Iranian person

Article 1 of the Regulation defines an Iranian person, entity or body as:

- the state of Iran or any public authority thereof
- any natural person in, or resident in, Iran
- any legal person, entity or body having its registered office in Iran
- any legal person, entity or body, inside or outside Iran, owned or controlled directly or indirectly by one or more of the above-mentioned persons or bodies.

Care should be taken to identify the beneficial ownership of contractual partners, particularly in light of press reports of obfuscation by Iranian shipping entities.

Application

The Regulation applies to any person, entity or body:

- within the territory of the EU, including its airspace
- on board any aircraft or ship under the jurisdiction of a member state
- to any person inside or outside the territory of the EU who is a national of a member state
- to any legal person, entity or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of a member state
- to any legal person, entity or body in respect of any business done in whole or in part within the EU.

Commentary

Whilst the EU maintains that the Regulation is not a trade ban, it is clear that it has wide-reaching consequences for anyone wishing to trade with Iran. Whilst its application is only directly relevant within the EU and for European persons, the nature of the Regulation could affect entities domiciled outside of the EU. This is due in a large part to the prohibition on provision of insurance services by an EU entity to any entity, wherever located, in the export of oil, petroleum products and petrochemical products from Iran.

The Regulation demonstrates the EU's steadfast approach to using sanctions as a political tool to exert pressure on foreign governments. Whilst sanctions can be amended or abrogated, it is clear that sanctions against Iran and other countries such as Syria are here to stay and present challenges to the wider maritime community. The US and UN continue to impose sanctions on Iran and Syria, amongst other states, which have impacted the entire maritime and insurance industries. Timely and coherent advice should be sought to ensure compliance with the plethora of sanctions and prevent reputational damage.

Lifting Iranian Bunkers from outside the EU

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Each month, about 3.5 million metric tons of bunker fuel are sold in Singapore, a key bunker hub between markets in East Asia and those in the Middle East and Europe. Whilst exact figures as to how much of the bunkers sold originate from Iran are not readily available, traders estimate that in May 2012, Iran supplied at least 8% of the fuel entering Asia for use in power stations, industry and shipping.

Regulation 267/2012 and Iranian bunkers

Regulation 267/2012 of the European Union Foreign Affairs Council came into effect on 24 March 2012 (the Regulation). It prohibits the trade and transportation of crude oil, petroleum products and petrochemical products from Iran by all EU-owned or flagged ships (EU ships) worldwide and by any ship trading within EU waters. The prohibition extends to any related financing, insurance and technical assistance involved in these operations. Interim exceptions temporarily suspended the application of the Regulation.

Although the Regulation makes no specific reference to bunkers, it is likely that these will fall within the generic description of crude oil or petroleum products; if bunkers originate from Iran or are blended with Iranian products (hereafter 'Iranian bunkers'), the prohibitions in the Regulation are likely to apply. Whilst the wording of the Regulation is not entirely clear, it is believed that Iranian bunkers should have been consumed before the expiry of the grace period to avoid any possibility of a breach of the Regulation. It is not clear how EU authorities will treat residual bunker stems on board a ship that had contained Iranian bunkers, given the natural tendency for heavy oils to 'cling'. It is hoped that previous stemming of these bunkers will not necessitate segregation and that they will not be treated as having cross-contaminated other stems on board or the ship's pipes, lines, pumps and tanks (thus requiring cleaning or further certification).

Penalties for breach of the provisions of the Regulation applicable to the UK are set out in the *Iran (European Union Financial Sanctions)* Regulations 2012 and include a fine and/or custodial sentence of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity.

Shipowners in EU waters and non-EU waters

The Regulation prohibits EU shipowners from stemming or transporting Iranian bunkers in any part of the world. Non-EU shipowners also are prohibited from stemming or transporting Iranian bunkers within EU waters.

The Regulation does not prevent non-EU shipowners from stemming Iranian bunkers outside the EU, say from Singapore, provided that their ship does not trade with such bunkers within EU waters.

However, there are still legal implications for such non-EU shipowners. Most International Group (IG) clubs' rules contain express provisions that may restrict, exclude or terminate cover following a breach of sanctions. The effect of those rules may be to withdraw or exclude insurance cover, or limit or preclude recovery in relation to liabilities incurred whilst a ship is performing a prohibited voyage. Therefore, to the extent that a shipowner undertakes such a voyage, his liabilities may not be insured by his IG club. As noted above, the stemming of Iranian bunkers by non-EU shipowners outside EU waters will not place them in breach of EU law. However, such an action may trigger club sanctions and compromise his club cover (just as it would for an EU shipowner).

Pool and reinsurances

The Regulation already applies directly to EU-registered clubs. However, not all IG clubs are EU-regulated. Non-EU clubs are not directly subject to the insurance prohibitions in the Regulation. However, the right of such non-EU clubs to recovery under the IG's pooling arrangements from clubs that are EU-regulated will be impaired. Also, the rights of recovery under the IG excess of loss reinsurance contract and other reinsurances taken out for the benefit of the club members will also be impaired. Clearly, such impairments will also apply to EU-regulated clubs. Most IG clubs have now incorporated provisions in their rules to exclude or limit cover where, as a result of sanctions, the pool and/or reinsurers are themselves subject to prohibitions against payment; claims for reimbursement may be reduced.

Article 42 defence and protective measures

What preventive measures can a prudent member take so as not to breach the Regulation as far as the stemming of Iranian bunkers is concerned?

Article 42 expressly provides that the Regulation will not give rise to liability upon persons or entities if they did not know and had no reasonable cause to suspect that their actions would infringe the prohibitions; actual or ostensible knowledge is key.

Therefore, it would be prudent for shipowners or their charterers to make enquiries and maintain records regarding the origin of bunkers before they are stemmed. When a member charters out their ships, they should request the charterers (who usually supply bunkers) to ensure that no Iranian bunkers are stemmed. There is no standard wording to pass from owners to charterers in relation to the provenance of bunkers supplied. This would be driven by many factors, including the relationship between the parties, their contractual terms, the law and jurisdiction of the relevant charter, and the course of previous dealings that they have had. That said, a simple requirement from owners to charterers that the latter confirm in writing that each stem of bunkers supplied is not of Iranian origin in whole or in part should be sufficient. The EU-driven requirement is to make reasonable enquiries; owners do not need to be exhaustive in such enquiries.

Shipowners should also ensure that all time charterparties expressly oblige charterers not to supply Iranian bunkers. Where the member is supplying bunkers to his own or a chartered-in ship, he should seek an undertaking from the bunker supplier not to supply Iranian bunkers. Charterers may wish to seek similar assurances from their sub-charterers, bunker suppliers or indeed from the owner of a newly chartered-in ship in relation to any residual bunkers on board at delivery. It is believed that a written assurance would be sufficient grounds to found a defence pursuant to Article 42 that the member was not in breach of the Regulation.

In Singapore, for instance, shippers have the option of buying from major Western companies that have their own refineries in Singapore and that could provide assurances that are acceptable to members. Some shipowners and charterers in Singapore are already known to seek as a matter of good practice guarantees from bunker suppliers that the bunkers supplied are not Iranian bunkers or blends thereof. It remains to be said what assurances can and will be offered by bunker suppliers and charterers.

Conclusion

The EU Regulation is far-reaching. It impacts upon both EU and non-EU ships, regardless of whether the ship is entered with an EU-regulated or non-EU-regulated club. It also applies whether the ship is sailing to destinations within or outside the EU. Members should accordingly take measures to ensure that their cover is not compromised by the Regulation even when lifting Iranian bunkers from outside the EU.

The practical advice for shipowners remains that if they are arranging bunker stems in areas where traditionally Iranian bunkers have been supplied (say Fujairah, India, Pakistan and Singapore), or where there may be some other reason to believe bunkers may be of Iranian origin, such as in states that are continuing to import Iranian oil and/or petroleum (such as Japan, China and India), then they should ask questions, seek undertakings from the bunker suppliers and, if in doubt, make alternative stem arrangements.