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Iran sanctions legislation and its effect on shipowners and the club

We sent a circular on 1 February 2010 advising members of a proposed new rule change which would give the board power to amend the club rules if it becomes necessary to do so because of legislative or regulatory changes. This proposal was made in the light of likely new legislation, particularly in the USA, tightening up sanctions against Iran. This *Standard Bulletin* provides members with an update on the subject and explains the issues.

1. US legislation

A number of Iranian shipping companies, including IRISL, are already "specially designated" by the US Treasury's Office of Foreign Assets Control ("OFAC"). The effect of this designation is to prohibit dealings by US persons (which would include provision of insurance services) with these companies. This prohibition is specifically targeted at the activities of identified Iranian companies and their ships and does not extend to the wider shipowning community.

Of greater concern and potential impact, however, is proposed legislation to amend the Iran Sanctions Act of 1996 to enhance US diplomatic efforts with respect to Iran and expanding economic sanctions against Iran.

Two pending bills in Congress (one in the Senate and one in the House of Representatives) would, if passed, seek to impose new Iran trade sanctions focused specifically on the exportation of refined petroleum products to Iran. The bills seek to amend the Iran Sanctions Act of 1996.

Under the House bill, sanctions could be imposed against both domestic and foreign entities that:

- (i) Provide ships, vehicles or other means of transportation to deliver refined petroleum products to Iran, or providing services relating to the shipping or other transportation of refined petroleum products to Iran.
- (ii) Underwrite or otherwise provide insurance or reinsurance for an activity described in clause (i) above.

The Senate bill provides for the imposition of sanctions against persons who with actual knowledge provide Iran with refined petroleum resources or engage in any activity that could contribute to the enhancement of Iran's ability to import refined petroleum resources, including

- (A) providing ships or shipping services to deliver refined petroleum resources to Iran;
- (B) underwriting or otherwise providing insurance or reinsurance for such activity.

The wide drafting under both draft bills could, in relation to shipping activity, include owners, charterers, managers, crew, and, in relation to insurance cover, could include the club in which an offending ship is entered and its reinsurers. As drafted, the sanctions would apply in relation to any of the identified shipping and insurance activities relating to any ships (regardless of country of flag, registry or beneficial ownership) trading refined products into Iran, and notwithstanding that, as a matter of the law governing the relevant contracts of carriage or insurance, the adventure is lawful.

Potential sanctions for transgression could include barring sanctioned persons or companies from access to US financial institutions and blocking of assets and dollar transactions of an offending insurer located within or routed through the United States. Apart from any implications for members themselves, such sanctions would clearly be very damaging to the club if the club were found to be insuring a member carrying out a proscribed trade or voyage.

The International Group is continuing to monitor developments in relation to the pending legislation and will report on material developments.

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2. UK legislation

The UK Financial Restrictions (Iran) Order 2009 came into effect on 12 October 2009. The material provisions of the Order prohibit the provision of insurance cover to IRISL owned or controlled or operated vessels and, as a consequence, no IRISL ships are currently insured by International Group clubs.

The Group has not been advised of any further intended action by the UK government in relation to insurance arrangements for other Iranian companies or in relation to trading to Iran, but depending on developments in the United States this possibility cannot be ruled out. The Group is continuing to monitor the situation and will inform members of any material further developments in this respect.

3. Shipowners' obligations arising under contracts of carriage

The Group will liaise and coordinate with relevant shipowner associations with a view to the development of appropriate protective clauses for incorporation into charterparties and bills of lading.

The US bills

The two US bills pending in Congress i.e. H.R. 2194 and S. 2799 are similar but not identical. Both pieces of legislation have recently passed each of the two chambers of the US Congress: the House of Representatives and the Senate. (H.R. 2194 passed in the House of Representatives and S.2799 passed in the Senate). Both bills seek to amend the Iran Sanctions Act of 1996. For a bill to become an Act or law in the US, it must pass both chambers in identical form. Where, as is the case with the current bills, there are similar, but not identical bills from each chamber, a process of reconciliation is initiated in which representatives from both bodies (the House and the Senate) meet to negotiate a reconciled bill. That reconciliation is not confined to mere middle ground between the two versions, but also can include new approaches. Once the language is made uniform, each chamber must vote again to approve the reconciled language. The bill is then sent to the President for signature or, as happens in rare instances, veto. Congress can override a presidential veto by a two-thirds majority vote of both chambers.

The Standard Club

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