

EU SANCTIONS – IRAN



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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:

- Within the territory of the European Union, including its airspace
- On board any aircraft or any vessel under the jurisdiction of a member state
- To any person inside or outside the territory of the Union who is a national of a member state
- To any legal person, entity or body that is incorporated or constituted under the law of a member state, and
- 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.