctions within different states and regions, and how they interact and differ. Compliance with the latest regulations alone will not ensure compliance with the entire suite of sanctions that may be applicable to a particular trade. "Know your customer" is a key rule, as too is the need to know your sanction compliance procedures. We hope that you find the following articles helpful.

OVERVIEW

There are various sanction regimes applicable against numerous states, entities and individuals. The penalties that are applicable for breach are varied and are draconian in some circumstances.

US TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC) ADMINISTERED THE IRANIAN TRANSACTIONS REGULATIONS AND THE IRANIAN ASSETS CONTROL REGULATIONS

These regulations represented a comprehensive suite of sanctions applicable to US persons and others in the jurisdiction of the US.

9 JUNE 2010 – UN RESOLUTION 1929

Following three earlier rounds of sanctions, the UN Security Council passed resolution No. 1929 and imposed further UN sanctions on Iranian entities. The resolution was adopted by 12 to two votes: Brazil and Turkey voted against the resolution, and Lebanon abstained. The states represented on the Council were concerned with the lack of co-operation with the International Atomic Energy Agency, Iran's failure to fully suspend its uranium enrichment activities and its pursuit of military nuclear applications.

10 JUNE 2010 – UK REGULATIONS AMENDED

Following UN Resolution 1929, the UK enlarged its list of targeted individuals and entities.

1 JULY 2010 – US CISADA

President Obama signed the Comprehensive Iran Sanctions, Accountability & Divestment Act (CISADA) on 1 July. It amended and added to existing sanction legislation in respect of Iran but also sought to extend its application extra-territorially to non-US citizens and entities.

26 JULY 2010 – EUROPEAN COUNCIL DECISION

This Decision (binding upon member states of the EU) contained a number of wide-ranging measures in a number of trades, financial services, transportation and energy, plus asset-freezing and provisions against nominated individuals, banks, companies and certain entities associated with the Islamic Republic of Iran Shipping Lines (IRISL).

26 JULY 2010 – EUROPEAN COUNCIL REGULATION 668/2010

Regulations were issued that further expanded the list of sanctioned individuals and entities to which existing EU sanctions were applicable.

JULY 2010 – BIMCO CLAUSE

BIMCO issued a new charterparty clause dealing with sanctions imposed whilst a voyage is en route to destination. The clause placed the burden upon charterers to produce alternative voyage orders or to indemnify the owners for the consequences of complying with the initial orders.

27 OCTOBER 2010 – EUROPEAN REGULATION 961/2010

EU Regulation 961/2010, which has direct effect, implemented the European Council Decision of 26 July 2010 and added further restrictions in respect of trade with Iran, particularly on dual-use cargos and key equipment for the Iranian oil and gas industries.

CLUB COVER

Kieron Moore: Legal Director, Standard Club
Telephone: +44 20 3320 8855
E-mail: kieron.moore@ctcplc.com

International sanctions in respect of Iran are complex and are in a state of flux. The various worldwide statutory provisions affect key trades, shipping, energy, finance and insurance. "Am I in breach of sanctions by carrying out this voyage with this cargo and do I still have insurance cover?" is the most common question put to the club. Unfortunately, the club is not in a position to provide members with confirmation as to whether they are in breach of sanctions. The club's recommendation is clear and consistent: specific legal advice must be sought in respect of each shipment. The circumstances when club cover automatically ends due to breach of sanctions are narrow. This article explains the position in relation to club cover, but members should also consider their insurance programme as a whole and should discuss their insurance arrangements with their broker.

AM I IN BREACH?

For each shipment, the following questions must be addressed:

1. Know your customer – am I dealing with a designated person/ entity?
2. Is the voyage to/from Iran?
3. Does the cargo fall into those listed as forbidden or in need of licencing by the relevant authorities?
4. Does this breach sanctions in:
   - US, UK and/or EU?
   - Flag State?
   - Country of incorporation of owner/manager?
   - Country of loading/transit/transhipment/discharge?

If the answer to any of the above is "yes" or is unclear, then members should seek immediate legal advice from their preferred lawyer. The club cannot confirm to a member whether a particular trade or shipment will breach sanctions. The club can recommend suitable law firms if needed. Members must act diligently and make enquiries to satisfy themselves as to whether their trading activities will put them in breach of any sanctions.

IMPACT OF BREACH ON CLUB COVER

Does breach of any sanctions automatically end my club cover? No.

The impact on club cover entirely depends on the circumstances and whether the member's actions put the club itself at risk of being found to be in breach. Club cover ends automatically if the club is put in the position of being in breach of sanctions because of the member's conduct. If a member breaches sanctions but that breach does not automatically expose the club, then cover remains, although there may be further issues, as considered further below.

No breach: if a member is not in breach, then clearly club cover continues.

Breach: if a member is in breach (or believes he may be in breach), then it is crucial that an assessment of the risks is made by the member as soon as possible.

If a breach of sanctions by the member means that penalties may be incurred by the member ALONE – club cover remains in place. Thus, a member may be in breach of sanctions, but if that fact does not make the club potentially liable for penalties, then club cover continues. However, this does not guarantee that claims will be paid, in full or at all; there are a number of usual exceptions to cover coupled with a number of policy defences. These may mean that club cover may be prejudiced, may become discretionary or may not be available at all.

Member's P&I cover, of course, is designed to respond to member's P&I liabilities. Breach of sanctions may result in fines being addressed to the ship, master, crew or shore personnel, or charges attracting imprisonment for the relevant individuals. These fines and legal costs may not be covered or may be subject to the board's discretion. The member would have to satisfy the board that he took all such steps as appear to the board to be reasonable to avoid the event giving rise to the liability.

Under the rules, no claim is recoverable if it arises out of or is consequent upon the ship blockade-running or being employed in an unlawful trade, or if the board determines that the carriage, trade or voyage was imprudent, unsafe, unduly hazardous or improper. A voyage to Iran may be held to fall within this exclusion, which may result in any subsequent claim being rejected.

Under some sanction regimes, it is forbidden to provide insurance to designated individuals or entities. Given the nature of the subscription insurance and reinsurance market, some insurers may inadvertently find that they may be exposed to sanctionable penalties. Market insurers are increasingly including provisions that absolve them from any liability to pay their proportion of a claim following such sanctionable activity by the assured. To the extent that the club is unable to recover claims from reinsurers due to a member's conduct, then any reimbursement from the club will be similarly reduced. Rule 6.22 (or 6.16 in Standard Offshore Rules) provides that a member will not recover from the club any liabilities that are not recovered by the club under any applicable reinsurance contracts because of a shortfall in recovery from reinsurers due to any sanction, prohibition or adverse action against them by a state or international organisation. Shortfall includes any failure or delay in recovery by the club caused by the reinsurers making payment into blocked accounts.

If a breach of sanctions by the member means that penalties may be incurred by the member AND by the club – club cover automatically ends at the time of the breach. Under rule 17.2(5) (see our circular dated 9 July 2010), 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 that 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.

Under Standard club cover, the automatic cessation of cover only relates to the ship itself, which is in breach of sanctions; it does not affect club cover of any sister or associated ship, nor any other ship chartered by the member. For cover to automatically end, there must be causative linkage between the member's sanctionable conduct and the strict application (or risk) of sanctions and penalties against the club. An example of a statute that does this is US CISADA. However, other laws in other states may have similar effect. It is for this reason that the above rule (17.2(5)) is not expressed to be limited to breaches of CISADA.

The club does not control nor have knowledge of where members' ships are trading. The club does not dictate to members where they may or may not trade. Therefore, the club does not expressly exclude trade with a particular person or nation. The club does prospectively require members to comply with Flag State and Class requirements. For example, if a member operates his ship in breach of the relevant Flag State law, then club cover ends.

Breach of sanctions by the club ALONE does not, in of itself, automatically end a member's cover. Rule 17.2(5) does not contain reciprocal language. However, in practical terms, given the potential penalties available and the subsequent threat to the club, the club takes stringent steps to ensure that it does not breach any sanctions.

PENALTIES

Authorities have realised that restriction of access to finance and insurance is a very effective tool in limiting the trade of a sanctioned regime or country. Penalties for breach of sanctions vary from one jurisdiction to another and are liable to change at short notice. However, over recent years, there has been a hardening of political will and this has manifested itself as an increasingly severe suite of penalties. For example, under US CISADA, the President must impose three penalties from a list of nine wide-ranging sanctions:

1. Denial of US export-import bank loans or credit facilities for US exports
2. Denial of licences for the US export of military or military useful technology
3. Denial of US bank loans exceeding $10m per year
4. Prohibition on sanctioned person, being a financial institution, serving as primary dealer in US government bonds or as repository for US government funds
5. Prohibition on US government procurement contracts
6. Prohibitions within the US of foreign exchange transactions
7. Prohibitions within the US of banking transactions such as transfers of credits or payments
8. Freezing of assets within the US
9. Restrictions on imports into the US.

EFFECT OF AUTOMATIC CESSATION

Automatic cessation means that cover immediately ceases. The relevant ship is then off risk. Club cover will not respond in respect of subsequent P&I liabilities occurring after the moment of cessation, other than liabilities for which the club has given an extant letter of undertaking, or under for example, a Bunker Blue Card. The club will then issue a notice of cancellation in relation to any relevant blue cards. The member's cover remains in place for incidents predating the cessation. The member remains liable for premium up to and including the date of cessation and for overspill calls; he is not liable for premium after the date of cessation. The club can meet a member's liabilities up to the date of cessation in the usual way, but the club will not respond to incidents thereafter.

IMPACT ON OTHER POLICIES AND MORTGAGES

If a member's conduct causes club cover to cease, it may have a similar effect on their hull and machinery cover (or other policies). Members should carefully examine the wording of such policies with their brokers, as any potential cessation of such covers may not be limited to the ship in question; it may affect the entire insured fleet.

Cancellation of insurance may impact a member's financing arrangements, as it may be classified as an event permitting or triggering foreclosure of any mortgages secured on the ship, or indeed upon the balance of the fleet.

FUTURE RULE CHANGES

If sanction regimes continue to harden, then the club may need to make further rule changes (in addition to those set out in our circular dated 12 October 2010, to be tabled before a meeting of members in January 2011).

CONCLUSIONS

The certainty provided by an established insurance and reinsurance programme may be undermined by the application of sanctions. Members are advised to continue to make diligent enquiries to ensure compliance with all applicable sanction regimes.

US EMBARGOES AND SANCTIONS

Melvin Schwechter: Partner,
Dewey & LeBoeuf LLP
Telephone: +1 202 346 8011
E-mail: myschwec@dl.com
Web: www.dl.com

The US Office of Foreign Assets Control (OFAC), a part of the US Treasury Department, administers and enforces two principal types of trade, financial and economic sanctions and embargoes. It maintains extensive sanctions against more than 6,000 individuals, entities and ships known as "Specially Designated Nationals" (SDNs). SDNs are generally designated because of their involvement in terrorist, WMD proliferation, drug trafficking or other activities inimical to US interests. The listing of such sanctioned persons (the "SDN list") is constantly being updated.

Without an OFAC licence, US persons cannot engage in any transactions with SDNs, and all SDN property in the possession or control of US persons must be placed in an interest-bearing "blocked account" at a US depository institution.

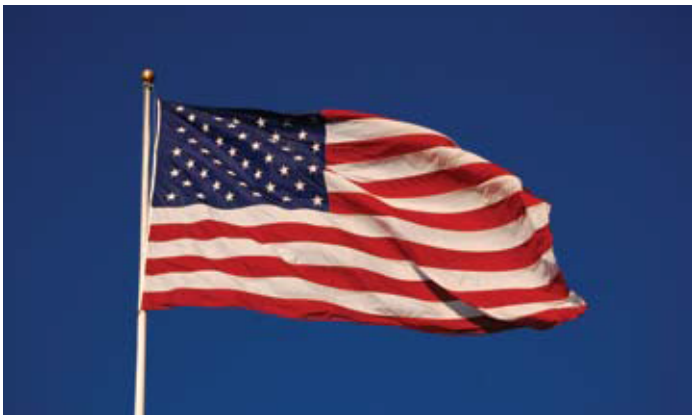
Blocking requirements and dealing prohibitions also apply to Cuban and Sudanese government agencies and officials, Cuban entities, and persons who have been Cuban citizens, residents or domiciled persons at any point since 8 July 1963 (except for such persons who are US residents).

OFAC also maintains trade, financial and economic embargoes and sanctions against 15 countries (in some cases, together with the US Department of Commerce), and against US exports/imports of uncertified diamonds. The country sanctions range from:

- Comprehensive trade, economic and financial embargoes of Cuba, Iran and Sudan
- Broad, but somewhat lesser embargoes of Myanmar (Burma), North Korea and Syria
- Sanctions against nine other countries that are, for the most part, limited to designating specified persons and organisations from such countries as SDNs.

OFAC's embargoes and sanctions generally apply to US persons, which means US citizens and permanent resident aliens, wherever they may be located and for whomever they are employed, persons physically in the United States, and US organised entities, including their foreign branches. With respect to the US embargo of Cuba, US persons also include foreign entities owned or controlled by US companies or by US citizens/residents.

OFAC not only prohibits US persons themselves from engaging in transactions with targeted companies and persons, but also prohibits, without an OFAC licence, US persons from approving, guaranteeing, financing or "facilitating" transactions by foreign persons with sanctioned countries, entities or individuals, if those transactions would be prohibited by OFAC if engaged in directly by US persons. Such prohibited facilitation can include referring to a foreign person business opportunities involving OFAC-prohibited countries or persons, and financing, insuring or transporting a shipment of goods sold by a foreign person to an OFAC-sanctioned country or person.



Some specific OFAC prohibitions relating to shipping and insurance activities include: (i) shipping goods to and from Iran, Sudan and Cuba, or on behalf of a resident of those countries; (ii) insuring property located, originating in, or being transported to or from an embargoed country; (iii) shipping or insuring merchandise in which any SDN, other blocked person or embargoed country national has an interest; (iv) marine and aviation liability policies covering scheduled stops in an embargoed country; (v) having a ship make a port call in an embargoed country to deliver cargo; (vi) chartering a ship to a SDN, other blocked person or embargoed country national; (vii) shipping merchandise to a SDN or on a SDN's ships, such as ships owned/operated by the Islamic Republic of Iran Shipping Lines (IRISL); and (viii) chartering, booking cargo on or otherwise dealing with a blocked ship.

Violations of OFAC sanctions carry potentially severe penalties, including criminal penalties of 20 years in jail, a $1m fine, or both, per violation, and civil penalties, in most cases, of up to the greater of $250,000 or twice the value of the transaction, per violation. Signifying the severity with which it views violations of US sanctions and embargoes, the US Congress has increased the authorised maximum civil penalty dramatically in recent years. Before 9 March 2006, the maximum civil penalty was $11,000 per violation. On 9 March 2006, it was increased to $50,000 per violation and, on 16 October 2007, it was raised to its current level.

While, as noted, OFAC embargoes/sanctions apply to US persons, with respect to Iran, the United States has also recently enacted legislation (the "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010") that targets certain foreign company activities involving Iran. Foreign companies engaging in sanctionable conduct can have their US activities severely restricted or totally blocked.

Such sanctionable conduct includes making significant investments in Iran's energy sector, providing (above certain threshold amounts) refined petroleum products to Iran, or goods, technology, services, information or support that would directly and significantly: (i) enhance Iran's ability to import refined petroleum products; or (ii) facilitate Iran's ability to maintain or expand its domestic production of refined petroleum products. The statute also specifically makes sanctionable shipping, financing and (re)insuring the shipment of refined petroleum products to Iran, or (re)insuring/financing shipments of goods, technology, services, information or support that would enhance Iran's ability to import refined petroleum products.

US and foreign companies subject to US sanctions should make sure that they have effective compliance and due diligence programmes/procedures in place to ensure that they do not engage in sanctionable conduct. Experience in developing such programmes/procedures for a variety of insurance and shipping clients has shown that, in order to be effective, they must not only be comprehensive, but must be practical and must meld easily with the company's business processes. In the event of problematic transactions occurring, such programmes can be an important mitigating factor in deciding whether the imposition of sanctions is warranted and in determining the amount of any penalty to be imposed.

UPDATE ON CISADA

Gina M. Venezia
Telephone:
E-mail:
Web:

Freehill Hogan & Mahar LLP
+ 1 212 425 1900
venezia@freehill.com
www.freehill.com

The Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) expands existing US sanctions against Iran and amends the Iran Sanctions Act (ISA). CISADA/ISA applies to all persons (including foreign businesses) doing business with Iran's petroleum sector. Such persons are now subject to three or more sanctions, the most severe of which bars access to the US financial system and may also result in restrained property.

How vigorously the US government will enforce CISADA/ISA remains uncertain. During a recent press conference, the US Department of State identified that Naftiran Intertrade Company (NICO), a Swiss-based subsidiary of the National Iranian Oil Company, as the first business to be sanctioned under the new law. During the same press conference, the State Department also highlighted that four European oil companies had taken advantage of CISADA's "special rule" to shield themselves from sanctions by assuring the US government that they had ceased doing business with Iran. The message from the State Department was clear: while it intends to enforce CISADA against non-compliant foreign companies, it strongly encourages companies to voluntarily cease operations with Iran to avoid being sanctioned. Though numerous questions remain unanswered, the State Department press conference sheds some light on a law with potential serious consequences for shipowners.

ENFORCEMENT BY THE US STATE DEPARTMENT

Following liaison with the US State Department, we understand that the Department of State, and not the US Treasury's Office of Foreign Assets Control, will implement and enforce CISADA. The State Department has not yet decided whether it will issue implementing regulations to clarify the scope of CISADA. It therefore seems likely that no regulations will be issued in the foreseeable future and there is a distinct possibility that no implementing regulations will ever be issued. Guidance from the State Department may instead come in the form of published enforcement actions.

TWO-STEP PROCESS TO DETERMINE ENFORCEMENT

Enforcement will entail a two-step process:

1. the "threshold question" of whether credible evidence of sanctionable activity exists, and if so,
2. an investigation to determine whether a violation occurred and sanctions should be implemented.

Though the State Department intends to contact a targeted person to advise them of the investigation before sanctions are imposed, it would not confirm this would always be the case.

CALCULATING RISK

In the absence of regulations, shipowners must calculate their risk under the plain language of CISADA/ISA. This will include, among others, determining whether a proposed shipment **could directly and significantly** facilitate Iran's domestic production of refined petroleum products or directly and significantly contribute to the enhancement of Iran's ability to import such products. The State Department has informally advised that its enforcement will focus on truly "direct and significant" contributions to Iran's ability to produce or import refined petroleum, and that shipowners should conduct an honest assessment of the parties involved in a proposed trade to determine whether they have any reason to believe a shipment could violate CISADA.

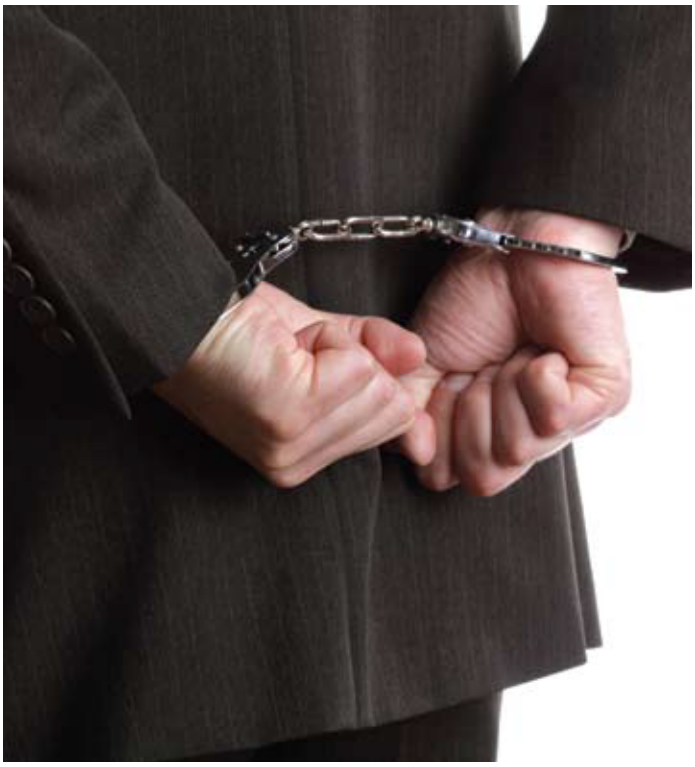
Shipowners should also be aware that CISADA/ISA authorises sanctions against anyone who "provides" Iran with refined petroleum products or services relating to the import of such products, including shipping. These prohibitions have a monetary threshold of $1m (or $5m during any 12-month period). While no firm position has been adopted, the State Department has advised that the value of the cargo (as opposed to the freight/hire earned on the transport) may determine whether CISADA's monetary threshold has been met. The same test will apply to the transport of goods that facilitate the maintenance or expansion of Iran's domestic refining capacity.

CONCLUSION

The US government has not yet provided firm guidance to the shipping industry as to what conduct it views as violating CISADA, and the guidance provided thus far suggests that the government intends to construe CISADA's provisions broadly. Further, while to date CISADA has been wielded more as a deterrent than as an instrument to punish sanctionable conduct, this may change should deterrence fail, resulting in aggressive enforcement. Accordingly, despite the lack of enforcement actions to date, we recommend that shipowners take a conservative view of CISADA/ISA when assessing their potential risks.

EU SANCTIONS – IRAN

Ben Knowles: Partner,
Clyde & Co LLP
Telephone: +44 20 7648 1974
E-mail: Benjamin.Knowles@clydeco.com
Web: www.clydeco.com



On 15 October, Phillip Bisgrove, a company director from Lancashire, was sentenced to eight months imprisonment and fined £30,000 for making 10 unauthorised shipments of goods to Iran. This was one of the first criminal prosecutions since the new EU sanctions regime was announced. Following the tightening of the regime, it is unlikely to be the last.

All of those involved in international trade, whether owner, charterer or trader, are rightly concerned about the effects of Iranian sanctions, and Clyde & Co is receiving regular instructions to advise on this new and complex regime. This article is a quick run-down of the most significant issues for the shipping sector.

WHAT ARE THE NEW SANCTIONS?

Crucially, the sanctions are no longer just about preventing nuclear and military development in Iran. They now extend to cover the import into Iran of oil and gas, and related technologies, insurance of Iranian entities, payments to and from the government of Iran, trading with named sanctioned individuals or entities, as well as providing that EU member states have an obligation to inspect all cargo to and from Iran on reasonable suspicion.

The impacts in the sector are considerable. For instance:

- A shipowner or charterer who carries equipment or technology to Iran for petroleum refining, production or exploration may be in breach of sanctions.
- Salvage operations, including payments, are also affected, not only in relation to Iranian-owned ships but also if the cargo is potentially sanctioned, irrespective of the nationalities of the parties.
- The provision of bunkering or ship supply services, or servicing of Iranian-owned or contracted ships, including chartered ships, is also prohibited if there are reasonable grounds to believe that the ship carries prohibited items.
- On the present view, even payments passing through the EU may be sufficient to bring a contract under the new sanctions regime.

WHERE AND TO WHOM DO THE SANCTIONS APPLY?

The sanctions apply:

a) Within the territory of the European Union, including its airspace
b) On board any aircraft or any vessel under the jurisdiction of a member state
c) To any person inside or outside the territory of the Union who is a national of a member state
d) To any legal person, entity or body that is incorporated or constituted under the law of a member state, and
e) To any legal person, entity or body in respect of any business done in whole or in part within the Union.

WHAT ARE THE PENALTIES?

Penalties will be dealt with by each member state, and the EU legislation provides that the penalties will be “effective, proportionate and dissuasive”. A UK Statutory Instrument imposing new criminal penalties for breaches of the sanctions will be enacted shortly. It is not expected to be more lenient than penalties under the previous, more limited, sanctions regime.

WHAT ARE THE DEFENCES?

The primary defence to an alleged breach of the sanctions regime is that one did not know, and had no reasonable cause to suspect, that the relevant actions would breach sanctions. There are also exceptions in respect of certain financial transactions for humanitarian purposes. The new sanctions do not apply to contracts concluded before 26 July 2010.

WHAT CAN I DO IF I AM CONCERNED ABOUT THE NEW SANCTIONS?

Not only is the new legislation complex, there also remains a degree of uncertainty over its interpretation and the scope of its effect. Moreover, although it severely restricts dealings with Iran in certain areas, trade is far from completely prohibited. It is therefore more important than ever for those who deal with Iranian counterparties to seek good legal advice focused on their particular area of business.

NEW EU LAW – CARGO ISSUES

Kieron Moore: Legal Director, Standard Club
Telephone: +44 20 3320 8855
E-mail: kieron.moore@ctcplc.com

This article concentrates on some of the new Regulation's provisions in respect of dual-use cargoes and prohibited exports, particularly in respect of key equipment for the key sectors of the oil and gas industry in Iran.

HAS THE "DUAL-USE CARGO" DILEMMA EASED – JUST DON'T LOAD IT IN THE FIRST PLACE?

The dual-use dilemma is normally reserved for the classic scientific quandary: science is primarily used to benefit humanity, but innocently published and disseminated information can be unethically used in civilian or military settings. In these times of heightened international security, the dilemma is not limited to the scientific community but is now a concern for shipowners, charterers, cargo interests, insurers and reinsurers.

Contractual carriers do not warrant the accuracy of the description of any cargo loaded on their ships beyond the usual statements as to "apparent good order and condition". No warranties are offered, for example, in respect of the actual contents of containers beyond the usual averments that they are "said to contain" certain goods (or indeed be of a certain weight). Carriers make no warranties in respect of goods' fitness for purpose or quality; they are not strictly liable for, nor the guarantors of, international trade. Typically, carriers are not the end user of the goods carried. Historically, carriers did not need to know what use any particular cargo was destined for. However, circumstances have changed in the context of trade with Iran, and carriers are now expected to make diligent and reasonable enquiries as to whom they deal with and the possible end use of their cargos in compliance with multiple (and sometimes contradictory) legal systems. This is particularly the case with dual-use items.

Dual-use items are goods, software, technology or information that have civil purposes but may also have military applications. They include raw materials, alloys, computer components, mechanical components (including bearings, pumps and pipes) and complete manufacturing (machine tools and chemical manufacturing items) and electronic systems (such as lasers and telecommunication equipment, computers and encryption software).

Dual-use goods have been subject to control under national laws and EU Regulations (since 2000). EU law (Council Regulation 428/2009, issued on 5 May 2009) set up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. An authorisation was needed prior to the export of certain items listed in Annex I in the following categories:

Category 0	Nuclear materials, facilities and equipment
Category 1	Special materials and related equipment
Category 2	Materials processing
Category 3	Electronics
Category 4	Computers
Category 5	Telecommunication and "information security"
Category 6	Sensors and lasers
Category 7	Navigation and avionics
Category 8	Marine
Category 9	Aerospace and propulsion

The marine items (Category 8) that needed prior authorisation included:

Category 8 – Marine	Certain submersible vehicles, ROVs and associated equipment
	Ocean salvage systems
	Underwater vision systems
	Certain propellers, noise reduction, power generation and transmission systems, including controllable pitch propellers and hub assemblies
	Rebreathing diving and underwater swimming apparatus
	Software and technology designed for the development, production or use of the above.

NEW REGULATION EXTENDS PROHIBITED EXPORTS LIST

The EU has now issued a fresh Regulation, 961/2010, which tightens restrictions on trade with Iran. It was issued on 25 October 2010 and has immediate direct effect. Member states do not have to issue implementing legislation. This Regulation follows and implements the Council Decision of 26 July 2010 concerning restrictive measures against Iran.

The EU stance has hardened. Rather than prospectively allowing the export to Iran of the items in Annex I under an authorisation, it is now prohibited to sell, supply, transfer or export most of the items in that Annex (with the exception of certain Category 5 Telecommunication and "information security" items). It is also prohibited to sell, supply, transfer or export, directly or indirectly, items that could contribute to Iran's enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems. It is further forbidden to sell, supply, transfer or export equipment that might be used for internal repression to any Iranian person, entity or body, or for use in Iran. Extant embargoes in respect of military equipment remain.

Essentially, export to Iran of many items that were subject to licensing, is now prohibited.

FRESH LIST OF ITEMS REQUIRING PRIOR AUTHORISATION

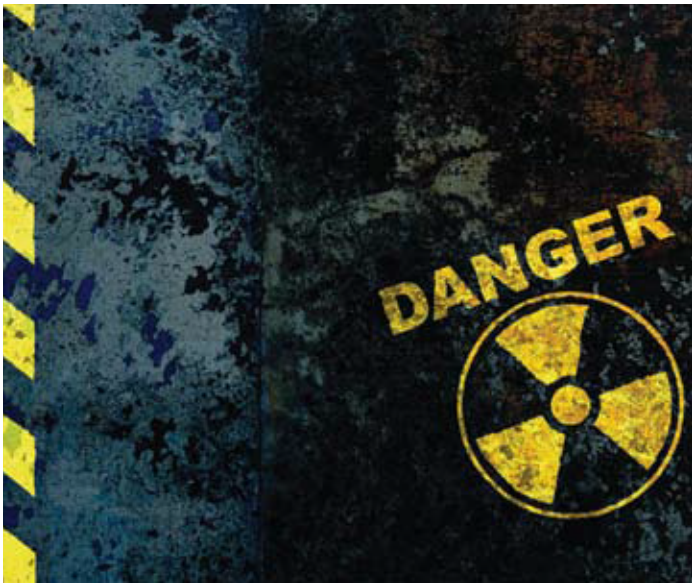
The new regulation sets out a fresh list of items (Annex IV) for which prior authorisation is now needed, including:

Nuclear materials, facilities & equipment	Pipes, piping, flanges, and fittings made of or lined with nickel or nickel alloys
	Vacuum pumps
Materials, chemicals, 'micro-organisms'and 'toxins'	Ring-shaped seals and gaskets composed of certain materials
	Personal dosimeters
Materials processing	Controlled atmosphere heat treatment furnaces
	Industrial equipment, components and multi- and seal-less pumps made of specific materials (including certain alloys, glass, graphite, nickel, titanium and stainless steel)
	Spectrometers and diffractometers.

OIL, GAS AND LNG EQUIPMENT

Under the new Regulation (Article 8), it is prohibited to sell, supply, transfer or export key equipment or technology (listed in Annex VI) directly or indirectly to any Iranian person, entity or body or for use in Iran, in respect of the following key sectors of the oil and gas industry in Iran:

Exploration of crude oil and natural gas (which includes the exploration for, prospection of and management of crude oil and natural gas reserves and the provision of related geological services)	**Equipment:** Geophysical survey equipment and ships
	Sensors for down-hole well operations
	Drilling equipment, bits, pipes, drill collars, wellheads, blowout preventers and Christmas trees
Production of crude oil and natural gas (which includes bulk gas transmission services)	Drilling and production platforms
	FPSOs
	Liquid/gas separators, gas compressors, high-capacity/pressure pumps and subsea production control equipment
	Materials: Drilling mud, additives, corrosion inhibiting emulsion treatment and defoaming agents and cements for use in oil and gas wells
Refining (which means the processing, conditioning or preparation for ultimate final sale of fuels) **Liquefaction of natural gas**	**Equipment:** Heat exchanges, cryogenic pumps and 'cold box' equipment
	Equipment for shipping terminals, liquefied gases, flexible and non-flexible transfer lines
	Crackers, hydrotreaters and catalytic reformers
	Certain pumps
	Pipeline Inspection Gauges (components, launchers and catchers)
	Storage tanks for crude oil and fuels
	Subsea flexible pipes specifically designed for transport of hydrocarbons
	Flexible pipes used for high-pressure topside and subsea applications
	Materials: Catalysts for cracking and conversion of hydrocarbons
	Additives formulated to increase octane number of gasoline
	Equipment for shipping terminals, liquefied gases, flexible and non-flexible transfer lines
	Software and technology: For liquefaction of natural gas
	For development, production and use of: LNG plants Maritime LNG vessels Refinery plant



The Regulation's prohibitions do not apply to pre-existing contracts, provided that 20 working days' notice is given to the competent authorities, but do apply to both new and used goods.

PRACTICAL RECOMMENDATIONS:

1 Identify your trading partners

The new Regulation updates the list of persons, entities and bodies whose funds and economic resources are to be frozen. Separate national laws also designate individuals with whom it is forbidden to trade. The US Office of Foreign Assets Control continues to regularly revise its list of Specially Designated Nationals. Regulation 428/2010 now forbids business dealings, including the creation of joint ventures with any Iranian person entity or body engaged in, for example, the exploration or production of crude oil and natural gas, the refining of fuels or the liquefaction of natural gas. We recommend members continue to make diligent enquiries in respect of the identity of their prospective business partners and to exercise caution before commitment.

2 Identify the cargo

The list of prohibited items and those requiring prior authorisation are lengthy and complex. Dual-use items can be difficult to identify. Given the increased tensions surrounding trade with Iran, members are advised to closely examine the details of cargoes nominated for shipment to Iran and to investigate the potential end uses.

3 Co-operate with competent authorities

Pre-arrival and pre-departure information must be delivered to the competent customs authorities in respect of all shipments to and from Iran. Transparency is recommended.

IRAN SANCTIONS – IMPACT ON THE OFFSHORE ENERGY SECTOR

Daniel Martin: Solicitor,
Holman Fenwick Willan LLP,
Telephone: +44 20 7264 8189
E-mail: daniel.martin@hfw.com
Web: www.hfw.com

Other articles in this Standard Bulletin have examined a number of the prohibitions that are included in the various UN, EU and US sanctions against Iran. In this article, we consider the offshore energy sector and the application of the raft of sanctions regimes to a specific case study.

INTRODUCTION

One of the main aims of the US and EU sanctions programmes is to restrict Iran's ability to develop its oil and gas industry and, in particular, its ability to produce refined petroleum products. Given this focus, it is important for all individuals who are involved in this sector, and who may deal with Iranian interests, to obtain comprehensive legal advice regarding the impact of the various sanctions regimes on their business.

While the UN sanctions do not have any specific impact on the offshore energy sector, a number of the prohibitions that are included in the US sanctions and EU sanctions legislation do have a specific impact on the offshore energy sector, and some of these are considered in the following hypothetical scenario.

In addition to the points that are made below, there are likely to be concerns about the inherent commercial risks of any transaction that is in any way connected with Iran. These will include concerns about the availability of insurance, the mechanism for payment and the impact on other projects and aspects of the business if other counterparties prefer not to be associated with Iran.

The best approach, as in all situations where the sanctions against Iran may apply, is to be vigilant, to conduct detailed and thorough due diligence about the project and your counterparties, and to provide full information to the relevant authorities if you have any concerns.

CASE STUDY – FACTS

Caspian Oil Pte Ltd is a Singaporean company that owns a number of assets, including a drill ship and a small tanker. Caspian Oil is the wholly owned subsidiary of a US company, and its director is a US national. Caspian Oil has been collaborating with a German company, Exploration and Drilling Services GmbH, which owns a fleet of geophysical survey ships (with all of the equipment on board), as well as extensive equipment and material onshore in Iran (including computers and software to analyse the data that they have collected, spare drilling equipment, plus reserves of drilling mud, hydrocarbon crackers, etc.).

Caspian Oil Pte Ltd has been operating for a number of years in Iran, exploring and developing Iranian oil reserves in the Caspian Sea, pursuant to a licence from the Iranian government. Acting together with Exploration and Drilling Services, it has collected abundant data about potential fields, has drilled some exploratory wells and had just started full-scale drilling (under contract to an Iranian state-owned company) when the US and EU sanctions came into force.

CASE STUDY – RELEVANT SANCTIONS REGIMES

Caspian Oil's American director, as well as its US parent company, will be subject to the full range of US sanctions. In addition, the US Comprehensive Iran Sanctions Accountability and Divestment Act (CISADA) will apply directly to Caspian Oil to the extent that it does business with Iran's petroleum sector. The sanctions have direct effect (in that they apply to the person who has committed the prohibited act), and also indirect effect (in that they apply to any person who owns or controls that person, and also to any person who is owned or controlled by that person). The sanctions apply where the person has actual knowledge, or should have known, about the relevant conduct, circumstance or result.

EU Regulation No. 961/2010 (the Regulation) will apply to Exploration and Drilling Services GmbH, which is a German company. The Regulation includes a specific defence where the persons involved did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibitions in the Regulation.

CASE STUDY – APPLICATION OF THE SANCTIONS REGIMES TO THE FACTS

CISADA includes a prohibition on making an investment (or a series of investments) that directly and significantly contributes to the enhancement of Iran's ability to develop petroleum resources. Investment is defined to include entry into a contract that includes responsibility for the development of petroleum resources located in Iran; therefore, continuation of the drilling contract would be a breach of CISADA.

Consequently, Caspian Oil immediately contacted the relevant authorities and provided them with full details of their drilling programme. Caspian Oil agreed to suspend drilling operations and, as a result, the authorities agreed not to take any action in respect of the drilling programme. In our discussions to date with the US authorities, they have made clear their strong preference that companies that are engaged in conduct that is potentially subject to the sanctions should engage in a dialogue with the US authorities, so that the company can stop the sanctionable activity, without the need for further action to be taken, by way of investigation and possible prosecution.

Having terminated the drilling contract, Caspian Oil was asked by the Iranian contractor whether it would sell the tanker, or alternatively the cargo of crude oil on board, by way of compensation for the early termination of the drilling contract. Caspian Oil may not sell the tanker, as CISADA prohibits the sale to Iran of goods (etc.) that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products, and goods specifically include ships.

However, CISADA only prohibits the sale to Iran of refined petroleum products (defined as diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel), and aviation gasoline), so Caspian Oil

would be permitted to sell the cargo of crude oil to an Iranian person or entity. Caspian Oil would, of course, need to check that the Iranian contractor is not on any of the restricted persons lists, before agreeing to sell the cargo. It may also face difficulties in persuading a US bank to process the sale proceeds if these are in US dollars.

Following Caspian Oil's decision to suspend drilling operations in Iran, Exploration and Drilling Services is considering winding up its own operations from Iran. It is wondering whether it may sell the geophysical survey ship, as well as the equipment and materials that are onshore in Iran, to an Iranian company. It is also considering simply handing over the geophysical data, computers and software to another Iranian company, rather than having to remove these. Finally, it is considering providing consultancy services to a third Iranian company that is now likely to oversee development of the wells, in return for an annual fee of €50,000.

All three of these proposals are likely to fall foul of EU Regulation No. 961/2010. Firstly, the Regulation prohibits the sale of key equipment or technology directly or indirectly to any Iranian person, entity or body or for use in Iran. The key equipment or technology is outlined in Annex VI to the Regulation and relates to the oil and gas industry in Iran (specifically in relation to exploration, production, refining and liquefaction). It includes physical equipment (such as the geophysical survey ship and any sampling and testing equipment), as well as materials (such as drilling mud).

Secondly, the Regulation also prohibits the supply and transfer of equipment, which includes software and technology, both of which are vaguely defined. Simply leaving equipment behind arguably falls within either supply or transfer (as these terms are intended to relate to something other than sales).

Thirdly, the Regulation prohibits the provision of technical assistance. Unlike the first two prohibitions discussed above, an authorisation can be obtained to provide technical assistance that would otherwise be prohibited. However, it is unlikely that Exploration and Drilling Services will actually receive payment for its technical assistance, as the rules in the Regulation that permit authorisation of transfers from an Iranian entity that have a value of €40,000 or more will not apply where the transfer of funds would contribute to the prohibited activities.

SUMMARY

It will be clear from the above that there are a number of wide-ranging prohibitions that will apply where a US or EU person is dealing with counterparties involved in Iran's oil and gas industry. Detailed legal advice will be required on the facts of each case. In addition, as indicated above, the best approach, as in all situations where the sanctions against Iran may apply, is to be vigilant, to conduct detailed and thorough due diligence about the project and your counterparties, and to provide full information to the relevant authorities if you have any concerns.

IRAN – PRACTICAL ISSUES

Rovine Chandrasekera:
Partner, Stephenson Harwood
Telephone: +44 20 7329 4422
E-mail: Rovine.Chandrasekera@shlegal.com
Web: www.shlegal.com

The various sources of the Iranian sanctions – from the UN, US and EU (and subsequently UK) – have created a complicated regime of rules that have wide-reaching effects on owners, charterers and insurers of ships. Whilst there is no outright ban on doing business with any Iranian party, to do such business is obviously more difficult as a result of the sanctions. There are additional legal and logistical considerations at several points of the shipping transaction, from entering the contract, its execution and, of course, payment.

This article briefly sets out some key steps that owners can take when dealing with an Iranian entity to avoid falling foul of the sanctions. It also offers some practical tips to assist when doing business with Iranian charterers.

Essentially, the sanctions target two main categories: prohibited goods and prohibited parties. As a result, any owner dealing with an Iranian charterer (before and during the charterparty's existence) must check whether the charterer is on the most recent list of prohibited persons, or intends to carry any prohibited cargo. These cautionary checks must also be applied to any potential sub-charterers.

In general, when dealing with Iranian entities, it is essential that owners are diligent and knowledgeable about all of the parties involved in the shipping transaction and check all of the goods when loaded (and keep records of these checks). This is often not so easy in practice!

As well as these checks, it would be wise for owners in contractual relationships with Iranian charterers to write to them and to set out the main terms of the sanctions and their obligations under them, as well as providing copies of the prohibited goods and persons lists. It would also be worthwhile to point out specifically the risks of that charterer dealing with other third parties.

As well as exercising sufficient caution, owners can protect themselves further with additional wording in the charterparty itself (which would also have to be incorporated into any sub-charter). Such wording would expressly provide a mechanism to deal with a situation when orders are given by the charterer that would breach the sanctions. BIMCO does have a standard form of wording, which could be adapted if necessary.

Having manoeuvred these tricky areas, there is then the crucial aspect of getting paid, which is complicated by the position taken by some EU banks and by prohibitions on dealing with certain Iranian banks, as well as transferring over a certain amount to Iranian entities. There are some ways around this; for example, in the UK, there are certain licensing exemptions in place whereby a recipient of funds from a prohibited Iranian bank can apply for a licence from HM Treasury in advance of payment. Otherwise, it may be a case of having to look to other ways of receiving payment, for example, via a different non-designated source. Parties, of course, need to be careful in situations where there has been corporate restructuring to in effect "get round" the sanctions. In such circumstances, whilst there may not appear to be a problem at a first glance, this could still amount to a breach of the sanctions.

Practically, therefore, it is clear that the sanctions create many impediments to dealing with Iranian entities, and although it is not impossible, diligence is constantly required throughout those dealings to avoid potential penalties.

IRAN SANCTIONS – IMPACT ON TIME CHARTERING

Vernon Sewell: Partner,
Bentleys, Stokes and Lowless
Telephone: +44 20 7782 0990
E-mail: vsewell@bentleys.co.uk
Web: www.bentleys.co.uk

Developments in 2010

There have been significant legal developments this year concerning Iranian sanctions, which shipowners, operators and charterers must take account of in time charters where Iran is a permitted trading place.

THE UN

In June, the UN adopted a fourth round of sanctions against Iran (UNSC Resolution 1929 of 2010) aimed (primarily) at ensuring the peaceful nature of Iran's nuclear programme. The sanctions seek (amongst other things) to prohibit Iran's access to an expanded list of goods, materials and technologies (including dual purpose items) that could be used to assist in developing nuclear and other weapons of mass destruction.

THE US

On 1 July, the US passed into law the US Comprehensive Iran Sanctions, Accountability, and Divestment Act 2010 (CISADA), which seeks (amongst other things) to prohibit both US and non-US persons or entities from transporting to Iran:

(1) Refined Petroleum Products (RPP)
(2) Goods, services, technology or support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of RPP, including assisting in the construction, modernisation or repair of petroleum refineries (RPP Facilitating Goods).

CISADA creates problems for non-US shipowners, operators and charterers at two levels. Firstly, although not legally binding upon them, it nevertheless threatens sanctions against non-US shipowners (etc.) who do transport RPP and RPP Facilitating Goods to Iran. The sanctions include the freezing of assets/funds in the US or preventing US dollar transactions. It will also undoubtedly affect hull and P&I insurance covers as well. Secondly, what constitutes RPP Facilitating Goods is not well defined and is likely also to include dual-use goods.

THE EU

On 27 October, Council Regulation No. 961/2010 was published and has direct legal effect on all EU persons or entities. It prohibits (amongst others) EU shipowners, ships, operators or charterers from transporting Annex I, II, III or IV listed goods (in broad terms the same goods as prohibited by UNSC Resolution 1929 of 2010) from any port or place to Iran. In addition (however), it (significantly) prohibits EU shipowners, ships (etc.) from transporting Annex VI listed goods to Iran – defined as key equipment and technology for the following key sectors of the Iranian oil and gas industry:

(a) Exploration of crude oil and natural gas
(b) Production of crude oil and natural gas
(c) Refining
(d) Liquefaction of natural gas.

It is not clear whether this prohibition is worldwide or restricted to transport from an EU port or place – a potentially very important drafting ambiguity.

HOW MIGHT THESE SANCTIONS AFFECT A CURRENT TIME CHARTER (GOVERNED BY ENGLISH LAW) WHERE IRAN IS NOT AN EXCLUDED TRADING PLACE AND THERE IS NO EXPRESS SANCTIONS CLAUSE?

A shipowner or operator[1] cannot be ordered to perform an unlawful voyage or carry unlawful cargo (see, for example, NYPE 46 Lines 24-25, "to be employed in carrying lawful merchandise …" and Shelltime 4 Line 112, "for the purpose of carrying all lawful merchandise …"). Merchandise will be unlawful if it contravenes laws at the port of loading, the port of discharge, the Flag of the ship or the governing law of the charter.

The following goods for transport to Iran are likely to constitute unlawful merchandise:

(1) For most (if not all) shipowners or operators, UNSC Resolution 1929 of 2010 prohibited goods
(2) For EU shipowners, ships or operators, Regulation No. 961/2010 Annex I, II, III and IV listed goods irrespective of whether they are also prohibited by UNSC Resolution 1929 of 2010
(3) For EU shipowners, ships or operators, Regulation No. 961/2010 Annex VI listed goods if shipped from an EU port or place
(4) For EU shipowners, ships or operators, possibly Regulation No. 961/2010 Annex VI listed goods if shipped from any port or place.

The following goods are either unlikely to amount to unlawful merchandise or the position is not clear:

(1) RPP or RPP Facilitating Goods even though prohibited by CISADA unless, in the case of EU shipowners, ships or operators, they are also Regulation No. 961/2010 Annex VI listed goods shipped from an EU port or place
(2) Arguably, Regulation No. 961/2010 Annex VI listed goods shipped from port or places outside the EU.

If the goods amount to unlawful merchandise, the order can be refused. However, the practical difficulty is identifying whether the goods are on the prohibited lists or not, particularly in the case of dual-use goods – no easy task! The lists need to be consulted and, if necessary, an expert evaluation will have to be carried out. This is likely to take time.

There is high legal authority to the effect that a shipowner or operator has the right to pause and investigate whether an order is lawful or not, particularly in a war-like situation (which arguably raises similar issues to international sanctions), the test being: "How would a man of reasonable prudence have acted in the circumstances?" *(The Houda* 1994 2LLR 541 – Court of Appeal).

The message here is that if you are in doubt, then pause and seek urgent expert and/or legal advice.

WHAT IF THE GOODS ARE LAWFUL, BUT NEVERTHELESS BY CARRYING THEM, A SHIPOWNER OR OPERATOR MIGHT BE EXPOSED TO CISADA SANCTIONS AND/OR HAVE HIS INSURANCE COVER WITHDRAWN?

It might be possible in these circumstances to argue that a shipowner is legally excused from carrying the goods by relying on the common law doctrine of frustration, which seeks to mitigate the strict terms of a contract if there has been a subsequent change of circumstances through no fault

of the party and which will render performance under the contract radically different from that which was originally contemplated by the parties. It is highly arguable that to require a shipowner to comply with an order that might result in the shipowner having sanctions imposed upon him and/or in having his insurance cover withdrawn or cancelled is a sufficiently radical change of circumstances to justify application of the doctrine of frustration. This is, however, a difficult area of the law and each case will turn upon its own particular facts and circumstances. The message here is that if you are faced with this potential problem, urgently seek legal advice.

WHAT ABOUT NEW TIME CHARTERS?

The safest option is to expressly exclude Iran as a trading place. Even then, a shipowner should exercise diligence to ensure his ship is not being chartered to a prohibited Iranian person or entity by first checking both of the online lists maintained by OFAC [http://www.ustreas.gov/offices/enforcement/ofac/sdn] and the UK Treasury [http://www.hm-treasury.gov.uk/d/iran.hgm].

A shipowner should also exercise the same degree of diligence in respect of persons or entities named in bills of lading that a charterer or a sub-charterer wants to have issued, especially if the cargo in question is (or might arguably be) prohibited or sanctioned cargo if destined for Iran but is instead destined for a place close to Iran geographically. If Iran is not going to be excluded as a trading place, then a shipowner will need to exercise the same degree of diligence regarding the identity of the proposed charterer.

In addition, it will be prudent for a shipowner to incorporate into the charter the BIMCO Sanctions Clause for Time Charter Parties, July 2010, or the Intertanko Sanctions Clause, March 2010, or some hybrid form incorporating the best bits of the BIMCO and Intertanko clauses.

The opening paragraph of the BIMCO Sanctions Clause states: "The Owners shall not be obliged to comply with any orders for the employment of the Vessel in any carriage, trade or on a voyage which, **in the reasonable judgment of the Owners**, will expose the Vessel, Owners, managers, crew, the Vessel's insurers, or their re-insurers, to any sanction or prohibition imposed by any State, Supranational or International Governmental Organisation …".

The test is "in the reasonable judgment of the Owners"; in other words, it allows a shipowner to pause and take expert and/or legal advice and then to form a reasonable judgment based upon the advices received. The BIMCO Sanctions Clause goes some way towards providing a shipowner with protection if he feels that a voyage order is unlawful, but whether or not a shipowner has formed a "reasonable judgment" may in appropriate circumstances be open to challenge.

The opening sentence of the Intertanko Sanctions Clause states: "Any trade in which the vessel is employed under this Charterparty **which could expose the vessel, its Owners, Managers, crew or insurers to a risk of sanctions** imposed by a supranational governmental organisation or the United States, [insert other countries] shall be deemed unlawful and Owners shall be entitled, at their absolute discretion, to refuse to carry out that trade …".

The language of this clause requires a shipowner to establish that the voyage order "could expose" him or his ship or his crew or his insurers to the risk of sanctions – a state of affairs that might in appropriate circumstances be challenged by the charterer.

The message here is insert one or other of the clauses or seek advice on the drafting of a bespoke sanctions clause. If having done so, you do receive a voyage order that you feel might expose you, the ship, your crew or your insurers to any sanction or prohibition, take urgent legal advice.

ADDITIONAL SANCTIONS – CANADA, AUSTRALIA, SOUTH KOREA AND JAPAN

Edgar Chin: Claims Executive, Standard Asia
Telephone: +65 6506 2867
E-mail: edgar.chin@ctcplc.com

BACKGROUND

On 9 June 2010, the United Nations Security Council (UNSC) passed Resolution 1929 imposing further UN sanctions on Iranian entities. This was in response to the proliferation risks posed by Iran's nuclear programme and its continued failure to co-operate with the International Atomic Energy Agency.

This was swiftly followed by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), enacted by the US on 1 July 2010, and the EU Foreign Affairs Council Decision on 26 July 2010, which heralded tougher sanctions and more aggressive economic measures against Iran.

Since July 2010, Canada, Australia, South Korea and Japan have also established unilateral sanctions against Iran. This article seeks to give a brief overview of the various sanctions imposed. Members are advised to seek local legal advice if they require specific guidance on the applicability of these sanctions to their trade or operations.

CANADA

Is there domestic legislation implementing existing UN sanctions?

Yes. The Regulations Implementing the United Nations Resolutions on Iran implement the decisions of the UN Security Council (including Resolution 1929) in Canadian domestic law.

Is there any domestic legislation extending the scope of the sanctions against Iran?

Yes. On 26 July 2010, it was announced that Canada was imposing further sanctions on Iran under the Special Economic Measures Act (SEMA). The Special Economic Measures (Iran) Regulations were therefore drafted to implement many of the measures that the UN Security Council called upon, but did not obligate member states to implement, under Resolution 1929.

What are these sanctions aimed at?
Sanctions prohibit all of the following:
(i) Dealing in the property of designated persons
(ii) Exporting or otherwise providing to Iran arms and related material not already banned, items used in refining oil and gas and items that could contribute to Iran's proliferation activities
(iii) Providing or acquiring financial services to allow an Iranian financial institution (or a branch, subsidiary or office) to be established in Canada, or vice versa
(iv) Making any new investment in the Iranian oil and gas sector
(v) Establishing correspondent banking relationships with Iranian financial institutions, or purchasing any debt from the government of Iran, and
(vi) Providing a ship owned or controlled by, or operating on behalf of the Islamic Republic of Iran Shipping Lines (IRISL) with services for the ship's operation or maintenance.

Who do these sanctions target?
The SEMA applies to any person in Canada and any Canadian outside Canada.

Will penalties be imposed for a breach of these sanctions?
The SEMA does provide for penal sanctions, including fines and imprisonment.

AUSTRALIA

Is there domestic legislation implementing existing UN Sanctions?
Yes. They are implemented through regulations made under the Charter of the United Nations Act 1945, the Customs Act 1901 and the Migration (United Nations Security Council Resolutions) Regulations 2007.

Is there any domestic legislation extending the scope of the sanctions against Iran?
Yes. The Minister for Foreign Affairs and Trade announced on 29 July 2010 autonomous sanctions measures against Iran, which supplement Resolution 1929.

What are these sanctions aimed at?
The autonomous sanctions cover the following restrictions/ prohibitions:
(i) Restrictions on financial transactions involving designated individuals and entities that:
  (a) contribute to Iran's nuclear and missile programmes, or
  (b) assist Iran to violate its sanctions obligations.
(ii) Restrictions on visas to travel to Australia by individuals who:
  (a) contribute to Iran's nuclear and missile programmes, or
  (b) assist Iran to violate its sanctions obligations.
(iii) Prohibition on exporting to Iran:
  (a) all arms and related materiel not otherwise prohibited by the Charter of the United Nations (Sanctions – Iran) Regulations 2008 (see the Iran UNSC sanctions homepage)
  (b) items mentioned in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies List of Dual-Use Goods and Technologies and Munitions List not otherwise referred to in item (a) above
  (c) items mentioned in the Australia Group control list of chemicals, biological agents and related equipment.

Who do these sanctions target?
Depending upon the terms of the sanctions, they apply to:
(i) Any person in Australia
(ii) Any Australian anywhere in the world
(iii) Companies incorporated overseas that are owned or controlled by Australians or persons in Australia
(iv) Any person using an Australian Flag ship or aircraft to transport goods or transact services subject to UN sanctions.

Will penalties be imposed for a breach of these sanctions?
Breaches of these sanctions are serious criminal offences and may be punished with fines and/or imprisonment.

SOUTH KOREA

Is there domestic legislation implementing existing UN Sanctions?
Yes. The South Korean government has reviewed specific measures to implement Resolution 1929.

Is there any domestic legislation extending the scope of the sanctions against Iran?
Yes. The specific measures announced by the South Korean government on 8 September 2010 go beyond Resolution 1929.

What are these sanctions aimed at?
The specific measures cover various areas, including finance, trade, transportation, travel, and energy.

Finance:
(i) Designation of entities and individuals subject to financial sanctions

(ii) Prior authorisation scheme for financial transactions
(iii) Prohibition of the opening of new branches
(iv) Prohibition of the establishment of new correspondent banking relationships
(v) Termination of existing correspondent banking relationships
(vi) Prohibition of the sale or purchase of national bonds
(vii) Prohibition of the provision of insurance and reinsurance.

Trade:
(i) Reduction of export guarantees
(ii) Prohibition of the export of strategic items, including dual-use items.

Transportation and travel:
(i) Strengthening of inspections
(ii) Prohibition of the provision of services to ships or cargo aircraft
(iii) Prohibition of the access of cargo aircraft to domestic airports
(iv) Travel ban on the designated individuals.

Energy:
(i) Prohibition of new investment in petroleum resources/gas development.

Who do these sanctions target?
The sanctions apply to South Korean entities and persons.

Will penalties be imposed for a breach of these sanctions?
No penalties have been specified yet.

JAPAN

Is there domestic legislation implementing existing UN Sanctions?
Yes. Following the adoption of the UNSC Resolution 1929, Japan announced on 3 August 2010 the implementation of several measures under the Foreign Exchange and Foreign Trade Act (Foreign Exchange Act).

Is there any domestic legislation extending the scope of the sanctions against Iran?
Yes. Further measures were announced on 3 September 2010, which expand upon the 3 August measures.

What are these sanctions aimed at?
These measures include:
(i) Asset freeze of 88 entities and 24 persons (designated by the Ministry of Foreign Affairs), including the Islamic Republic of Iran Shipping lines and its subsidiary entities
(ii) Asset freeze of 15 Iranian banks (designated by the Ministry of Foreign Affairs) with the effect that correspondent banking relationships with these banks are halted
(iii) Prohibition on trade-related transfers of funds from Japan to Iran, and all transfers of funds from Iran to Japan, relating to Iran's nuclear activities or Iran's activities pertaining to the supply of large conventional weapons
(iv) Prohibition of the provision of insurance/reinsurance services by Japanese companies if activities covered by such insurance/reinsurance services could contribute to Iran's nuclear activities or to Iran's activities pertaining to the supply of large conventional weapons.

Who do these sanctions target?
The sanctions apply to Japanese entities and persons.

Will penalties be imposed for a breach of these sanctions?
No penalties have been specified yet.

SANCTIONS – WHAT QUESTIONS DO I NEED TO CONSIDER?

Peter McNamee: Claims Executive, Standard Club
Telephone: +44 20 3320 2282
E-mail: peter.mcnamee@ctcplc.com

This article is intended to be a useful guide for the issues that must be considered for every ship operator who is concerned by International trade sanctions. Whilst not exhaustive, this article should give you an overview of the types of operations that could become problematic. Clearly, certain legislation will affect some operators more than others; especially those from the US. However, there are no operators who can afford to ignore the international sanctions.

1. WHO ARE THE RECEIVERS/CHARTERERS?

- **"Know your client":** It is important to consider the identity of your contractual partners. Do they appear on the US SDN List (see the link below) or are they sanctioned under the law of the UK, UN or EU (see the link below) or your ship's Flag State.
  - If you have any concerns, it is essential that you **seek advice from your preferred lawyer.**
  - **It is important to note that the lists change regularly and it is essential that you repeatedly check!**

2.1. WHERE IS THE VOYAGE TO?

- **Iran:** CISADA prohibits exports from the US or by US persons (wherever located) to Iran.
- **Elsewhere:**
  - There are sanctions imposed on other states, including Syria, North Korea, Cuba, etc.; therefore, it is important to consider where you are trading and if your actions are likely to fall foul of any international sanctions.
  - The contract of carriage should also be considered as it may be that you are the carrier for an intermediate leg on a through bill of lading with a cargo of, say, Refined Petroleum Product that is destined for Iran. As such, the entire voyage is potentially in breach of CISADA and if you have knowledge (actual or you 'should have known') that the cargo is part of the sanctioned voyage, then you too may face sanctions.

2.2 WHERE IS THE VOYAGE FROM?

- **Iran:** CISADA imposes a ban on US imports from Iran.
  - **US Persons Test:**
    - US citizens and permanent residents wherever they reside
    - A person physically in the US or a company with a US branch
    - Any US organisations and their foreign offices.
  - **If this applies, seek advice from your preferred US attorney as it is likely you may be in breach of CISADA.**
- **Elsewhere:** If the cargo originated from Iran and is destined to the US, the above could still apply even if there is an intermediate port. As such, it is important to carry out due diligence to ensure you are not in breach of any sanctions.

3. WHAT IS THE CARGO?

- **Refined Petroleum Products (RPP):** This includes diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel) and aviation gasoline.
  a. Is the fair market value over $1m in one shipment or $5m over a number of shipments over 12 months?
  b. Have you knowingly provided this cargo (whether as an owner or charterer)? This includes actual knowledge or imputed knowledge where you should have known.
  c. **If answer to either of the above is "yes", seek advice from your preferred US attorney as it is likely you may be in breach of CISADA**
- **Nuclear/military – Dual-use cargo**
  a. Are you:
     i. a person physically in the EU
     ii. a ship under the jurisdiction of the EU
     iii. a person who is a national of member state, wherever they are physically located
     iv. a person, entity or body incorporated in the EU, or
     v. a person, entity or body who does any business in the EU?
  b. Is the cargo goods, software, technology or information that may have a military application as listed in Annexes I, II, III and IV of EU Regulation 961/2010 (see link below).
  c. If you suspect that the cargo may fall within one of the categories in Annexes I, II, III or IV, you must seek prior approval from the relevant competent authority in a member state. **If you are in any doubt, you should seek advice from your preferred lawyer.**

- **Energy:** Under EU Regulation 961/2010, it is prohibited to sell, supply, transfer or export certain equipment or technology used in the oil and gas industry:
  a. Are you:
     i. a person physically in the EU
     ii. a ship under the jurisdiction of the EU
     iii. a person who is a national of member state, wherever they are physically located
     iv. a person, entity or body incorporated in the EU, or
     v. a person, entity or body who does any business in the EU?
  b. Is the cargo key equipment or technology that is listed in Annex VI of EU Regulation 961/2010 (see link below)?
  c. Is the cargo going directly or indirectly to any Iranian person, entity or body or for use in Iran?
  d. Will it be used in the refining, production or exploration of crude oil and natural gas or in the liquefaction of natural gas?
  e. **If answer to any of the above is "yes", or if you are in any doubt, you should seek advice from your preferred lawyer.**
- **Other cargo:**
  a. Could the cargo be used to "directly and significantly" facilitate the maintenance or expansion of Iran's petroleum industry?
  b. Does the cargo directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products?
  c. Has the cargo been properly declared, or could it be regarded that you have knowingly provided this cargo (whether as an owner or charterer)? This includes actual knowledge or imputed knowledge where you should have known.
  d. These questions are highly subjective and difficult to answer. It is therefore essential that you carry out proper due diligence, and if you have any concerns, **seek advice from your preferred US attorney.**

4. WHAT ELSE MUST I CONSIDER?

- **Payments to Iranian entities:** Most EU and US banks are reluctant to send funds to Iranian entities/Iranian banks, even if they are not on the US SDN list or the UK, UN or EU designated person's lists. As such, whether it is paying port charges or paying an Iranian charterer, there are still significant difficulties. Therefore, you should seek specific advice from your preferred lawyers.
- **Quantum:** EU Regulation 961/2010 prevents any payments over €40,000 to an Iranian person or entity, regardless of where they are located, without the prior authorisation of the relevant competent authority in a member state. It also requires that any payment between €40,000 and €10,000 must be notified to the relevant competent authority in a member state. For copies of these forms, please see the link below.
- **Claims:** Should you face a claim in Iran, whether for fixed and floating object damage, pollution, etc., it is likely to be very difficult to obtain independent advice as to the cause and nature of the incident/damage. It is also likely that the claim will be subject to Iranian law, even if there is a law and jurisdiction clause in the contract of carriage to the contrary, which presents a large degree of uncertainty.
- **Security:** It will be very difficult, if at all possible, for the club to post security, even if it is acceptable to the local claimant and it is for a covered risk. It is also likely to be very difficult for a bank to be able to provide a bank guarantee or a bond/escrow account.
- **Misdeclaration of cargo:** There are significant concerns that misdeclared cargo, especially in containers, may cause a problem. The advice from the US State Department appears to be that due diligence should be carried out to ensure that the cargo is not in breach of CISADA or any other sanctions; however, it has been suggested that this even includes inspecting the contents of every container! It is advisable therefore that you investigate as fully as possible the contents of any containers, and if you have any concerns, seek advice from your preferred lawyers.
- **Insurance:** The current Standard Club's rule 17.2(5) provides that:
  – "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."
  – If you are in breach of international sanctions that may lead to the club being in breach of those sanctions, then your cover will cease. A similar approach has been adopted across the International Group and by many hull and machinery insurers. Consequently, as well as a lack of cover, this also presents a potential danger of foreclosure on mortgaged ships for breach of warranty in the loan agreement.

UK Treasury: UK/UN/EU sanctioned persons
http://hm-treasury.gov.uk/financialsanctions

US Treasury: OFAC list
www.ustreas.gov/offices/enforcement/ofac/sdn/

Prior approval for payments to Iranian entities:
www.hm-treasury.gov.uk/fin_sanctions_iran.htm#Prior_notificationauthorisation_forms

EU Regulation 961/2010 including Annexe I-VI:
www.hm-treasury.gov.uk/d/council_regulation_eu_961_251010.pdf

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Standard House, 12/13 Essex Street,
London, WC2R 3AA, England

Telephone: +44 20 3320 8888
Fax: +44 20 3320 8800
Emergency mobile: +44 7932 113573
E-mail: p&i.london@ctcplc.com
Website: www.standard-club.com

Please send any comments to the editor:
Ursula O'Donnell

E-mail: ursula.odonnell@ctcplc.com
Telephone: +44 20 3320 8813