



EU AND US IRAN SANCTIONS

BRIEFING TO MEMBERS JUNE 2013

INTRODUCTION

The current EU and US Iran sanctions consist of a patchwork of legislative instruments. This patchwork nature makes it difficult to apply the laws to the carriage of a particular cargo.

This briefing note has been produced with a view to assisting Members in gaining an overview of how the carriage of a particular cargo may be affected by the US and EU sanctions.

CONTENTS

This briefing note provides further information on:

- **Legal sources 2**
- **EU and US Iran Sanctions - where and to whom applicable? 2**
- **Screening of counterparties 5**
- **Summary of EU and US Iran sanctions by type of cargo..... 9**
- **Restrictions on the use of port facilities in Iran 20**
- **Trading with Iran and effect on P&I cover..... 22**
- **Penalties 24**
- **Protective clauses 25**

Legal sources

- Legal sources of EU and US Iran Sanctions legislation referred to in this text are either hyperlinked or can be found on the Iran Sanctions websites maintained and updated by the UK and US authorities:
 - For the legal sources of EU Iran Sanctions on the UK Treasury site click [here](#).
 - For the legal sources of US Sanctions on the US Treasury click [here](#). Note: the legal sources are to be found at the end of the hyperlinked page.

US and EU Iran Sanctions - where and to whom applicable?

US Iran Sanctions.

- The US maintains two sets of sanctions regimes against Iran.
 - (i) Sanctions applicable to US Persons only:

Pursuant to a number of statutes, regulations and executive orders, US Persons have for some years been generally prohibited from engaging in virtually any transaction having a connection with Iran. The US sanctions legislation applying to US Persons is complex and subject to frequent change. It is not covered here and Members who qualify as US Persons are advised to seek specialist US legal advice.
 - (ii) Sanctions also applicable to non-US Persons:

Since 2010, the US authorities have been introducing legislation which provides for potentially severe penalties to be applied against “foreign persons” involved in:

 - (a) transactions with targeted Iranian entities. The list of Iranian entities targeted by the US is published by the US Office of Foreign Asset Control (OFAC) and is named “Specially Designated Nationals List” (SDN list). The legislation requires systematic screening of counterparties in shipping transactions connected or potentially connected with Iran and this is explained in further detail below. See the section below: “*Screening of counterparties*”
 - (b) certain trade or financial transactions. The transactions which are most relevant for shipping are set out below and are ordered by types of trade/cargo. See the section below: “*Summary of EU and US Iran sanctions by type of cargo.*”
 - (c) Assisting Iranian entities in evading US sanctions (e.g., by acting as a middleman for funds transfers, etc.).
 - (d) Causing US Persons to breach US Sanctions regimes which apply to US Persons. The US authorities have indicated that companies who do not

qualify as an US Person and who engage in transactions which are legitimate under the laws of the countries to which they are subject may still be subject to penalties if as a result of such transaction, they cause US Persons to be in breach of US Sanctions. An example would be when a non US Person carries out a transaction involving Iran (and which would be sanctionable if the company was an US person) which involves US dollar payments and attempts are made in the payment instruction to conceal the fact that the underlying transaction has a connection to Iran or a SDN.

Definition of “US Persons” in US Sanctions Legislation

- The definition of US Persons includes the following:
 - (i) Any US citizen (wherever he is located)
 - (ii) Any person (individuals and entities) in the territory of the US
 - (iii) Entities organised under the law of the US
 - (iv) As of 9 October 2012, Non-US entities owned or controlled by US companies are subject to the same restrictions as U.S. Persons and U.S. parent companies are liable for violations by their foreign subsidiaries. For these purposes “owned and controlled” means a 50% or greater equity interest, a majority of seats on the board of directors or otherwise control over the actions, policies or personnel decisions of the entity (e.g. control over the day-to-day operations). [31 CFR 560.215]
- A non-U.S. company listed on a US stock exchanges is not a US Person for the purpose of sanctions legislation, but under the listing rules, they must generally disclose their own and their affiliates’ transactions with Iran and dealings with the Iranian Government or SDN’s.
- Directors of companies that are not companies which qualify as US Persons are nevertheless themselves subject to the US sanctions legislation (and penalties) if they are US citizens.

EU Iran Sanctions

- EU Iran sanctions apply to:
 - (i) transactions carried out (in whole or in part) in the EU irrespective of whether the parties are EU Persons or not.
 - (ii) transactions carried out world-wide, if one or more of the parties are EU Persons.

[Article 49 of EU Regulation 267/2012]

- Definition of EU Persons:

The term “EU Persons” is defined to include:

- (i) vessels under the jurisdiction of an EU Member State [Article 49 (b) of EU Regulation 267/2012)
 - (ii) companies incorporated or constituted under the law of a Member State. [Article 49 (d) of Regulation 267/2012]
- Directors of companies that are not EU Persons (as defined above) are nevertheless themselves subject to the EU sanctions legislation (and penalties) if they are EU nationals.

Application of EU Sanctions to non-EU Persons:

- Unlike US legislation, sanctions under EU legislation are essentially only applied to EU Persons, although the EU sanctions apply to anyone if the transaction is carried out in the EU. This will mean that some Members of the Association are not affected by them directly.
- However, for those Members who are not affected directly by the EU legislation (because the transaction is not carried out in the EU or because they do not qualify as EU persons) and who wish to perform transactions which would be sanctionable under EU Sanctions legislation, it should be borne in mind that in such cases the Association would be affected by the EU sanctions legislation and in order to remain in compliance, its scope to provide service, including the P&I insurance itself, is restricted in such circumstances. (See the section below: “*Trading with Iran and Iranian entities and effect on P&I cover*”).

Screening of counterparties against entities targeted by US and EU Iran sanctions.

Sources listing targeted entities:

- The targeted entities are listed by the EU and US because they are considered as supporting Iran's development of weapons of mass destruction, or they are linked with the Iranian Revolutionary Guard Corps, or they are deemed owned or controlled by the Iranian Government.
 - They include the National Iranian Oil Company (NIOC), National Iranian Tanker Company (NITC), Naftiran Trading Company, Islamic Republic of Iran Shipping Lines (IRISL), Tidewater Middle East Co and companies deemed associated, as well as certain Iranian banks and insurers.
 - They also include a number of entities which are located outside of Iran (e.g. in Cyprus, Hong Kong and Germany) but which are linked with Iran.
- The lists are regularly updated and available electronically and in easily searchable PDF format:
 - EU list of targeted entities (as listed by the UK Treasury): Please click [here](#)
 - US list of targeted entities (as listed by the US Treasury): Please click [here](#)
- In addition, there is specialised software available. This generally allows a single search against a consolidated list of multiple sanctions lists, and may also, depending on the provider, include searches against new sources and/or include more sophisticated search tools (e.g. fuzzy logic and/or close matches). Automated batch searching is also available, and is widely used by banks, who will conduct daily searches against all of their customers.
- Members should also consider subscribing to the on line news alert service on changes to the list of targeted entities or sanctionable transactions which are issued by the US and EU, as well as, possibly, by their national authorities.
 - The UK's Treasury/sanctions website includes a useful on line alert facility. Please click [here](#)
 - The US Treasury Department Office of Foreign Assets Control (OFAC) includes a similar on line alert facility. Please click [here](#).
 - The EU sanctions website does not yet provide an alert service, but Member States may provide such a service.

Guidance on extent of screening required.

- To date neither the US or EU authorities have provided any substantial guidance on the extent of screening required in the context of shipping.

- As far as the tanker and dry bulk trades are concerned, legal advice received indicates that the screening should include all parties involved in the transaction, including the charterers and sub charterers, and as far as any bills of lading are concerned, should include the shippers, notify party and receivers.
- Members who are EU subjects and involved in the tanker trade should also bear in mind the obligation, under EU legislation, to undertake appropriate measures to prevent ships being made available by their charterers for carriage or storage of oil or petrochemical products that originate in Iran [Article 37b of Regulation 267/2012 as inserted by Regulation 1263/2012].
 - Although no further official guidance has been provided, it appears that in order to comply with this obligation, Members should ensure the inclusion of express wording in their charterparties which reflects this obligation.
 - This could include an express reference in the cargo exclusion clauses to “cargo which originates in Iran or has been exported from Iran”, as well as an exclusion of Iran from the trading limits.
- Members should also bear in mind that the list of targeted entities maintained by the US and EU authorities includes ships and in case of for example ship to ship transfers, Members should also consider screening the names involved.
- Members should also check the identity of operators of the terminal/port if the cargo is to be loaded or discharged in Iran (since some are expressly listed as targeted entities) as well as any other party (receiving payment in Iran).
- In addition, Members should check the banks being used in the transaction if known.
- OFAC has given some guidance on screening containers. For the guidance note please click [here](#).

Chartering to Iranian or Iranian controlled entities which are not yet on the US list of targeted entities

- Members should be aware that new US Sanctions legislation which will come into force on 1st July 2013 (and which also applies to non US persons) are potentially sufficiently broad to render sanctionable the chartering of vessels to any Iranian or Iranian controlled entity even if these entities are not (yet) listed on the US list of targeted entities [Section 1244 of the National Defence Authorisation Act 2013}. Members should therefore be able to show due diligence that their chartering counterparties are not Iranian or Iranian controlled entities.

Systematic screening of counterparties.

- The EU and US sanctions on the face of it operate on the basis that the identities of trading partners are known. There is little understanding among regulators regarding practical feasibility, for example in the context of a complex chain of charter parties or in case of negotiable bills of lading.

- However, whether the US or EU authorities would impose penalties on a Member because the transaction or the counterparty involved gives rise to sanctions is likely to depend on whether the Member has carried out sufficient due diligence with a view to avoiding a transgression.
 - U.S. sanctions typically require either actual knowledge or that the party “should have known” after its due diligence that it was engaging with a targeted entity.
 - EU sanctions typically state that sanctions shall not be imposed if the person or entity concerned “did not know, and had no reasonable cause to suspect, that their actions would infringe [EU Sanctions]”. [Article 42 Regulation 267/2012]
- Accordingly, Members should adopt a policy of systematic screening of their counterparties and trades.

World-wide screening

- In dealing with listed entities, the US and EU sanctions apply to world-wide trading and are not limited to transactions involving the movement of goods and services to or from Iran.
- Accordingly Members, as part of a systematic approach, should therefore consider screening all counterparties on a world wide basis, including any financial institutions involved (whether merely as a conduit or a finance party).

Screening for direct or indirect transactions with targeted entities.

- Targeted entities under US sanctions include any entity owned or controlled by targeted entities. The definitions used in various US Sanctions legislation are not entirely consistent and while the threshold therefore varies depending on the basis of designation, a conservative working definition according to guidance issued by OFAC is that: “owned” means 50% or more equity interest or a controlling minority interest. “control” means controlled in fact. For the OFAC Guidance note please click [here](#)
- Under EU sanctions, transactions with targeted entities include transactions “directly or indirectly, to or for the benefit of” a targeted entity. [EU Regulation 267/2012 Article 23 (3)]. However no further guidance on this definition has been provided so far.

Screening for suspicious information

- Members should be alert in their diligence for other indications that the transaction may be an attempt to circumvent applicable sanctions. For example:
 - Payment terms involve moving money through a country/entity that has no relationship to the transaction.

- Goods/quantity of goods destined for a third-country which are not the type of goods used in that country (for example the carriage of heavy mining equipment to a country that does not have a mining industry).
- Charterers or counterparties that are not known or appear unfamiliar with the trade.
- Where Charterers instruct STS operations at unusual locations or unusual vessels.
- Where Charterers order an unusual switch of bills of lading.
- Such suspicious information can often be explained, but should be cause for further diligence.

Record keeping.

- It is critical that members keep detailed records of the above screening and diligence.
 - OFAC officials have been clear that if there is no written record of diligence efforts/screening, then they will assume that none has been done.

SUMMARY OF EU AND US SANCTIONS BY TYPE OF CARGO

a) Crude Oil - Petroleum Products - Petrochemical Products - Natural Gas

EU Sanctions

- Under EU Regulation 267/2012 (as amended by Regulation 1263/2012), the following transactions are sanctionable:
 - Carriage or storage of crude oil, petroleum products, petrochemical products and natural gas from Iran or originating in Iran (and the insurance thereof).
 - This prohibition applies worldwide to EU Persons and to any person or entity when there is an import in to the EU.
 - For a definition of “EU Persons”, see the above Section “*EU and US Sanctions – where and to whom applicable*”.
 - Members who are non-EU subjects and who are considering a carriage of these products outside the EU should however bear in mind that EU Regulation 267/2012 also prohibits the insurance of such carriage by the Association.

[Article 11,12&13 of Regulation 267/2012 and Article 14a of Regulation 267/2012 as inserted by Article 1(9) of Regulation 1263/2012]

- Making available vessels designed for the transport or storage of crude oil, petroleum and petrochemical products to:
 - (a) any Iranian entity
 - (b) any other entity unless the providers of the vessels have taken appropriate action to prevent the vessel from being used to carry or store oil or petrochemical products that originate in Iran or have been exported from Iran

[Article 37b of Regulation 267/2012 as inserted by Article 1(19) of Regulation 1263/2012]

- Definitions:
 - Definitions and lists of targeted “petroleum products” and “petrochemical products” can be found in Annex IV and V of Regulation 267/2012.
 - Definitions of what amounts to targeted “natural gas” can be found in Annex IV A of Regulation 1263/2012.
 - For Regulation 267/2012 click [here](#). For Regulation 1263/2012 please click [here](#).

- Members who are minded to transport or store other types of petrochemical or petroleum products because they are not covered by the EU sanctions, should take detailed expert advice to be certain that the goods are not sanctionable.
 - For example, whilst some cargo is not described as sanctionable (such as LPG), the components of the cargo could be listed.
 - The product may still be targeted by the US sanctions (See below)
 - In particular if the contract is ongoing, the product may be sanctionable by future EU/US sanctions.
- Exceptions:
 - Earlier versions of the EU Sanctions provided for grace periods. These have now expired.
 - One very specific (and limited) exception, which is still available permits the carriage of crude oil, petroleum products or petrochemical products which are under specific contracts for barter concluded before 23 January 2012 [article 12(1) of Regulation 267/2012 as amended by Regulation 1263/2012]

US Sanctions (also applicable to non-US Persons)

- Importing liquid products into Iran. US sanctions legislation makes sanctionable the carriage or storage (and the insurance thereof) of:
 - Refined petroleum products
[Section 5 (a) Iran Sanctions Act 1996 as amended by CISADA 2010 Section 102 (a)]
- Exporting liquid products from Iran: US sanctions legislation makes sanctionable the carriage or storage (and the insurance thereof) of:
 - Crude Oil
 - Petroleum products
 - Petrochemical products[Section 2 of Executive Order 13622 of 30 July 2012]
- Definitions
 - Members should bear in mind that that the definitions of what amounts to targeted, “crude oil,” “petroleum products” and “petrochemical products” under US Sanctions and EU Sanctions are not necessarily the same.

- The relevant US definitions are re-printed in a Guidance note issued by the US State Department (Public Notice 8086 of 8 November 2012) which can be found by clicking [here](#).
 - Members who are minded to transport or store other types of petrochemical or petroleum products because they are not covered by the US sanctions, should take detailed expert advice to be certain that the goods are not sanctionable and should be aware that the product may still be targeted by the EU sanctions or may be sanctionable by future EU/US legislation - in particular if the contract is ongoing.
- Exceptions.
 - The above prohibitions are subject to financial thresholds and waivers; in case of export to certain countries the application of the thresholds and waivers are complex and Members should obtain specialist legal advice.
 - However, in practical terms, since under EU sanctions there is a blanket ban on the export of a similar range of cargo (and the insurance thereof) these thresholds or other waivers may not be of practical benefit.

Concealing Iranian origin of crude oil and refined petroleum products

- Pursuant to US Sanctions legislation, if a vessel is used in a manner that conceals the Iranian origin of crude oil or refined petroleum products being transported, a “controlling beneficial” owner is subject to sanctions if it had actual knowledge that the vessel was so used and anyone who otherwise owns, operates, controls or insures the ship is subject to sanctions if they knew or should have known.
- In particular, the U.S. is aware and has targeted for sanctions foreign ship-owners who allow their vessels to be used to load Iranian crude oil offshore in an attempt to disguise the origin of the oil. Other parties to such transactions are also subject to sanction under other US sanctions laws.

[Section 202 of the Iran Threat Reduction and Syria Human Rights Act 2012]

- Definitions
 - “Conduct representing concealment” is not defined, but is stated to include permitting a vessel to suspend the operation of its satellite tracking device.
 - “Concealing” also includes obscuring or concealing the ownership, operation or control of a vessel by the Government of Iran, the National Iranian Tanker Company, or IRISL, or any other entity determined by the U.S. to be owned or controlled by any of these three. A person is deemed to have actual knowledge that a vessel is so owned, operated or controlled if a vessel appears on the list of Specially Designated Nationals published by OFAC and updated regularly.
 - For a copy of the Iran Threat Reduction and Syria Human Rights Act 2012 please click [here](#)

b) Urea, Coal, Graphite, Raw or semi finished metals

EU Sanctions

- Under EU Regulation 267/2012 (as amended by Regulation 1263/2012) the carriage (and the insurance thereof) directly or indirectly for delivery to any Iranian person or entity world-wide or for use in Iran of the following is sanctionable:

- (i) graphite,
- (ii) raw or semi finished metals

[Article 15a Regulation 267/2012 as inserted by Article 1(10) of Regulation 1263/2012]

- Definitions
 - Definitions and lists of the targeted metals can be found in Annex VII B of Regulation 1263/2012.
 - The list can be accessed by clicking [here](#).
 - The list includes iron, steel, copper, nickel, aluminium, lead zinc, tin and other base metals, and articles thereof (including waste and scrap).
 - The list includes the corresponding HS number of the products listed. Members if in doubt should request from their counterparties the HS number so that it can be cross checked against Annex VII B and expert advice obtained in case of a potential misrepresentation. The HS number refers to the Harmonized Commodity Description and Coding System (HS) which is an internationally standardised system of names and numbers for classifying traded products developed by the World Customs Organization (WCO) which has over 170 member countries.

US Sanctions (also applicable to non US Persons)

- By contrast with the current EU sanctions, the current US sanctions legislation targets the shipment of urea in view of it use in the petrochemical industry.
- Under Section 1245 of the National Defence Authorisation Act 2013 (NDAA 2013), which will come into force on 1st July 2013, the carriage (and the insurance thereof) of:
 - (i) graphite,
 - (ii) raw or semi finished metals such as aluminum, steel & coal

directly or indirectly to or from Iran is sanctionable if those materials are:



(i) to be used in connection with the energy, shipping or shipbuilding sectors in Iran, or any other sector of the economy of Iran determined to be controlled directly or indirectly by Iran's Revolutionary Guard Corp, or

ii) sold, supplied or transferred to an Iranian person on the SDN list, or

iii) to be used in connection with the nuclear, military or ballistic missile programs of Iran as determined by the President.

- Definitions

- The US authorities are to issue by 1st July 2013 and every 180 days thereafter, further details of the targeted materials (and any waivers) and on the sectors determined to be controlled directly or indirectly by Iran's Revolutionary Guard Corp.

- For a copy of Section 1245, please click [here](#) .

c) Other bulk cargoes

- Save for cargoes referred to above, neither current US sanctions (to the extent that they apply to non-US Persons) nor EU sanctions target at the moment the carriage of bulk commodities (including bulk agricultural products) to or from Iran or to Iranian entities.
- However, Members considering engaging in such trades should consider a number of caveats including:
 - **Screening of counterparties.**
 - The restrictions on dealing with targeted entities as published by the US and EU need to be observed (See the section above: “*Screening of counterparties targeted by EU and US sanction regimes*”).
 - **US Goods.**
 - The US measures (which are in this respect also applicable to non-US Persons) render sanctionable direct and indirect supplies to Iran of goods of U.S.-origin, unless specific or general licenses have been provided by OFAC (See further below in this Section for US Bulk Agricultural commodities).
 - US goods include foreign made goods containing more than 10% US origin content by value.
 - **Bulk Agricultural commodities when US persons and/or US goods are involved in the transaction.**
 - Transactions where US persons or US goods are involved remain sanctionable under US law but OFAC’s general licenses allow US persons to export or re-export to Iran certain food items (including bulk agricultural commodities, medicines and basic medical supplies) without further specific authorization.
 - Under the OFAC general license, it may be that a transaction can also be concluded even if any of the counterparties appear on the SDN list. However this depends on the reason of the designation. For, example, if a counterparty is designated with the tag NPWMD, (“Non-Proliferation of Weapons of Mass Destruction), SDGT/SDT (“Specially Designated Global Terrorist”) or IRGC (“Iranian Revolutionary Guard Corp”) the general license will not apply. However transactions involving some Iranian banks listed on the SDN list would be allowed. Members are advised to obtain further clarifications from their counterparties and/or seek specialist advice on whether a proposed carriage is permissible under the OFAC general license, or whether their counterparties should have obtained a special OFAC license.
 - A list of agricultural bulk commodities can be found at Appendix B to 31 C.F.R. Part 560. For the list please click [here](#). Members should note that fertilizer is not included. The list is subject to amendments and Members are advised to obtain further clarifications from their

counterparties and/or seek specialist advice on whether a proposed carriage is permissible under the OFAC general license current at the time, or whether their counterparties should obtain a special OFAC license.

- Financial Restrictions.

- The US restricts the financial transactions that US and non-US financial institutions may engage in, directly or indirectly, with Iranian institutions. Similar measures are in place by EU sanctions.

- For example, US banks are not authorized, absent a special license, to process US Dollar or other payments for shipments of bulk agricultural commodities by non-U.S. Persons, even though the underlying transaction is covered under a general OFAC license (see above) and does not violate U.S. sanctions.

- The US authorities have indicated that companies who do not qualify as an US Person and who engage in transactions which are legitimate under the laws of the countries to which they are subject may still be subject to penalties if as a result of such transaction, they cause US Persons to be in breach of US Sanctions. An example would be when a non-US Person carries out a transaction involving Iran or an SDN (and which would be sanctionable if the company was an US person) which involves US dollar payments and attempts are made in the payment instruction to conceal the fact that the underlying transaction has a connection to Iran or an SDN.

- Members should also be aware of the widening practice of banks with a global presence to cease any involvement with customers whom they suspect of engaging in transactions relating to Iran (even permissible transactions as far as the Member is concerned), and which could trigger sanctions against the banks.

- P&I Cover.

- In case of liabilities arising in Iran involving P&I, there may be particular delays or other difficulties encountered in releasing the Members' ships and in settling liabilities (in particular if the claimant is or is potentially owned or controlled by an Iranian individual or entity targeted under US and EU sanctions).

- See the section below: "*Trading with Iran and effect of P&I cover*".

- Port Restrictions.

- See the section below "*Restrictions on use of port facilities operated by Tidewater and other ports in Iran*".

- Dual purpose Cargo.
 - See the section below: “*Manufactured and Dual Purpose Cargo*”.
- Protective Clauses.
 - Additions or amendments to existing sanctions legislation are often made at short notice by the EU or US. Members should therefore consider, if commercially feasible, the insertion into their contracts of protective clauses allocating the risk of cargo or parties becoming sanctionable.
 - See the section below: “*Protective clauses*”.

d) Manufactured and Dual Purpose Cargo

EU Sanctions

- EU Regulation 267/2012 (as amended by EU regulation 1263/2012) renders sanctionable the carriage of a number of specialist and dual purpose cargoes for use in Iran and lists in the annexes the targeted goods which include:
 - (i) Key equipment or technology which could be used in the oil, gas and petrochemical sectors of Iran;
 - (ii) Key equipment or technology for ship-building, maintenance and re-fit;
 - (iii) Specialist armament, military equipment or material which could be used for internal repression (listed often by reference to the EU military list).
- The annexes in these EU Regulations are complex and Members considering such trades or requested by Charterers to engage in them should obtain further specialist advice and clarifications from their counterparties as to whether the cargo is targeted by the legislation or not; and as to its end use.
- For Regulation 267/2012 click [here](#). For Regulation 1263/2012 please click [here](#)

US sanctions (also applicable to Non-US Persons)

- US Sanctions legislation also renders sanctionable the carriage (and the insurance thereof) of a number of specialist and dual purpose cargoes:
 - (i) cargo that could directly and significantly facilitate the maintenance or enhancement/expansion of Iran's ability to develop petroleum resources located in Iran (e.g. crude oil exploration, drilling), or domestic production of refined petroleum products (e.g. refining), including any direct and significant assistance with respect to the construction, modernisation or repair of petroleum refineries. This specifically includes construction of port facilities, railways and roads the primary purpose of which is to support the delivery of refined petroleum products. [Section 5(a) (5) Iran Sanctions Act 1996 as amended by the Iran Threat Reduction and Syrian Human Rights Act 2012 and CISADA 2010]
 - (ii) cargo where a person knew or should have known that the cargo would be exported, transferred or transshipped to Iran "could materially contribute to the ability of Iran to (a) acquire or develop chemical, biological, or nuclear weapons; or (b) acquire or develop destabilizing numbers and types of advanced conventional weapons. [Sections 203 and 211 Iran Threat Reduction and Syria Human Rights Act 2012]
 - (iii) cargo that could directly and significantly contribute to the maintenance or expansion or Iran's domestic production of petrochemical products. [Section 5(a) (6) Iran Sanctions Act 1996]

- (iv) certain other goods such as those used to repress free speech or monitor communication in Iran. [Sections 402 of Iran Threat Reduction and Syria Human Rights Act 2012] adding 22 USC 8514 (a) and Section 412 adds definitions]
 - (v) Under new US Sanctions legislation which will come into force on 1st July 2013, “knowingly providing significant, material, technological or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of the energy, shipping or ship building sectors of Iran” will also become sanctionable. This includes the insurance of such transactions. Further regulations are anticipated to be enacted defining those sectors and also describing the types of goods and services that will be deemed in connection with these sectors. [Section 1244 of the National Defence Authorisation Act 2013].
 - (vi) significant goods used in connection with Iran’s automotive sector. The automotive sector of Iran is defined as the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles [Executive Order dated 3 June 2013]
- The US legislation in respect of the these trades is complex and Members considering such trades or requested by Charterers to engage in them should obtain further specialist advice and clarifications from their counterparties as to whether the cargo is targeted by the legislation or not and as to its end use.

e) Bunkers originating in Iran

EU sanctions

- Bunkering in Iran remains prohibited unless the vessel has to call in Iran due to force majeure. [Article 11 (d) Regulation 267/2012 and Article 12 (e) Regulation 267/2012 as inserted by Article 1(7) of Regulation 1263/2012]
- The purchase of bunkers outside Iran if the bunkers originate from Iran or are blended with product originating from Iran, is not sanctionable. [Article 12(f) Regulation 267/2012 as inserted by Article 1(7) of Regulation 1263/2012]

US Sanctions

- The sanctions regarding purchase of Iranian petroleum product, unfortunately, do not expressly exclude the purchase of bunkers. Accordingly, Executive Order 13622 of 20 July 2012 which renders sanctionable (albeit subject to waivers and financial thresholds) the purchase of petroleum products originating from Iran could in theory apply.
 - Accordingly, informal guidance from the US State Department indicates that Owners when purchasing bunkers outside Iran still need to show due diligence that they do not knowingly make significant purchases of bunkers which originate from Iran or which contain blended product from Iran. Due diligence is likely to mean here Owners showing that they made inquiries with the bunker supplier/broker about the origin of the bunkers; and it is recommended that this should include a confirmation from the bunker supplier that to their knowledge, the bunkers to be supplied are not of Iranian origin or blended with product originating from Iran.
 - Legal advice has also indicated that if the supplier is not able to confirm that the product originated from Iran or was blended with product from Iran Owners can proceed absent unusual factors on the basis that they are not “knowingly” purchasing bunkers which originate from Iran.

Restrictions on the use of port facilities operated by Tidewater Middle East Co and other targeted entities in Iranian ports

EU and US Sanctions against Tidewater Middle East Co

- Both the US and EU list of targeted entities include Tidewater Middle East Co.
- Tidewater Middle East Co is a port operating company in Iran and is reportedly owned by targeted entities including Mehr Bank and the Iranian Revolutionary Guard Corps. Tidewater Middle East Co is not connected with Tidewater Inc, a well known provider of offshore services. According to the US Department of Treasury, Tidewater Middle East Co operates in the following ports:
 - Bandar Abbas (Shahid Rajaei Container Terminal)
 - Bandar Imman Khomeini Grain Terminal
 - Bandar Anzali
 - Khorramsar Port (one terminal)
 - Assaluyeh Port
 - Aprin Port
 - Amir Abad Port Complex
- The Association is unlikely to be able to assist with the payment of claims or with the provision of security directly or indirectly for the benefit of Tidewater Middle East Co, for example in connection with damage to the port facilities it owns. (See the section below: *“Trading with Iran and effect on P&I cover”*)
- The provision of material goods, services, etc. to Tidewater could be sanctionable under U.S. law (e.g. providing materials for improvement of Tidewater facilities, selling Tidewater a tugboat, etc.). To date the U.S. has not sanctioned vessel operators for merely calling on Tidewater facilities (but see the section below: *“Reporting”*)

Reporting

- Under new US sanctions legislation which will come into force on 1st July 2013 (Section 1252 of the National Defence Authorisation Act 2013), the US authorities will publish lists of vessels that have called at ports controlled by Tidewater in the previous 180 days. The publication will facilitate further investigations by the US authorities.
- This could demonstrate the focus of US authorities on international maritime trade with Iran, and the increased negative publicity associated with appearing on this list may cause some shipowners to refuse all calls to Iran, even if those calls are not sanctionable by applicable sanctions (e.g. where no payment is made to Tidewater and neither the cargo nor the counterparties are targeted).
- It is likely that the relevant authorities are monitoring in any event AIS data.

Other port facilities in Iran directly or indirectly owned by targeted entities

- Members should also bear in mind that the Association is unlikely to be able to assist with the payment of claims or with the provision of security directly or indirectly for the benefit of entities which are directly or indirectly owned by targeted entities (which include the Iranian Revolutionary Guards or insofar US targeted entities are concerned, the Iranian Government).

Providing significant support to port operators in Iran

- Under new US Sanctions legislation which will come into force on 1st Jul 2013, “*knowingly providing significant, material, technological or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit*” of *port operators in Iran*” will also become sanctionable [Section 1244 of the National Defence Authorisation Act 2013]. No formal guidance has been provided by the US authorities on whether calling at an Iranian port constitutes “providing significant” support but this is likely to depend on the nature and the value of the cargo and any payments. Informal guidance from the US authorities to the International Group indicates that, at the moment, routine calls to Iranian ports with non sanctionable cargo would generally not fall within the scope of providing significant support to an operator of an Iranian port.

Trading with Iran - Effect on P&I cover

Provision by the Association of security in Iran or to Iranian entities

- In the event of a claim being brought against a Member by any entity targeted by the sanctions legislation to which the Association is subject, the Association would unlikely to be able to provide security (either directly or indirectly).
- Current guidance from the UK Treasury indicates that the provision of security to non-targeted Iranian entities is not subject to prior government authorisation.
- However, authorisation would still be required for any payment (or reimbursement of any payment made by a Member) to an Iranian entity or involving an Iranian Bank which exceeds EUR40,000 or equivalent. Such authorisation may be subject to further investigations into whether the payment contributes to sanctionable activities. It would be improper for the Association to provide security without reference to such restrictions on payment under it and the likelihood of a claimant accepting such “conditional” security must be uncertain at best.

Payment of or reimbursement of claims arising in Iran or made by Iranian entities

- In addition to prior authorisation by the UK Treasury for payments which exceed the equivalent of EUR 40,000 to an Iranian entity or involving an Iranian bank, many international banks have imposed further far-reaching restrictions on processing payments connected with Iran or Iranian entities. EU banks are also sanctionable when engaging in business relationships with Iranian banks.
- This not only has an impact on Members’ own ability to make or receive payments linked with such entities in operational situations, but it may also affect the Association’s ability to pay service providers, to assist with the provision of bank guarantees or to pay claims to lawful third parties without the prior agreement of the bank in question, which will be subject to the criteria applied by it at the time. In view of the wide and often vague criteria applied by some of the international banks, it can not be guaranteed that such prior agreement can be obtained in every instance and without delay.
- If the payment or financial transaction involves US banks or the US financial system, the payment is likely to be rejected or frozen by the US financial institutions involved.

Shortfall in recoveries under the Association’s re-insurances

- Cover may be reduced by shortfalls in recoveries under the Association’s re-insurances. The Association’s re-insurers and pooling partners of the Association may be subject to sanctions regimes to which the Association is not subject, but which prevent them from making payments in respect of claims or underlying transactions which are legitimate according to the laws to which the Member and Association are subject. In such a situation, Members are entitled under the Rules to recover the net amount actually recovered under such reinsurance or pooling arrangements together with that portion of the risk retained (if any) by the Association.

Sanctionable transactions and P&I cover

- Under the Rules, cover is not available and claims are not payable in circumstances where the Association is at risk of incurring sanctions by providing the insurance or reimbursing the claim. Also, the Association may not be able to permit the entry of a ship to continue (or to permit a new entry) if it considers that the entry gives rise to an increased risk to the Association of incurring sanctions.

Penalties under EU and US Iran sanctions legislations

EU Sanctions

- EU regulation 267/2012 leaves it to the individual Member States to lay down the rules on penalties applicable to infringements. [Article 47 of Regulation 267/2012]
- Accordingly there is no matrix of EU penalties and the actual penalties will depend from Member State by Member State.
- By way of indication, the penalties implemented by the UK are a potentially unlimited fine and up to 2 years in prison. [Regulation 21 of UK SI 2012 No. 925]. For SI 2012 No 925 please click [here](#)

US Sanctions

- The nature and severity of the sanction depends on the particular legal basis for the violation.
 - For violations with a clear US nexus (e.g., involving US goods, US persons, etc), the US can impose civil penalties of up to \$250,000 or twice the amount of the transaction (whichever is greater), with higher criminal penalties for intentional violations.
 - For violations of extraterritorial sanctions, typically the US will impose sanctions from a list of specific sanctions, some of which may be of little practical consequence to a foreign entity (e.g. prohibiting US persons from participating in US Export Import Bank Financing) to severe penalties such as designating that entity as a SDN.
 - Even for entities with no US business, the US has used the designation of entities as SDN as a very powerful tool to enforce compliance with US sanctions. Any entity that is designated an SDN is essentially shut out of the worldwide financial market and the devastating effects on such entity's business cannot be overstated.

Protective clauses

- Customary hold harmless provisions do not necessarily shield Members from the criminal and other penalties which some sanction regimes can impose in case of breach.
- Protective clauses by which counterparties confirm that they are not designated entities under EU and US sanction legislation and that they are not acting on behalf of or that they are not directly or indirectly owned by entities which are designated entities under such legislation are helpful, but unlikely to absolve Members from a requirement to make their own inquiries.
 - In this respect Bimco has recently developed a model clause (“Bimco Designated Entities Clause for Charterparties”).
- Protective clauses which oblige charterers to provide, in advance, cargo and counterparty details as required for Members’ sanctions screening purposes are also useful.
- Although Members normally have an implied right to verify the legitimacy of Charterers’ orders as regards cargo and counterparties, it is useful (if commercially feasible) to incorporate clauses which allocate the risk of delay in the performance of the charter or bill of lading contract due to the screening process.
- Sanctions clauses which have been developed by industry bodies such as Bimco and Intertanko, whilst useful, offer only limited protection in the sense that they generally deal with the validity of voyage instructions and/or consequences of sanctions legislation which is introduced after a relevant employment has been commenced. They do not discharge the parties from their obligations to screen their counterparties and, where relevant, the intended cargo, against sanctions legislation which is already in place before the commencement of the employment.
- Although the clauses developed by Bimco require Charterers to procure that the protective clause is also incorporated into all sub charters and bills of lading, Members should also ensure that such steps are effectively taken (in particular as far as the bills of lading are concerned).
- Members who are EU subjects and involved in the tanker trade should also bear in mind the obligation under EU sanctions legislation to undertake appropriate measures to prevent vessels being made available by their charterers for the carriage or storage of oil or petrochemical products that originate in Iran or have been exported from Iran [Article 37b of Regulation 267/2012 as amended by Regulation 1263/2012]. Although no further official guidance has been provided, it appears that in order to comply with this obligation, Members should ensure the presence of express wording in their charterparties which reflects this obligation. This could include an express reference in the cargo exclusion clauses to “cargo which originates in Iran or has been exported from Iran,” as well as an exclusion of Iran from the trading limits.

Disclaimer

- This briefing summarises EU and US legislation in respect of trades involving Iran but Members may also be affected by sanctions legislation applied by other States to which they are subject.
- EU and US Sanctions legislation and lists of entities and transactions designated as targets are often added to or otherwise amended at short notice. Members should not act in sole reliance on the information provided here as it is necessarily a summary in nature, whereas sanctions analysis is often very much dependant on the facts, circumstances, including parties involved in a particular voyage or other transaction.
- Members should make their own enquiries and where necessary obtain independent advice in respect of the sanctions legislation in the jurisdictions to which they are subject and this briefing should not be construed as legal advice or a determination of cover given in particular circumstances by the Association.

June 2013