

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



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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.