IRAN - IMPACT OF SANCTIONS

OVERVIEW OF LEGISLATION AND REGULATIONS

UPDATED 9th NOVEMBER 2010

There follows an overview of the current legislation and regulations currently affecting, or with the potential to affect, the Club and its Members.

United Nations Security Council Resolution 1929 (2010)

On 9th June 2010 the UN Security Council adopted Resolution 1929 imposing further measures designed to counter Iran's nuclear proliferation activities. These measures include:

- A ban on the direct/indirect supply, sale, or transfer to Iran of specified arms, equipment, artillery and missile systems (prohibited items) and training, financial or other services or advice relating to the supply, use etc. of such arms and related materiel; (paragraph 8).
- The inspection of all cargo to/from Iran if there are reasonable grounds to consider it contains prohibited items; (paragraph 14).
- Inspections of vessels on the High Seas (with the consent of the flag State) if there are reasonable grounds to suspect the vessel is carrying prohibited items, with power to seize and destroy prohibited items, (paragraphs 15 and 16).
- A ban on the provision of fuel or supplies or other servicing of Iranian owned or chartered vessels, if there are reasonable grounds to believe they are carrying prohibited items; (paragraph 18).
- The addition of specified "designated persons," whose funds, financial assets and economic resources to be frozen (pursuant to UN Resolution 1737 (2006)), and the freezing of assets of persons or entities acting on behalf of designated persons or at their direction, or those of entities owned or controlled by designated persons, including through illicit means; (paragraph 19).
- The reporting to the Committee of the UN Security Council (the Committee) of any information available on transfers or activity by vessels owned or operated by IRISL to other companies, that may have been undertaken to avoid UN sanctions/resolutions, including the renaming of ships; (paragraph 20).
- A ban on the provision of financial services, including insurance or re-insurance or any financial or other assets or resources if there are reasonable grounds to believe the services, assets or resources could contribute to Iran's proliferation-sensitive nuclear activities; (paragraph 21).
- All States shall require their nationals, companies incorporated in and persons/firms subject to their jurisdiction to exercise vigilance when doing business with Iranian entities, including

IRISL, and any individuals or entities acting on their behalf or at their direction, and entities owned or controlled by them, including through illicit means, if there are reasonable grounds to believe that such business could contribute to Iran's proliferation-sensitive nuclear activities or development of nuclear weapons or the violation of existing UN Resolutions; (paragraph 22).

- All State, UN bodies and "other interested parties" to co-operate fully with the Committee in particular by supplying relevant information on the implementation of the various existing UN Resolutions and incidents of non-compliance, (paragraph 30).

United Kingdom and Bermuda

The Financial Restrictions (Iran) Order 2009

Pursuant to the Financial Restrictions (Iran) Order 2009 (the "2009 Order"), Steamship Bermuda (the Club) was directed by HM Treasury (HMT) to cease all business relationships with IRISL with effect from 30th October 2009, subject to the terms of any HMT licences issued in relation to the run-off of Class 1 claims arising prior to the cessation date and liabilities arising under Blue Cards. Similar legislation in Bermuda, the Anti-Terrorism (Financial Restrictions Iran) Order 2010 came into effect on 15th January 2010.

HMT Financial Sanctions Notification – 2007 Order

On 10th June 2010 HMT issued a Financial Sanctions Notification (the Notice) giving effect to UN Resolution 1929 (2010). The Notice referred to the pre-existing Iran (Financial Sanctions) Order 2007 (the 2007 Order). Pursuant to UN Security Council Resolution 1929 (2010), Irano Hind Shipping Company was added with immediate effect as a designated person for the purposes of the 2007 Order, which makes it a criminal offence for anyone to deal with funds and economic resources owned, held or controlled directly or indirectly by a designated person, or to make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person. Equivalent provisions with respect to the assets of designated persons are set out in a Bermudian Order, The Iran (United Nations Measures) (Overseas Territories) Order 2007 which is binding on Bermuda-incorporated companies.

The European Union - Recent EU Legislation

- EU Regulation 668/2010 dated 26th July 2010 designated further specified entities for the purposes of asset freeze pursuant to EU Regulation 423/2007, including IRISL and all its branches and subsidiaries.
- HMT Notice dated 27th July 2010 implemented EU Regulation 668/2010.

- EU Council Decision dated 26th July 2010 implemented the measures of UNSCR 1929 and in some cases went further. The Decision is binding on Member States only and requires further implementing legislation to bind individuals/entities within Member States.
- EU Regulation 961/2010 published 27th October 2010 implements the substance of the EU Council Decision.

EU Regulation 961/2010- Summary:

This EU Regulation came into immediate effect from the date of its publication, on 27th October 2010. The Regulation has incorporated (and expanded) the provisions relating to asset freeze which were contained in Regulation EC No. 423/2007 which is now repealed. The new Regulation provides for restrictive measures against Iran further to the Council approved decision in July 2010, in particular:

- Additional restrictions contained in Articles 2-9 on trade in, and the provision of technical assistance or brokering services in relation to dual-use goods, technology and equipment which might be used for nuclear proliferation-sensitive activities, the development of WMD or internal repression. Lists of prohibited dual-use goods are set out at Annexes I -IV of the Regulation and also comprise all goods and technology in Annex I to Regulation EC no. 428/2009, with the exception of certain items in its Category 5.
- Restrictions contained in Articles 8 and 11 on trade and key equipment for, and on investment in, the Iranian oil and gas industry; a list of key goods and technology for use in the oil and gas sectors, the sale, supply, transfer or export of which is prohibited, is provided at Annex VI to the Regulation;
- Restrictions (Article 15) on Iranian investment in the uranium, mining and nuclear industry;
- Freezing of funds and economic resources (Articles 16-19). The regulation provides for additional categories of persons to be made subject to the freezing of funds and economic resources. Lists of designated persons and entities are set out at Annexes VII and VIII;
- Restrictions on transfers of funds to and from Iran (Articles 21-22).
- Restrictions concerning the Iranian banking sector (Articles 23,24).
- Restrictions on Iran’s access to the bonds markets of the EU (Article 25).
- Restrictions on the provision of insurance and reinsurance to Iranian entities (Article 26)
- Restrictions on transport (Article 27), in particular the requirement for declaration of cargo and the submission of pre-arrival and pre-departure information in relation to all goods brought into or leaving EU territory from or to Iran;
- Restrictions on providing certain services to Iranian ships and cargo aircraft (Article 28).
- It is left to Member States to prescribe effective, proportionate and dissuasive penalties for breach of the Regulation (Article 37).

<u>The issues of most concern to the Club and its Members are:</u>

(a) The scope of application of the Regulation (Article 39) which is very wide, applying to any person/ entity doing business in whole or in part within the territory of the EU, as well as applying to EU Nationals/EU domiciled companies and persons/entities physically present in the EU.

(b) The difficulty of identifying whether a Member is carrying a proscribed dual-use cargo intended directly or indirectly for any Iranian person entity or body or for use in Iran. Article 4 of the Regulation will put a Member subject to the Regulation in breach by mere transport <u>from</u> Iran of a proscribed item listed in Annexes I-III of the Regulation, whether it originates in Iran or not. The detailed lists are set out at Annex I of EU Regulation 428/2009 (some 200 pages); and annexes I-IV amd VI of the Regulation. The complexity of the description of many of the items might require expert evaluation. Broadly however, the prohibition encompasses dual-use goods, technology and equipment which might be used for nuclear proliferation-sensitive activities, the development of WMD or internal repression, as well as key equipment and technology listed in Annex VI for key sectors of the oil and gas industry in Iran. These sectors include:
(i) exploration of crude oil and natural gas
(ii) production of crude oil and natural gas
(iii) refining
(iv) liquefaction of natural gas.

(c) New declaration duties in respect of cargoes (Article 27) for all goods brought into or leaving the customs territory of the EU from or to Iran, which are subject to pre-arrival or pre-departure information to be submitted to the competent customs authorities of the Member State concerned.

(d) Restrictions on funds transfers to/from Iran (Article 21) may make it difficult for persons/entities subject to the Regulation to do business with Iranian entities. Transfers due on transactions regarding foodstuffs, healthcare, medical equipment or for humanitarian purposes, shall be carried out without any prior authorisation, but need to be notified if above Euro 10,000 or equivalent. Any other transfers of funds over Euro 10,000 or equivalent must be notified in advance in writing to the designated competent authorities of the Member States (a list is set out at Annex V); and transfers of or over Euro 40,000 require an application for prior authorisation. An application shall be deemed granted if the authority has not objected in writing within 4 weeks of the application. The relevant authority for the UK is HMT.

Article 21 applies to payments and claims settlements involving Iranian entities but it may also impact the provision of security, because the definition of “Funds” in the Regulation includes guarantees.

Although the Regulation is not entirely clear in this regard, it is likely that the provision of security by the Club for claims liabilties will be subject to the notification and authorisation provisions of Article 21. Whilst the provision of security by the Club is always discretionary in accordance with the Club Rules, Members should be aware that security cannot be provided for the benefit of a designated sanctions target and the terms of Article 21 probably prevent the Club from providing security for or on behalf of an Iranian Member, or to an Iranian claimant, if authorisation is refused, or at the very least may cause a delay of several weeks before such security can be provided. The provision of security (or indeed payment) to an Iranian entity may also infringe sanctions regulations applicable in a Member's own jurisdiction.

(e) A restriction on the provision of services, including supply and bunkering, to ships under direct or indirect Iranian ownership or control, if there are reasonable grounds to believe the ship is carrying prohibited items (Article 28).

(f) IRISL and the companies it owns or controls are identified as targets for asset freeze in Article 16, which also imposes a ban on loading and unloading cargoes on and from vessels owned or chartered by IRISL companies, in the ports of EU Member States. However the detention or impounding of such vessels, the contracted crew, and the cargoes carried is not required.

(g) In Article 26 there is a prohibition on providing insurance to Iranian companies and to a natural person or company (which could be outside of Iran) when acting "on behalf or at the direction of" such an Iranian company, entity or body. This raises issues of corporate control, although it has been clarified that "direction" does not include direction for the purposes of docking, loading or unloading, or safe transit of a vessel temporarily in Iranian waters. Further, the prohibition does not apply to provision of compulsory or third party insurance to Iranian persons, entities or bodies based in the EU. It is also permissible to insure or reinsure the owner of a vessel chartered by an Iranian company, provided that company is not designated for asset freeze in Annex VII and VIII of the Regulation.
Article 26.4 will permit insurers to comply with insurance and reinsurance contracts which incepted prior to the entry into force of the Regulation, but it will not be possible to renew or extend such contracts. The restriction on funds transfers may interfere with the performance of existing contracts.

United States Legislation

Pursuant to the **Iranian Transactions Regulations (ITR 31 CFR part 560)** Iran and the Government of Iran are subject to a near complete trade embargo by the US. In general, unless licensed by the Office of Foreign Asset Control (OFAC), goods, technology or services may not be exported, re-

exported, sold or supplied directly or indirectly from the US or by a US person wherever located to Iran or its Government.

Pursuant to **US Executive Order EO 13382** with effect from 10th September 2008, a number of Iranian shipping companies, including the Islamic Republic of Iran Shipping Lines (IRISL) and a number of its subsidiary and affiliated companies, became a Specially Designated National (SDN). US persons and companies, and persons and companies located in the US are prohibited from dealing with SDN's which would include the provision of insurance services to them. All property of the SDN in the US is blocked. The prohibition in Order EO 13382 is specifically targeted at the activities of identified Iranian companies and their vessels and does not extend to the wider shipowning community.

Further Designations pursuant to US Executive Order (EO) 13382

On 16th June 2010, the US Department of the Treasury announced measures implementing UN Security Council Resolution 1929 (UNSCR 1929) with an updated and expanded set of designations made pursuant to Executive Order (EO) 13382:

Post Bank of Iran; The Islamic Revolutionary Guard Corps (IRGC); individuals and entities with ties to Iran's WMD programs; and five (5) Islamic Republic of Iran Shipping Lines (IRISL) front companies, including the following three (3) Iranian based companies: Hafiz Darya Shipping Company (HDS Lines); Soroush Sarzamin Asatir Ship Management Company, and Safiran Payam Darya Shipping Co. (SAPID), as well as two (2) Hong Kong based companies affiliated with IRISL, Seibow Limited and Seibow Logistics Limited.

The Treasury also identified 27 new vessels as blocked property due to their connection to IRISL and updated the entries for 71 already-blocked IRISL vessels to identify new names given to those *vessels.*

Pursuant to the designations all transactions involving any of the designees and any US person are prohibited. Moreover any assets the designees may have under US jurisdiction, including but not limited to US dollar wire transfers, are frozen.

Of greater potential impact is new legislation amending the Iran Sanctions Act (ISA) of 1996 to enhance US diplomatic efforts by expanding economic sanctions against Iran.

Comprehensive Iran Sanctions, Accountability and Divestment Act 2010 ("CISADA") formerly known as Iran Refined Petroleum Sanctions Act ("IRPSA")

This Act came into force with effect from 1st July 2010. It imposes new trade sanctions and extends beyond the straightforward prohibition of importation/delivery of Refined Petroleum Products (RPP) into or to Iran as envisaged by the draft IRPSA Bills. There are also provisions for identifying countries of concern who permit the diversion through their territory of goods, service, and technologies to or through Iran to Iranian end users and/or intermediaries.

Under CISADA, sanctions could be imposed against both domestic and foreign entities (persons) who are determined on or after 1st July 2010 to have "knowingly"

1) Sold or provided refined petroleum products to Iran that have a fair market value of US$1 million or more, or during a 12 month period have an aggregate fair market value of US$5 million or more; and
2) sold, leased or provided to Iran goods, services, technology, information, services or support that individually have a fair market value of US$1 million or more, or during a 12 month period have an aggregate fair market value of US$5 million or more and that could directly and significantly:
   (a) facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernisation or repair of petroleum refineries;
   (b) contribute to the enhancement of Iran's ability to import refined petroleum products, including:
      (i) underwriting, or entering into a contract to insure or reinsure the sale, lease, or provision of such goods, services, technology, information or support;
      (ii) the financing or brokering of such sale, lease or provision; or
      (iii) providing ships or shipping services to deliver refined petroleum products to Iran.

The Act provides that sanctions are not to be imposed on underwriters and insurers/reinsurers exercising due diligence in establishing and enforcing official policies, procedures and controls to ensure that insurance or reinsurance is not provided for the sale, lease or provision of goods, services, technology, information or support that could directly and significantly contribute to Iran's ability to import RPP.

In the Act the term "knowingly" with respect to conduct, a circumstance or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance or the result.

"Refined Petroleum Products" means diesel, gasoline, jet fuel (including naphtha type and kerosene type jet fuel) and aviation gasoline.

"Persons" means a natural person, business enterprise, government entity operating as a business enterprise, financial institution, insurer, underwriter, guarantor, any other business organisation. This definition also includes a person that owns or controls a sanctioned person (e.g. a parent company), or a person that is under common ownership or control with a sanctioned person (corporate affiliates of a sanctioned person).

The wide scope of the wording of the Act could, in relation to shipping activity, include owners, charterers, managers, crew, and, in relation to insurance cover, could include the Club in which an offending vessel is entered, as well as its reinsurers. As drafted, the sanctions would apply in relation to any vessel(s), regardless of country of flag/registry/beneficial ownership, trading refined products into Iran even where, as a matter of the law governing the relevant contracts of carriage, the voyage, carriage or activity is lawful. Further, the Act does not just apply to the importation of RPP, it extends to other activities also, for example goods which are intended for, or which could be used to facilitate the maintenance or expansion of Iran's domestic production of RPP, including the modernisation or repair of refineries. Many cargoes are capable of multiple uses, so that the issue of infringement potentially depends on the intended use of the cargo. This might be unknown to the carrier, but the US authorities might attempt to assert implied knowledge arising out of the identity of the consignee. Members may need to seek information of proposed shipments to determine whether a particular cargo might possibly have an application to the production of RPP. Relevant enquiries might be:

- the identity of the consignee/receiver in Iran; their line of business;
- the value of the cargo;
- the identity of the exporter/supplier;
- the grade of the cargo and how might that grade of cargo be capable of being used.

Although the provisions relating to the value of the cargo, goods, services or support may afford a defence, it is presently unclear how these will be interpreted by the US Government, and how calculations will be made for insurance services. It is expected that the calculation, insofar as it relates to insurance, will consider the amounts of insurance coverage/policy limits. The Club is advised by the Eren law firm that the fair market values specified in the Act are likely to be met by a standard P&I policy written subject to mutual limits. However the IG has sought clarification from the US State Department on this point and also as to whether the relevant provisions of CISADA apply only to new insurance contracts entered into on or after 1st July 2010 or to all insurance contracts already in force at that date. If CISADA does apply to the latter, then guidance has also been sought as to the manner in which insurance cover should be withdrawn, whether by means of cesser provisions in the contract, direct notice of termination, or by exclusion of rights of recovery.

Possible sanctions for CISADA-offending activity could include being designated as a sanctions target on a US blacklist and the barring of sanctioned persons/companies from access to US financial institutions; the blocking of their assets, property in the United States; a bar on dollar transactions of an offender within, or routed through, the United States; as well as lesser sanctions such as barring sanctioned persons from US Eximbank credits and US government contracts. In addition, criminal penalties (severe monetary fines and imprisonment) could be imposed on US persons (a person in the United States, a US citizen, a US resident, a company organised under US law and its foreign branches) for violations of the Act.

Under the Act the President does have some discretion as to whether or not to impose CISADA sanctions. The President has some discretion in how CISADA is administered and enforced and can waive the imposition of sanctions under certain circumstances, including circumstances where he certifies that doing so is important, or as the case may be, vital to the national interest of the United States. It is possible that a few designations of entities as sanctions targets will be made under the new law, and that this limited action may deter others from CISADA-offending trade.

The Eren law firm in Washington advising the IG comments that the US administration may exercise restraint in imposing sanctions initially whilst other states (and in particular the EU) have had the opportunity to implement similar measures.

EU Regulation (Council Regulation EC No. 2271/96 – the "EC Blocking Regulation")

An existing EU Regulation (Council Regulation EC No. 2271/96 – the "EC Blocking Regulation") seeks to restrict compliance by persons subject to EU jurisdiction (nationals or residents of one of the EU Member States and companies incorporated in one of the Member States) with the US Iran and Libya Sanctions Act of 1996 (ISA), since the ISA purported to have extra-territorial effect and its prohibitions regarding investment in Iran were deemed to contravene the fundamental freedom of movement of capital.

This is an extremely complex area but preliminary legal advice received by the International Group indicated that whilst the issue was not free from doubt, amendments to ISA are not automatically caught by the EC Blocking Regulation which would have to be updated to refer to CISADA. A further Counsel's opinion has been obtained which is again equivocal, but concludes that were the matter to come before the European Court of Justice (ECJ), the Court would be most likely to conclude that the Regulation applies to the ISA as amended by CISADA. The IG has requested clarification from the EU DG Relex (External Relations), who are seeking legal advice.

This point may ultimately be of limited significance if the EU itself recognises that the aims of CISADA accord with EU initiatives to implement further sanctions against Iran and Iranian entities.

Rule Changes

Against the background of the then proposed US IRPSA legislation and the risk that other governments, including the UK, could take steps to implement further sanctions, Rules changes were introduced with effect from 20th February 2010, and August 2010 in an attempt to protect the Club itself from becoming a sanctions target as a result of actions taken by States or other International Organisations because of the activities of any of the Club's Members, or the trades in which Members' vessels are employed. The Rules can be found on the Club's website and details of the Rules changes approved by Members were notified in Circulars B 525, 521, 510 and 508 (for Steamship Bermuda) and L 134, 131, 119 and 115 (for Steamship London).