In this Member Alert, the Club considers the sanctions currently in place against Iran, and the effects that these sanctions may have on both the shipping industry in general, and on Members in particular.

THE SANCTIONS LEGISLATION

The United Nations

The Resolutions

Various UN Security Council Resolutions (no.s 1696, 1737, 1747 and 1803) were adopted between 2006 and 2008. These primarily imposed sanctions on Iran's weapons of mass destruction. In June 2010, the UN adopted UNSC Resolution 1929 of 2010, which is largely aimed at ensuring the peaceful nature of Iran's nuclear programme.

To whom do the Resolutions apply?

The Resolutions which make up the UN sanctions regime are put in place under Chapter VII of the UN Charter, and as such are mandatory. The sanctions regime must be followed by all countries who are members of the UN. The Resolutions are not, however, directly effective and must be implemented by way of national legislation.

What measures are put in place?

Resolution 1696 (March 2006) demanded that Iran suspend all enrichment-related and reprocessing activities, failing which it would face economic and diplomatic sanctions. The deadline for compliance with this passed, and Resolution 1737 (December 2006) was adopted. This called on states to block Iran's import and export of sensitive nuclear material and equipment, and to freeze the financial assets of those involved in Iran's nuclear activities. Further, all countries were required to prevent the supply or sale of equipment and technology that would aid Iran's nuclear programme.
Resolution 1747 (March 2008) required countries to scrutinise the dealings of Iranian banks. It also called on countries to inspect cargo planes and ships entering or leaving Iran if there were reasonable grounds to believe that they were carrying goods prohibited by any UN Resolution.
The June 2010 Resolution seeks to prohibit Iran's access to an expanded list of goods, materials and technologies (including dual-use items) that could be used to assist in developing nuclear and other weapons of mass destruction.

The main provisions of the June 2010 Resolution which are relevant to the shipping and trade industries are as follows:

a) it authorizes countries to inspect any shipments which are suspected of consisting of contraband items, and further provides the authority for the cargo in question to be disposed of. Inspections on the high seas are, however, subject to the agreement of the country where the vessel is registered;

b) it bans sales to Iran of most categories of heavy arms and requires restraint in the sale of light arms; and

c) it requires countries to insist that companies registered there refrain from doing business with Iran if there is reason to believe that such business could further Iran's programmes for weapons of mass destruction.

Enforcement and Penalties

The UN Resolutions themselves do not put in place penalties which apply to all member states. Rather, it is for each member state to deal with enforcement and penalties through national legislation.
Breach of the UN sanctions regime can, depending on the nature of the breach, result in criminal prosecution, fines and/or the freezing of assets.
Various authorised persons and bodies have extensive powers of investigation and enforcement in support of the UN sanctions against Iran. In the UK, for example, authorised persons include the police, customs officers and other persons authorised by the Secretary of State. Such persons will be able to, for example, investigate should there be reasonable grounds to suspect that a ship's cargo may include military goods or weapons either from Iran, or going to Iran.

The powers of these authorised persons include the power to:

a) stop and board a vessel, divert it into national waters and detain it there;

b) search the vessel, and anyone and anything on it, including its cargo;

c) arrest without warrant anyone believed to be guilty of the carriage of prohibited goods;

d) seize, detain and/or dispose of prohibited cargos.

The powers of authorised persons in the UK apply to:

a) any vessel in UK territory;

b) any UK vessel in international waters; and

c) any UK vessel in another state's territorial waters, subject to specific authorisation by the Secretary of State.

The United States

The sanctions legislation

The main pieces of US legislation dealing with sanctions against Iran are:

a) the Iranian Transactions Regulations (the "ITR");

b) the Iran Sanctions Act 1996 (the "ISA"); and

c) the Comprehensive Iran Sanctions, Accountability and Divestment Act 2010 ("CISADA"), which was signed into law on 1 July 2010. It expanded the existing US sanctions against Iran and amended the ISA.

On 23 June 2011, the US Government issued a Joint Statement on Iran Sanctions (the "Joint Statement"). Executive Order 13590 was issued on 21 November 2011.

To whom does the legislation apply?

United States sanctions legislation generally applies to both US citizens and permanent resident aliens, persons physically in the United States and US-organised entities, including their foreign branches.
The US Office of Foreign Assets Control ("OFAC") prohibits the parties listed above from engaging in transactions with companies and persons targeted by the sanctions legislation. However, it also prohibits (without an OFAC licence) such parties from approving, guaranteeing, financing or facilitating transactions by foreign persons with sanctioned countries, entities or individuals, if those transactions would be prohibited by OFAC if engaged in directly by a US person or entity. Facilitation can include referring, to a foreign person, business opportunities involving prohibited countries or persons, and financing, insuring or transporting a shipment of goods sold by a foreign person to a sanctioned country or person.
An important aspect of CISADA, in particular, is its extraterritorial effect, in that it targets certain foreign company activities involving Iran. Non-US companies engaging in sanctionable conduct can have their US activities severely restricted or even totally blocked. This is intended to take advantage of the key role that the US banking system plays in international trade and finance to influence the conduct of foreign companies which have no connection to the US.

Executive Order 13590, issued on 21 November 2011, is aimed at non-US persons who provide support to Iran's energy sector.

What measures are put in place?

The ITR prohibit trade and business between US persons/entities and Iran and other targets of sanctions legislation against Iran. They prohibit the exportation of goods, services and technology to Iran and investment in Iran. They also prohibit US persons/entities from facilitating transactions and activities by non-US persons/entities where such transactions or activities would be prohibited under the ITR if carried out by a US person/entity.
The provisions put in place by CISADA are largely focused on refined petroleum products ("RPP"). If provides for sanctions against anyone (not just US persons and companies) who:

a) knowingly provides goods, services, technology, information or other support to maintain or expand Iran's domestic production of RPP;

b) knowingly exports RPP above a threshold value to Iran; and

c) knowingly sells, leases or provides to Iran goods, services, technology or information above a threshold value (US$1m or an aggregate fair market value of US$5m in a 12 month period) that could directly and significantly contribute to the enhancement of Iran's ability to import RPP.

The "goods, services, technology, information or support" referred to above include:

a) underwriting of insurance or reinsurance for the sale, lease or provision of such goods etc.;

b) financing or brokering such a sale, lease or provision; and

c) providing ships or shipping services to deliver RPP to Iran.

CISADA also includes prohibitions on access to foreign exchange in the US, access to the US banking system and a prohibition on property transactions in the US. Such provisions could have serious consequences for

international shipping concerns.
The US government has recently begun naming companies which will be subject to certain of the measures set out in CISADA as a result of their dealings with Iran. This action reflects a new Executive Order, issued on 23 May 2011, which assigns new powers to the US Treasury to implement and enforce CISADA financial sanctions on parties named by the Secretary of State. Companies which have recently been named include:

a) Petrochemical Commercial Company International; Royal Oyster Group; and Speedy Ship. These companies have been barred from US foreign exchange transactions, US banking transactions and all US property transactions.

b) Tanker Pacific; Ofer Brothers Group; and Associated Shipbroking. The first two companies are barred from securing financing from the Export-Import Bank of the United States, from obtaining loans over $10 million from US financial institutions, and from receiving US export licences. The latter company has been barred from US foreign exchange transactions, US banking transactions and all US property transactions.

Joint Statement issued on 23 June 2011

The Joint Statement added Tidewater Middle East Co. ("Tidewater"), the main provider of Iranian port services, to the list of "Specially Designated Nationals" with whom US persons and non-US financial institutions are not permitted to have dealings. Tidewater was added to this list, as the ports were it has operations have been used to export arms or related materials in violation of UN Resolutions. Tidewater has operations at the following ports, where payment of port dues is now likely to be an offence:

1. Bandar Abbas (Shahid Rajaee Container Terminal)
2. Bandar Imam Khomeini Grain Terminal
3. Bandar Anzali
4. Khorramshahr
5. Assaluyeh
6. Aprin
7. Amir Abad Port Complex

It should be noted that Tidewater is a separate entity from Tidewater Inc, which is an international shipping company with its headquarters in the US and which is listed on the New York Stock Exchange as TDW. The sanctions imposed do not apply to Tidewater Inc.

Executive Order 13590 issued on 21 November 2011

Executive Order 13590, published in response to concerns over Iran's nuclear programme, sets out a series of sanctions in relation to the petroleum sector. It widens the provisions of CISADA and authorises sanctions against parties which provide support (for example the sale, lease or provision of goods, services or technology) for any Iranian petroleum or petrochemical production or development, over certain dollar thresholds.

This Executive Order also added eleven more parties to the list of designated companies and individuals with whom it is prohibited to do business. These parties are:

1. The Nuclear Reactors Fuel Company (SUREH)
2. Noor Azfar Gostar Company
3. Fulmen Group
4. Yasa Part
5. Modern Industries Technique Company (MITEC)
6. The Iran Centrifuge Technology Company (TESA)
7. Simatic Development Co
8. Parto Sanat
9. Paya Partov
10. Neka Novin
11. Javad Rahiqi

Iran has also been designated a "Jurisdiction of Primary Money Laundering Concern" under section 311 of the USA Patriot Act.

Enforcement and Penalties

Enforcement under CISADA is a two stage process:

1. the consideration of the "threshold question" of whether credible evidence of sanctionable activity exists; if it does

2. an investigation to determine whether a violation occurred and sanctions should be implemented.

Violations of US law are subject to both criminal and civil penalties, and these penalties have risen sharply in recent years. Conduct which is in breach of one or more provisions may attract criminal fines of up to $1million and/or 20 years imprisonment. A civil penalty could be, in most cases, up to the greater of US$250,000 or twice the value of the transaction, per violation.
Under CISADA, the President must impose three penalties from the following list of nine when a breach has occurred:

a) denial of US export-import bank loans or credit facilities for US exports;

b) denial of licences for the US export of military or military useful technology;

c) denial of bank loans exceeding $10million in any 12 month period from US financial institutions;

d) Prohibition on sanctioned person, being a financial institution, serving as a primary dealer in US government bonds or as a repository for US government funds;

e) prohibition on US government procurement contracts;

f) prohibitions within the US of foreign exchange transactions;

g) prohibitions within the US of banking transactions such as transfers of credits or payments;

h) freezing of assets within the US;

i) restriction on imports into the US.

The European Union

The sanctions legislation

Council Regulation No.961/2010 (the "EU Regulation") was published on 27 October 2010. This gives effect to all of the previous EU sanctions legislation in a single consolidated form, and as such repeals previous regulations. On 24 May 2011, Regulation (EU) 503/2011 (the "2011 EU Regulation") came into force.

Council Implementing Regulation 1245/2011 was published on 1 December 2011.

To whom does the legislation apply?

The EU Regulation applies:

a) within the territory of the EU, including its airspace;

b) on board any aircraft or vessel under the jurisdiction of a Member State;

c) to any person, inside or outside the territory of the EU, who is a national of a Member State;

d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State; and

e) to any legal person, entity or body in respect of any business done in whole or in part within the EU.

The EU sanctions legislation would therefore apply to Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU.
The EU Regulation had immediate effect, meaning that it did not need to be implemented by the issuance of national legislation in individual Member States.

What measures are put in place?

The EU Regulation imposes wide-ranging restrictions, including provisions restricting the following:

a) trade in key equipment for particular sectors of the Iranian oil and gas industry;

b) the transportation of certain goods (listed in the four Annexes to the Regulation) from any port or place to Iran;

c) investment in the Iranian oil and gas industry;

d) trade in dual-use goods, technology and equipment which might be used for internal repression;

e) transfers of funds to and from Iran;

f) dealing with the Iranian banking sector; and

g) provision of insurance or reinsurance to the Iranian government, its public bodies or Iranian-controlled entities.

As regards the transfer of funds, the EU Regulation prevents any payments over €40,000 to an Iranian person or entity, regardless of where they are located, without the prior authorisation of the relevant competent Member State authority (these authorities are listed at Annex V to the EU Regulation). As a result, if Members are

contracting with an Iranian entity, there is no guarantee that they will be able to make or obtain payment. This requirement of prior authorisation may also give rise to difficulties in the provision and obtaining of security. The EU Regulation also requires that any payment between €10,000 and €40,000 must be notified in advance to the relevant competent authority.
As regards cargo shipments, the EU Regulation requires Member States to inspect cargo being transported to and from Iran if there are reasonable grounds to suspect that it contains prohibited items. The Annexes in which such items are listed are lengthy and detailed. This poses challenges in terms of identifying precisely whether goods proposed for carriage are prohibited or not.
Under the EU Regulation, it is an offence to make funds or "economic resources" available, either directly or indirectly, to or for the benefit of, the designated persons listed. There is also a freeze on funds and economic resources put in place in respect of these persons.
The 2011 EU Regulation has extended the list of designated persons and entities by over 100 names, many of which have been added due to their links with the Islamic Republic of Iran Shipping Lines ("IRISL").

Unlike the US, the EU has not specifically added Tidewater to the list of designated persons and entities. However, the Islamic Revolutionary Guard Corps ("IRGC") is on the list, and it is believed that Tidewater is owned by IRGC. That listing will encompass all entities owned or controlled by IRGC.

Council Implementing Regulation 1245/2011 was published, in a similar vein to the US Executive Order 13590, in response to concerns over Iran's nuclear programme. It adds 180 Iranian people and entities to the list of designated persons. As with the 2011 EU Regulation, many of these were added due to their links with IRISL.

When checking the list of designated persons and entities, Members should be sure to check the lists attached to all EU regulations.

Enforcement and Penalties

The exact penalty for sanctionable conduct will differ between Member States, however under EU legislation penalties must be "effective, proportionate and dissuasive".
In the UK, for example, legislation has been enacted which provides that breaches of certain prohibitions under the EU Regulation are criminal offences. This relates in particular to the asset freezing measures, and to dealing with funds and economic resources owned, held or controlled by a person or entity designated in the EU Regulation.
The EU Regulation contains a defence of due diligence. There shall be no liability "if [the person/entity accused of a breach] did not know, and had no reasonable case to suspect, that their actions would infringe these prohibitions". The availability of this defence will depend very much on the facts. In the case of Tidewater and IRGC, for example, the link between those two entities has been widely publicized. It is therefore unlikely that a party could use as a defence to prosecution the argument that it had no reasonable cause to suspect that Tidewater was owned by IRGC.

OPERATIONAL, PRACTICAL AND CHARTERPARTY ISSUES

The effect on services central to the shipping industry

Under the EU sanctions legislation, the provision of bunkering or ship supply services, or servicing of vessels by nationals of Member States to Iranian-owned or contracted vessels, including chartered vessels, is prohibited if that national has reasonable grounds to believe that the vessel is carrying items of which the sale, transfer or export is prohibited. Exceptions to this are services necessary for humanitarian purposes or if the cargo has been inspected and, if necessary, seized and disposed of.
Under both the US and EU provisions, the prohibition on providing services extends to broking services. Under the US provisions, this includes brokering either from the US or by US persons, wherever they are located. As set out above, CISADA extends its provisions to non-US persons and entities, and this is likely to apply to broking services. Under the EU sanctions legislation, the provision of such services in relation to any transaction involving the provision of items which would assist with the development of Iran's nuclear capability, or which would further their ability to import and produce RPP, is prohibited. Brokers must, therefore, act with as much caution as Owners.
The prohibition on the provision of services is not limited to broking. It extends to those who provide any type of services, information or insurance to the vessel. This will include managers, hull and machinery and P&I insurers and their re-insurers.
The designation of Tidewater by the US means that payment of port dues and any other sums payable to port authorities in the ports listed above is likely to be an offence.

Owners' position where Charterers' orders amount to a breach of sanctions

Where Charterers wish to order a vessel to any country against which sanctions are in force, to discharge goods specified in any sanctions legislation, whether Owners will be entitled to refuse such orders is not a straightforward question. As sanctions are likely to impact on Charterers as well as Owners, it may be that highlighting the risk that Charterers would face by ordering the vessel on such a voyage would be sufficient to lead to an agreement between Owners and Charterers to revise the voyage orders.
If, however, Charterers restate their original orders, and there is no express exclusion in the charterparty

preventing them from doing so, Owners would be left with a number of arguments.
It may be possible to argue that such an order should be considered illegal as the vessel is only permitted to carry lawful merchandise in lawful trades. Under English law a voyage order would be illegal not only if it is contrary to English law but also, it is thought, if it is illegal under the law of the vessel's flag state or the law of the "place of performance" of the charterparty. Looking at US sanctions for example, which may require the freezing of assets and funds, it could be argued that if hire payments are routed through the US then the payment of hire is effectively prohibited by US legislation.
The Club recommends that Members seek legal advice if they are at all concerned that particular voyage orders may result in sanctionable conduct.

Frustration of the Charterparty

The doctrine of frustration allows a party to treat a contract as discharged if there has been a sufficient change in circumstances, through no fault of that party, which would render performance under the contract "radically different" to that which was originally contemplated.
It could be arguable that requiring an Owner to comply with an order that could result in the imposition of sanctions is a sufficiently "radical" change of circumstances to frustrate the contract. However, it is the Club's view that such a finding would be rare, as it is the nature of the contract itself which results in the imposition of sanctions, and Members should not seek to rely on such an argument without seeking legal advice.
An argument which may have more chance of success is that of supervening illegality, which is a recognised cause of frustration. Where freight or hire is to be routed through the US, for example, there might be grounds for arguing that the charterparty has been frustrated in light of the risk that such payments would be frozen. However, this is a difficult area of law and the English courts at any rate are generally reluctant to find that contracts have been frustrated. The Club recommends that Members seek legal advice if they are in any way concerned that Charterers' orders may result in sanctionable conduct.

Issues affecting hire and freight payments

The issue of getting paid will be complicated by legislation limiting parties' abilities to deal with Iranian banks, for example:

(a) the United States Comprehensive Iran Sanctions, Accountability and Divestment Act 2010 ("CISADA") prohibits access to foreign exchange in the US and access to the US banking system for certain specified individuals and entities; and

(b) the EU sanctions legislation restricts the transfer of funds to and from Iran, and dealings with the Iranian banking sector. It also prevents any payments over €40,000 to an Iranian person or entity, regardless of where they are located, without the prior authorisation of the relevant competent Member State authority.

There may be ways to deal with these issues, for example the licensing exemptions available in the UK relating to the receipt of funds from a prohibited Iranian bank.
If it is not possible to circumvent these problems, it may be necessary to look for other ways of making and receiving payment, for example via a source which is not a designated person or entity. However, caution must be exercised where corporate restructuring is put in place in an attempt to avoid the sanctions, as this could still amount to a breach.

Negotiating future charterparties

There are measures which Owners can take in negotiating new charterparties which will go some way to protecting them from the effects of sanctions legislation.
Should Owners wish to avoid calling at Iranian ports, the Club suggests that Iran be excluded from the trading limits in the charterparty.
In cases where Iranian ports are not specifically excluded from the trading limits, Owners can also protect themselves by incorporating specific wording into the charter (and, where appropriate, the sub-charter) to provide a mechanism to deal with a situation when orders are given by Charterers that would breach sanctions. BIMCO and Intertanko have both published a standard form of wording.
The Intertanko clause has a broad scope and is generally drafted in favour of Owners, as all that is required for a trade to be deemed unlawful is that it "could" expose the "vessel, its Owners, Managers, crew or insurers" to a "risk" of sanctions. There is, however, the possibility that parties could disagree as to whether the "trade" in question could lead to such a risk. Owners may wish to expressly amend the clause to provide that it is for Owners to decide, in their reasonable judgment, whether such risks exist. Charterers, on the other hand, may wish to restrict the scope of the clause to trade which "does", in fact, expose Owners to risk.
BIMCO state that the objective of their clause is to "provide owners with a means to assess and act on any voyage order issued by a time charterer which might expose the vessel to the risk of sanctions. The test is one of 'reasonable judgment' by the owners in determining whether the risk of the imposition of sanctions is tangible".
The Club strongly recommends that such a clause be included in charterparties, although legal advice should be obtained to ensure that the clause is in keeping with the other terms of the charterparty in question.
A recent decision by the English Court of Appeal (Arash Shipping Enterprises Company Limited v Groupama Transport) provides a useful illustration of how a sanctions clause might be interpreted by the courts. In this case, insurers had cancelled a policy of insurance on the basis of a sanctions clause which allowed them to cancel the

policy where the assured had exposed, or may expose, the insurer to the risk of "becoming subject to any sanction, prohibition or adverse action in any form whatsoever against Iran".
The Court held that the notice of cancellation was valid, and that the insurers had been reasonable in coming to the conclusion that they were exposed to the risk of breach of sanctions. The judgment in this case suggests that any decisions made in reliance on a sanctions clause must not be made irrationally, and further the risk to the party in question must be real, although not necessarily substantial.

Cargo issues

There has been an on-going debate about so-called "dual use" cargoes. These cargoes consist of items that could be said to have both civil and military uses. Such cargoes could include raw materials, computer and mechanical components, manufacturing items and electronic systems. A particular cargo could therefore be prohibited by certain sanctions legislation, even though the use to which those particular goods will be put is not itself sanctionable.
Generally, carriers are not the end user of the goods carried, and in the past they have not needed to know the ultimate use to which any particular cargo will be put. However, in the context of trade with countries which are the target of sanctions legislation, carriers must now make diligent and reasonable enquiries as to the parties they deal with, and the possible end use of their cargos.

Issues arising due to the differences between the sanctions legislation of different jurisdictions

There are certain similarities between the EU and US sanctions regimes. However, one key difference is that the US regime prohibits the export to Iran of RPP, or any "goods, services, information or support" which could enhance Iran's ability to import RPP. The EU regime, on the other hand, does not prohibit the import or export of RPP itself, but only key equipment and technology for the refining, exploration and production of natural gas. This could lead to a situation where a party is in breach of the US sanctions legislation, but not in breach of the EU legislation.
How such a situation would be dealt with is largely uncertain. CISADA does allow for a waiver to be granted to cooperating countries. This would operate on a case by case basis for companies from countries which are cooperating with the US in its efforts against Iran. In order to be granted, the activity in respect of which the waiver is granted must be vital to the national security interests of the US. Further, the waiver can only be granted after the company in question has been found to violate a provision. It is not, therefore, a blanket exemption. It is not clear how many, or indeed whether, waivers will actually be granted, so the Club does not recommend that Members in any way rely on benefiting from one.
It is also necessary to consider Council Regulation EC 2271/96 (the "Blocking Regulation"). Amongst other provisions, this essentially forbids persons or entities subject to EU jurisdiction from complying with the ISA. CISADA amends the ISA, and there is some uncertainty as to whether the Blocking Regulation applies to the ISA so amended. The European Commission has not confirmed this. Pending such clarification, there is a risk that measures taken to avoid contravening provisions of CISADA could expose parties subject to EU jurisdiction to breaches of the Blocking Regulation.

Such issues highlight just how crucial it is that Members seek specific legal advice on any commercial transaction which is likely to involve an Iranian entity.

FREQUENTLY ASKED QUESTIONS

What steps can Members take to avoid falling foul of sanctions legislation?

It is essential that Members carry out thorough investigations where there is even a possibility that interests related to a country against which sanctions are in force may be involved in a transaction. The Club suggests that the following points, in particular, are considered:

a) Identify all parties involved in the transaction. This may include Charterers, customers, suppliers, receivers, ultimate end users and financial institutions. Members should also make themselves aware of any third parties or middlemen, as well as the ultimate beneficial owner of the vessel/s in question and of all companies involved in the transaction. All of these parties must be investigated thoroughly.

b) Identify the precise nature of the cargo to be transported. Members should also investigate the ultimate use to which the cargo will be put. Pleading ignorance of this is unlikely to provide a defence to a breach of sanctions legislation.

c) Regularly check the published lists of parties with whom trade is prohibited or restricted. The relevant websites are listed later on in this memo.

d) Ensure that all contracts, for example charterparties, are drafted to permit the refusal by Owners of orders that require trading with entities who are targeted by sanctions legislation, and permit a refusal of cargo which will put any party at a risk of a breach of sanctions legislation.

If in any doubt as to whether a particular contractual arrangement will result in a breach of any sanctions legislation, the Club recommends that Members seek legal advice.

What resources are available to enable Members to stay up to date on sanctions legislation?

Resource centre for UN sanctions:
http://www.un.org/sc/committees/1737/index.shtml

US Department of the Treasury Resource Centre for Iran Sanctions:
http://www.treasury.gov/resource-center/sanctions/Programs/pages/iran.aspx

Full text of EU Regulation 961/2010, including Annexes which contain lists of prohibited goods and designated individuals and entities:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:281:0001:0077:EN:PDF

Full text of EU Regulation 503/2011, which sets out additions to the list of designated individuals and entities:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:136:0026:0044:EN:PDF

Full text of EU Regulation 1245/2011, which sets out additions to the list of designated individuals and entities:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:319:0011:0031:EN:PDF

The UK Treasury website has combined the EU and UN lists of designated persons and entities. These lists are available at the following addresses:
http://www.hm-treasury.gov.uk/d/irannuclear.htm
http://www.hm-treasury.gov.uk/d/iranhuman.htm

What options are available to Owners if following Charterers' orders will put them in breach of sanctions legislation?

Charterers may order a vessel to discharge in Iran, to discharge goods which are prohibited by sanctions legislation, or which are to be supplied to a party listed in sanctions legislation. Taking any such action may put Owners in breach of one or more provisions of the sanctions legislation currently in force. However, the question of whether Owners will be entitled to refuse Charterers' orders is not a straightforward one.
The imposition of sanctions is likely to impact on Charterers as well as Owners. It may, therefore, be worth highlighting the risk that Charterers would fact by ordering the vessel on such a voyage. This could be sufficient to lead to an agreement between Owners and Charterers to revise the voyage orders.
Charterers may, nevertheless, restate their original orders. If there is no express exclusion in the charterparty preventing them from doing so, Owners are left with a number of arguments.
It may be possible to argue that Charterers' order should be considered illegal: the majority of charterparties only permit vessels to carry lawful merchandise in lawful trades. Under English law, for example, a voyage order would be illegal not only if it is contrary to English law, but also if it illegal under the law of the vessel's flag state or the law of the "place of performance" of the charterparty. US sanctions, for example, may require the freezing of assets and funds. As a result, it could be argued that if hire payments are routed through the US then the payment of hire is effectively prohibited by US legislation.
The Club recommends that Members seek legal advice if they are at all concerned that particular voyage orders may result in sanctionable conduct.

What steps should Members take when negotiating charterparties to avoid falling foul of sanctions legislation?

Although it is impossible to guarantee protection at all times from all sanctions legislation, there are some measures which Owners can take when negotiating new charterparties which will go some way to protecting them.
Firstly, should Owners wish to avoid calling at Iranian ports, the Club suggests that Iran be excluded from the trading limits in the charterparty.
In cases where Iranian ports are not specifically excluded from the trading limits, Owners can also protect themselves by incorporating specific wording into the charter (and, where appropriate, the sub-charter) to provide a mechanism to deal with a situation when orders are given by Charterers that would breach sanctions legislation. BIMCO and Intertanko have both published a standard form of wording for time charters, which can be found on their respective websites.
The Intertanko clause has a broad scope and is generally drafted in favour of Owners, as all that is required for a trade to be deemed unlawful is that it "could" expose the "vessel, its Owners, Managers, crew or insurers" to a "risk" of sanctions. There is, however, the possibility that parties could disagree as to whether the "trade" in question could lead to such a risk. Owners may wish to expressly amend the clause to provide that it is for Owners to decide, in their reasonable judgment, whether such risks exist. Charterers, on the other hand, may wish to restrict the scope of the clause to trade which "does", in fact, expose Owners to risk.
BIMCO states that the objective of its clause is to "provide owners with a means to assess and act on any voyage order issued by a time charterer which might expose the vessel to the risk of sanctions. The test is one of 'reasonable judgment' by the owners in determining whether the risk of the imposition of sanctions is tangible".
The Club strongly recommends that such a clause be included in new charterparties, although legal advice should be obtained to ensure that the clause is in keeping with the other terms of the charterparty in question. In particular, it should be noted that these clauses focus on the ability to refuse orders, and do not contain other necessary provisions such as indemnities.

How will sanctions legislation affect the payment of hire and freight?

Several of the sanctions provisions currently in place in relation to Iran deal with the movement of money and dealing with Iranian banks, in particular as follows:

(a) the United States Comprehensive Iran Sanctions, Accountability and Divestment Act 2010 ("CISADA") prohibits access to foreign exchange in the US and access to the US banking system for certain specified individuals and entities; and

(b) the EU sanctions legislation restricts the transfer of funds to and from Iran, and dealings with the Iranian banking sector. It also prevents any payments over €40,000 to an Iranian person or entity, regardless of where they are located, without the prior authorisation of the relevant competent Member State authority. Payments between €10,000 and €40,000 must be notified in advance to the relevant authority.

Provisions such as these may well complicate the issues of paying and getting paid under charterparties and related contracts. They could, for example, result in funds passing through the US banking system being frozen, or penalties being imposed as a result of unauthorised payments being made. In some instances, there will be ways of dealing with these problems.
Under the EU sanctions legislation, for example, payments of between €10,000 and €40,000 may be made to an Iranian person or entity, but must be notified to the relevant competent authority. There are also licensing exemptions in place in the UK relating to the receipt of funds from a prohibited Iranian bank.
If it is not possible to circumvent the problems, it may be necessary to look for other ways of making and receiving payment. This could be done, for example, via a source which is not a designated person or entity. Alternatively, funds could be routed through the banking system of a country which does not require funds to be frozen. While one option could be corporate restructuring, caution should be exercised as if this is put in place specifically in an attempt to avoid the imposition of sanctions, it could itself amount to a breach.

What are the penalties for a breach of sanctions legislation?

The penalties for breaching any of the sanctions legislation in place can be severe, although the precise penalties differ depending on exactly which provisions are breached. It is also important to remember the detrimental effect which a breach of one or more sanctions could have on a Member's reputation within the industry.

United Nations (General Observations)

Breach of UN sanctions can, depending on the nature of the breach, result in criminal prosecution, fines and/or the freezing of assets.
Various authorised persons and bodies have extensive powers of investigation and enforcement in support of the UN sanctions against Iran.
The enforcement measures and penalties put in place by the UK are considered as an example below.

United States

Enforcement under CISADA is a two stage process:

1. the consideration of the "threshold question" of whether credible evidence of sanctionable activity exists; if it does

2. an investigation to determine whether a violation occurred and sanctions should be implemented.

Violations of US law are subject to both criminal and civil penalties, and these penalties have risen sharply in recent years. Conduct which is in breach of one or more provisions may attract criminal fines of up to $1million and/or 20 years imprisonment. A civil penalty could be, in most cases, up to the greater of US$250,000 or twice the value of the transaction, per violation.
Under CISADA, the President must impose three penalties from the following list of nine when a breach has occurred:

a) denial of US export-import bank loans or credit facilities for US exports;

b) denial of licences for the US export of military or military useful technology;

c) denial of bank loans exceeding $10million in any 12 month period from US financial institutions;

d) prohibition on sanctioned person, being a financial institution, serving as a primary dealer in US government bonds or as a repository for US government funds;

e) prohibition on US government procurement contracts;

f) prohibitions within the US of foreign exchange transactions;

g) prohibitions within the US of banking transactions such as transfers of credits or payments;

h) freezing of assets within the US;

i) restriction on imports into the US.

European Union

The exact penalty for sanctionable conduct will differ between Member States, however under EU legislation penalties must be “effective, proportionate and dissuasive”.
The EU Regulation contains a defence of due diligence. There shall be no liability “if [the person/entity accused of a breach] did not know, and had no reasonable case to suspect, that their actions would infringe these prohibitions”.
The enforcement measures and penalties put in place by the UK are considered as an example at below.

United Kingdom

Here we consider the various enforcement measures and penalties put in place by the UK, as an example of how the UN and EU sanctions regimes have been implemented.
Under the UN sanctions regime, various authorised persons have wide powers of investigation and enforcement. In the UK, authorised persons include the police, customs officers and other persons authorised by the Secretary of State. Such persons will be able to, for example, investigate should there be reasonable grounds to suspect that a ship’s cargo may include military goods or weapons either from Iran, or going to Iran.
The powers of these authorised persons include the power to:

a) stop and board a vessel, divert it into national waters and detain it there;

b) search the vessel, and anyone and anything on it, including its cargo;

c) arrest without warrant anyone believed to be guilty of the carriage of prohibited goods;

d) seize, detain and/or dispose of prohibited cargos.

The powers of authorised persons in the UK apply to:

a) any vessel in UK territory;

b) any UK vessel in international waters; and

c) any UK vessel in another state’s territorial waters, subject to specific authorisation by the Secretary of State.

In relation to the EU sanctions regime, legislation has been enacted in the UK which provides that breaches of certain prohibitions under the EU Regulation are criminal offences. This relates in particular to the asset freezing measures, and to dealing with funds and economic resources owned, held or controlled by a person or entity designated in the EU Regulation.
