

2 March 2011

TO ALL MEMBERS

Dear Sirs

Trade Sanctions and their effect on P&I Cover

During the course of 2010 the Association issued three circulars (5:403, 5:410 and 5:411) informing Members of trade sanctions legislation introduced in the USA and Europe in relation to Iran. Following the adoption of Resolution 1929 by the United Nations Security Council in June 2010, other States have also been expanding their sanctions regimes and no doubt Members will wish to ensure they comply with whatever legislation may be applied by their Flag States and in any other States whose jurisdictions they are subject to.

Members will also wish to be mindful of the fact that even if they are not obviously subject to US jurisdiction, the US sanctions referred to in circulars 5:403 and 5:410 are designed to apply not only to US companies, but also to have extra-territorial effect, so assets and financial transactions of non-US members, involving the USA may nevertheless be vulnerable to the sanctions. It should be borne in mind that dollar and even some other currency payments that do not seem to involve the USA may pass via banks in that country.

It should also be noted that in addition to applying sanctions in respect of specific trades, an increasing number of States are taking action in accordance with Resolution 1929 and prohibiting their citizens and corporations from engaging in transactions with listed persons and entities said to be assisting Iran.

Members should be aware that sanctions applied by some States are not only targeted at Iran. For example, in the case of the USA the list of “designated” entities (which can be found via: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) is geographically extensive.

It is clear from Resolution 1929 that the Security Council believes that hampering access to insurance is a particularly effective means of exerting pressure on Iran. The earlier Circulars explained that the Association would be potentially affected by the US sanctions and although there was initially some uncertainty over whether the EU sanctions anticipated at the time would concern insurers, it later emerged that the Association would be affected by pre-existing EU legislation prohibiting payments to a growing list of “targeted” Iran-related entities.

That would not only prevent the Association from giving guarantees in the event of a Member incurring a claim from a targeted entity, but an indirect payment by means of indemnification, under the Rules, of such a Member who has paid a claim of such an entity might also be prohibited. Accordingly it became clear to the Committee that a new Rule would need to be introduced excluding cover in respect of claims that, if paid, would put it in breach of the legislation and result in sanctions being imposed on the Association.

Other Club members of the International Group have also been addressing similar issues that arise in their own circumstances, but the Group has needed, in addition, to do so collectively, because the necessarily diverse reinsurers of its claims pooling system are also potentially affected by the sanctions, in some cases more extensively, if they are subject to US law and are prohibited from making payments indirectly to the geographically much wider range of entities designated by the USA. This mismatch between sanctions applicable to Clubs themselves and to their reinsurers is also not necessarily limited to those of the latter who are subject to US law. Without Clubs being protected, there is a danger of them being required to pay a claim permissible under the laws applicable to them, but not recoverable from reinsurers prohibited to pay by the laws applicable to them (including members of the Pool itself), so leading to an undue strain on solvency. Accordingly it was also clear to the Committee that the exclusion from the Association's cover referred to above would need to be extended to involve any parts of claims not recoverable from the Pool and its reinsurers (and that similar Rules would be needed for the Freight, Demurrage and Defence Class).

Members will have received notice of the Class meetings that took place on 26th January 2011 which set out the Rules that were for consideration in order to provide the Association with the necessary protection. The final versions of the Rules that will apply for the 2011 policy year are different in some minor respects and can be found overleaf.

The Committee recommended adoption of these Rules at the Class meetings with regret, since the changes involved cover being restricted, but it was obviously necessary to ensure that the Association was complying with the law and that its solvency was being protected.

Further information about sanctions can be found in the news section of the Association's website and this includes links to the sanctions legislation which affects the Association directly. A large number of its reinsurers will be affected by that same legislation and/or the US sanctions. Members may wish to be conscious of the types of trade that, if engaged in, could put them at risk of their P&I cover being curtailed.

Yours faithfully
A BILBROUGH & CO LTD
(MANAGERS)

SANCTIONS RULES 2011/12

- 13.3** There shall be no recovery by an Assured in respect of any Ship entered by him for any liability, loss, damage, cost or expense where the provision of cover or any payment in respect thereof exposes or may expose the Association or the Managers to being or becoming or to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state, international organisation or other authority which sanction, prohibition or adverse action the Committee in its sole discretion determines may materially affect the Association in any way whatsoever.
- 31.2** The Assured shall not be entitled to recovery in respect of that part of any liability, loss, damage, cost or expense which is not recovered by the Association under the Pooling Agreement, Group General Excess Loss Contract or any reinsurance(s) arranged by the Association because of a shortfall in recovery from such parties or reinsurers thereunder by reason of a sanction, prohibition or adverse action against them by a state, international organisation or other authority or the risk thereof if payment were to be made by such parties or reinsurers. For the purposes of this Rule 31.2, "shortfall" includes any failure or delay in recovery by the Association by reason of such parties or reinsurers making payment into a designated account in compliance with the requirements of any state, international organisation or other authority. The provisions of this Rule 31.2 shall cease to apply in respect of any shortfall to the extent the same is subsequently recovered by the Association under the Pooling Agreement, Group General Excess Loss Contract or any reinsurance(s) arranged by the Association.