



Iran Sanctions – European Union

16 September 2015

WHO DO THE EU SANCTIONS APPLY TO?

THE EU SANCTIONS REGIME 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.

This will include Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU.

The sanctions do not apply to non-EU companies. However, if those companies take any action which is in breach of sanctions, associated EU companies and employees who are EU citizens may face penalties under the EU regime.

In addition, under point (e) above, non-EU companies may face sanctions in respect of any business they do which is done in whole or in part within the EU. Note that the sanctions would be limited to that particular business, and would not extend to exclusively non-EU business carried out by those companies.

PROHIBITIONS: GENERAL

On 20 January 2014, the EU brought into force measures which temporarily suspend some of the sanctions against Iran. These suspensions have been extended every 6 months. The latest extension means that the suspensions will remain in place until 14 January 2016.

All contracts falling within these latest measures must be executed by 14 January 2016. Prudence dictates that “executed” should be taken to mean “occur and be completed” by 14 January 2016.

The following general prohibitions apply under EU law:

- Asset freezes

All funds and economic resources belonging to, owned, held or controlled by listed parties are to be frozen. In addition, no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of listed parties. These provisions have a very wide scope, and are intended to go beyond affecting only the funds and economic resources of listed parties. The prohibition on making available funds and economic resources goes beyond prohibiting direct payments to listed parties. Indirect payments, such as payment to a non-listed party who then in turn pays the money to a listed party, are prohibited.

- Import and Export Restrictions

Prohibitions are in place in respect of certain goods. Generally prohibitions will relate either to the “sale, supply, transfer or export, directly or indirectly” of listed goods to or for use in Iran, or the import into the EU and/or purchase of goods from Iran. The latter often includes prohibitions on transporting listed goods, both inside and outside the EU.

There are also restrictions on providing services associated with the import/export of listed goods. The most common prohibitions are on the provision of technical assistance, financing and financial assistance.

- Restrictions on Financial Transfers

It is prohibited for any EU financial institution, or branch or subsidiary based outside the EU, to make any transfer to (a) credit and financial institutions and bureaux de change domiciled in Iran and their branches and subsidiaries, and (b) credit and financial institutions and bureaux de change, wherever located, controlled by a party domiciled in Iran.

- Restrictions on Financial Services

There are general restrictions on financial services. Perhaps the most important is the prohibition on providing insurance and reinsurance. Insurance and reinsurance must not be provided to (a) the Iranian Government and its public bodies, (b) an Iranian person or entity other than a natural person, and (c) to any person acting on behalf or at the direction of the parties listed at (a) and (b).

- General Transport Restrictions

The provision of bunkering, ship supply services, or any other servicing of vessels, to vessels owned or controlled, directly or indirectly, by an Iranian party is prohibited. This prohibition only applies, however, where the party supplying the services has reasonable grounds to determine that the vessel in question is carrying goods listed by the EU legislation.

The provision of certain services to oil tankers and cargo vessels flying the Iranian flag, or owned, chartered or operated, directly or indirectly, by an Iranian party is prohibited. This includes the provision of classification services, the carrying out of flag state surveys and inspections and the participation in the construction and repair of vessels.

It was previously prohibited to make available vessels designed for the transport or storage of oil and petrochemical products to any Iranian party, or to any party unless the provider has taken appropriate action to prevent the vessel being used to carry or store oil or petrochemical products which originate in or have been exported from Iran. This prohibition has been suspended until 14 January 2016.

DEALING WITH DESIGNATED PARTIES : ASSET FREEZES

What is prohibited?

1. Funds and economic resources belonging to, owned, held or controlled by designated parties are to be frozen.

→ What does this mean?

This provision is largely aimed at banks and financial institutions, who must freeze all accounts belonging to, owned, held or controlled by designated parties.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of designated parties.

→ What does this mean?

No payments can be made to any party designated by the EU regime, either directly or indirectly (e.g. making the payment to a non-designated party in the knowledge that they will pay it on to the designated party).

No payments can be made “for the benefit of” a designated party. This includes, for example, making payments to a non-designated company which is owned or controlled by a designated party.

The prohibition extends beyond the payment of monies to “economic resources”. These are defined by the EU regime as “assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services”.

The wide scope of this provision emphasises the importance of thoroughly investigating all parties involved in a particular transaction or trade.

How can I find out which parties are designated?

A full up to date list of all parties designated by the EU regime can be found here: <http://www.hm-treasury.gov.uk/d/irannuclear.htm>

Designated parties of key concern to the Shipping industry

The Shipping industry is of central importance to the Iranian economy, and as such several companies involved in and associated with the industry have been designated by the EU.

The Islamic Republic of Iran Shipping Lines (IRISL), for example, is one such party. IRISL is notorious for trying to find ways to avoid the sanctions, and in the past has set up “front” companies in an attempt to circumvent the sanctions imposed against it. This highlights the importance of fully investigating all parties involved in a transaction, including the ownership and interests which may be behind the company.

Another party of key concern to the Shipping industry is Tidewater. This company has a very large presence in Iran. Information suggests that Tidewater runs operations at seven key Iranian ports. Where a vessel is calling at an Iranian port, it is important to identify the party which operates the port and/or terminal in question, in order to determine whether it is designated.

Where cargo is to be loaded or discharged at a terminal run by Tidewater, the payment of port dues and other charges will amount to making funds available to a designated party, and so will be prohibited. It is essential, therefore, to obtain information about the Iranian ports being used as well as the parties involved in a transaction.

IRISL and Tidewater are just examples of the Shipping companies which have been designated by the EU. The list is extensive, and Members must ensure that all parties involved in any particular transaction are cleared.

How can I avoid a breach?

Thorough investigations must be carried out in order to determine whether any party involved in a transaction is designated. If so, there is a risk that involvement in the transaction will amount to sanctionable conduct, even if the listed party is not a direct contractual counterpart.

The following investigations should be carried out:

- (a) Identify all parties involved in the transaction, for example shippers, receivers, agents and any intermediaries.
- (b) Investigations must go further than simply identifying the names of the parties and checking them against the asset freeze lists. The prohibitions extend to parties owned and controlled by designated persons. Where possible the corporate structure, ownership and control of all companies involved in the transaction must be investigated.
- (c) Where a cargo is to be loaded or discharged in Iran, the relevant ports and terminals must be identified. Tidewater, a designated party, runs operations at several ports in Iran.

The Swedish Club

Involvement in a trade which would require payment of port dues and other similar charges to Tidewater, either directly or indirectly, is likely to amount to a breach of sanctions.

It is also necessary to consider whether a non-designated party is owned or controlled by a designated party.

A party is considered to be “owned” by another party which is in possession of more than 50% of its proprietary rights, or which has a majority in it.

There is no definitive meaning of “control” for the purposes of the EU sanctions regimes. Factors to take into account when determining whether a designated party controls a company will include:

- (i) the size of that party’s shareholding;
- (ii) the nature of the shares held (some may carry voting rights, whilst others may not);
- (iii) the composition of the board of directors;
- (iv) the provisions of the company’s Articles of Association; and
- (v) the designated party’s ability to exercise power over matters affecting the running of the company.

There are several searchable electronic databases which make it relatively easy to determine whether a particular party appears on any asset freeze list.

Are there any situations in which payments can be made to a designated party?

Payments to designated parties may be authorised in certain specified circumstances. The majority of these are not relevant to a commercial situation, and reflect circumstances such as satisfying the basic needs of designated parties, or the payment of fees or service charges for the maintenance of frozen funds.

Amongst these permitted payments are those which are:

- (a) to be made available to the Central Bank of Iran and are necessary in connection with a specific trade contract, the execution of which may involve the Central Bank of Iran, provided that the payment does not contribute any prohibited activity; and
- (b) intended exclusively for the payment of fees due in connection with the de-flagging of vessels.

Funds may be added to frozen accounts where they reflect payments due under contracts, agreements or obligations that were concluded or arose before the date on which the designated party in question was listed. Those funds must then be immediately frozen.

NB: these payments must be authorised by the relevant authority in the Member State of the party making the payment. Those authorities are listed in Annex X to Regulation 267/2012. The payment must also be notified to the EU Sanctions Committee, who must not object to the payment.

Member State authorities may currently authorise the making available of funds or economic resources to the Ministry of Petroleum, after having determined that they are necessary for the import or purchase of petrochemical products that originate in Iran or have been imported from Iran. Member State authorities will be permitted to grant such authorisation until 14 January 2016.

Even if it appears that a particular payment may be permitted, it should never be assumed that authorisation will be given.

Are there any situations in which funds may be released from a frozen account?

Funds may be released from frozen accounts, with prior authorisation, in certain specified circumstances, including:

- (a) if the funds in question are the subject of a judicial, administrative or arbitral lien established before the party was designated, or of a judicial, administrative or arbitral judgment rendered prior to that date;

NB: these funds must be used exclusively to satisfy claims secured by such a lien or recognised in such a judgment; the lien or judgment must not be for the benefit of a designated party; recognising the lien or judgment must not be contrary to public policy in the relevant Member State; and the Sanctions Committee must have been informed.

- (b) if a payment is due under a contract or agreement concluded, or an obligation that arose, before the party was designated provided that payment will not contribute to any prohibited activity, and will not otherwise contravene the asset freeze provisions.

Member State authorities may currently authorise the release of economic resources to the Ministry of Petroleum, after having determined that they are necessary for the import or purchase of petrochemical products that originate in Iran or have been imported from Iran. Member State authorities will be permitted to do so until 14 January 2016.

CARGO: IMPORT AND EXPORT RESTRICTIONS

Note that the prohibitions on the import, export and transport of petrochemical products, and the provision of related services (including insurance and reinsurance), are currently suspended until 14 January 2016.

A temporary suspension also applies to some crude oil and petroleum products, namely those with HS Code 2709 00, described as “petroleum oils and oils obtained from bituminous minerals, crude”. The suspension **only** applies to the transport of these products and the provision of related services, including insurance and reinsurance. The prohibition on importing and purchasing these products remain in place.

Please note that even where a trade or transaction falls within the suspension of sanctions, it is essential that thorough investigations are still carried out. There will still be issues under EU sanctions if, for example, a designated party is involved. There may also be issues under US sanctions if payments are to be made in US Dollars.

All contracts falling within the suspensions enacted by these latest measures must be executed by 14 January 2016. Prudence dictates that “executed” should be taken to mean “occur and be completed” by 14 January 2016.

Carrying cargo to Iran – what cargos are prohibited?

It is prohibited to sell, supply, transfer or export, directly or indirectly, to any Iranian party or for use in Iran, the following goods:

1. Goods and technology which could contribute to Iran’s enrichment-related, reprocessing or heavy-water-related activities or to the development of nuclear weapon delivery systems. For the full lists see Annex I and Annex II of Regulation 267/2012.

→ Are there any exceptions?

There are only very limited exceptions. This prohibition does not apply to:

- (a) the transfer of specified goods relating to the construction of a light-water reactor in Iran, where construction began before December 2006;
- (b) transactions mandated by the IAEA technical cooperation programme; or
- (c) goods supplied to, or for use in, Iran due to obligations under the Paris Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 13 January 1993.

Member States may authorise a transaction in respect of these goods where:

- (a) they are required for food, agricultural, medical or other humanitarian purposes; and
- (b) where the transaction would not contribute to the development of Iran’s nuclear programme.

2. Without prior authorisation, nuclear materials, facilities and equipment, certain chemicals and toxins, goods relating to materials processing, electronics, sensors and lasers and goods relating to navigation, avionics, aerospace and propulsion (for the full lists see Annex III of Regulation 267/2012).

→ Are there any exceptions?

Transactions involving these goods can be authorised by Member States unless the goods will be used for:

- (a) enrichment-related, reprocessing or heavy water-related activities;
- (b) the development of nuclear weapon delivery systems; or
- (c) the pursuit of other activities about which the IAEA has expressed concerns.

3. Equipment and technology for key sectors of the oil, gas and petrochemical industries in Iran, including for the exploration and production of crude oil and natural gas, refining, and liquefaction of natural gas. For the full list see Annex VI of Regulation 267/2012.

→ Are there any exceptions?

This prohibition does not apply to:

- (a) the execution, until 15 April 2013, of transactions required by certain trade contracts concerning crude oil and natural gas concluded before 27 October 2010, or by a contract or agreement concluded before 26 July 2010 and relating to an investment in Iran made before 26 July 2010; and
- (b) the execution, until 15 April 2013, transactions required by certain trade contracts concerning the petrochemical industry concluded before 24 March 2012, or by a contract or agreement concluded before 23 January 2012 and relating to an investment in Iran made before 23 January 2012.

If a party wishes to take advantage of one of these exceptions, they must notify the competent authority in the Member State in which they are established at least 20 working days in advance of the transaction.

4. Diamonds, with HS Code 7102 (to the Iranian Government, its public bodies, corporations and agencies, any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them).

The prohibitions in respect of gold and precious metals are currently suspended until 14 January 2016. The goods to which the suspension applies are listed in Annex II to Regulation 42/2014.

All trades or transactions which fall within this suspension must still be investigated thoroughly. There will still be issues under EU sanctions if, for example, a designated party is involved. There may also be issues under US sanctions if payments are to be made in US Dollars.

All contracts falling within the suspensions enacted by these latest measures must be executed by 14 January 2016. Prudence dictates that “executed” should be taken to mean “occur and be completed” by 14 January 2016.

→ Are there any exceptions?

There are no exceptions to this prohibition.

5. Key naval equipment and technology, including technology for ship building, maintenance or refit, including equipment and technology used in the construction of oil tankers. For the full list, see Annex VIB to Regulation 267/2012.

→ Are there any exceptions?

These goods may be supplied to a vessel which is not owned or controlled by an Iranian party, and which has been forced into a port in Iran, or into Iranian territorial waters, under force majeure.

6. Software for integrating industrial processes. For the full list, see Annex VIIA to Regulation 267/2012.

→ Are there any exceptions?

There are no exceptions to this prohibition.

7. Graphite and raw or semi-finished metals. For the full list, see Annex VIIB to Regulation 267/2012.

→ Are there any exceptions?

This prohibition will not apply to the execution, until 15 April 2013, of contracts concluded before 22 December 2012 or ancillary contracts necessary for the execution of such contracts.

Carrying cargo from Iran – what cargos are prohibited?

The EU has suspended all prohibitions on petrochemical products (listed in Annex V to Regulation 267/2012).). The suspension is currently in place until 14 January 2016.

However, all trades or transactions which fall within this suspension must still be investigated thoroughly. There will still be issues under EU sanctions if, for example, a designated party is involved. There may also be issues under US sanctions if payments are to be made in US Dollars.

All contracts falling within the suspensions enacted by these latest measures must be executed by 14 January 2016. Prudence dictates that “executed” should be taken to mean “occur and be completed” by 14 January 2016.

1. It is prohibited to purchase, import or transport from Iran, directly or indirectly, the following goods (whether or not the item originates in Iran):
 - (a) goods and technology which could contribute to Iran’s enrichment-related, reprocessing or heavy-water-related activities or to the development of nuclear weapon delivery systems (for the full lists see Annex I and Annex II of Regulation 267/2012);

→ Are there any exceptions?

There are no exceptions to this prohibition.

- (b) Diamonds, with HS Code 7102 (from the Iranian Government, its public bodies, corporations and agencies, any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them).

The prohibitions in respect of gold and precious metals are currently suspended until 14 January 2016. The goods to which the suspension applies are listed in Annex II to Regulation 42/2014.

All trades or transactions which fall within this suspension must still be investigated thoroughly. There will still be issues under EU sanctions if, for example, a designated party is involved. There may also be issues under US sanctions if payments are to be made in US Dollars.

All contracts falling within the suspensions enacted by these latest measures must be executed by 14 January 2016. Prudence dictates that “executed” should be taken to mean “occur and be completed” by 14 January 2016.

→ Are there any exceptions?

There are no exceptions to this prohibition.

2. It is prohibited to import crude oil and petroleum products into the EU if they originate in Iran or have been exported from Iran. It is also prohibited to purchase crude oil or petroleum products which are located in or which originated in Iran.
- Crude oil and petroleum products are listed in Annex IV to Regulation 267/2012.

→ Are there any exceptions?

The following exceptions apply to crude oil and petroleum products:

- (a) the execution until 1 July 2012 of trade contracts concluded before 23 January 2012 and ancillary contracts;
- (b) the execution of contracts concluded before 23 January 2012, and ancillary contracts, where the supply of these products or the proceeds of that supply are for the reimbursement of outstanding sums to EU parties; and
- (c) it is permitted to import, purchase and transport crude oil and petroleum products which were exported from Iran prior to 23

January 2012, or where the export was made pursuant to point (a) (on or prior to 1 July 2012) or (b) above.

The party seeking to perform the contract must notify the competent authority in the Member State in which it is established at least 20 working days in advance of the activity or transaction.

3. It is prohibited to purchase, transport, or import into the EU natural gas which originates in Iran or has been exported from Iran. For the full list, see Annex IVA to Regulation 267/2012.

Notably, the definition of “natural gas” is not clear. Presumably it includes LNG but it is unclear if it includes LPG. Members are recommended to seek further guidance on the point.

→ Are there any exceptions?

This prohibition does not apply to:

- (a) natural gas that has been exported from a State other than Iran when the exported gas has been combined with gas originating from Iran within the infrastructure of a State other than Iran;
- (b) the purchase of natural gas within Iran by nationals of Member States for civilian purposes, including residential heating or power, or for the maintenance of diplomatic missions; or
- (c) the execution of contracts for the delivery of natural gas originating in a State other than Iran into the EU.

Carrying Iranian cargo anywhere in the world – what cargos are prohibited?

1. It is prohibited to transport certain crude oil and petroleum products if they originate in Iran, or are being exported from Iran to any other country (both within and outside the EU).

In respect of cargoes with HS Code 2709 00 (described as “petroleum oils and oils obtained from bituminous minerals, crude”) these prohibitions have been suspended. The suspension is currently in place until 14 January 2016. The prohibition **remains in place** in respect of all other crude oil and petroleum products listed in Annex IV to Regulation 267/2012, i.e. products with HS Codes 2710, 2712, 2713, 2714 and 2715 00 00.

All trades and transactions which fall within this suspension must still be investigated thoroughly. There will still be issues under EU sanctions if, for example, a designated party is involved. There may also be issues under US sanctions if payments are to be made in US Dollars.

All contracts falling within the suspensions enacted by these latest measures must be executed by 14 January 2016. Prudence dictates that “executed” should be taken to mean “occur and be completed” by 14 January 2016.

→ Are there any exceptions?

The following exceptions apply to crude oil and petroleum products:

- (a) the execution until 1 July 2012 of trade contracts concluded before 23 January 2012 and ancillary contracts;
- (b) the execution of contracts concluded before 23 January 2012, and ancillary contracts, where the supply of these products or the proceeds of that supply are for the reimbursement of outstanding sums to EU parties; and
- (c) it is permitted to import, purchase and transport crude oil and petroleum products which were exported from Iran prior to 23 January 2012, or where the export was made pursuant to point (a) (on or prior to 1 July 2012) or (b) above.

The party seeking to perform the contract must notify the competent authority in the Member State in which it is established at least 20 working days in advance of the activity or transaction.

2. It is prohibited to “purchase, transport, or import into the Union” natural gas which originates in Iran or has been exported from Iran. The drafting of this prohibition suggests that it extends to the transportation of natural gas anywhere in the world, as opposed to being limited to transportation into the EU.

→ Are there any exceptions?

This prohibition does not apply to:

- (a) natural gas that has been exported from a State other than Iran when the exported gas has been combined with gas originating from Iran within the infrastructure of a State other than Iran;
- (b) the purchase of natural gas within Iran by nationals of Member States for civilian purposes, including residential heating or power, or for the maintenance of diplomatic missions; or
- (c) the execution of contracts for the delivery of natural gas originating in a State other than Iran into the EU. Notably, the definition of “natural gas” is not clear. Presumably it includes LNG but it is unclear if it includes LPG. Members are recommended to seek further guidance on the point.

How can I avoid a breach?

In order to avoid falling foul of the cargo prohibitions, the following questions should be asked:

- (a) What is the cargo? It should be identified as precisely as possible.
- (b) What is the origin of the cargo?
- (c) What is the location of the cargo? This may be different to the cargo’s origin.
- (d) What is the destination of the cargo? This should include the cargo’s final destination and any intermediate destinations.
- (e) Who will be the ultimate receiver of the cargo? Will the cargo pass through the custody of any intermediaries before reaching the ultimate receiver and if so, who are they?
- (f) What will the cargo be used for?

These questions should also be asked in respect of bunkers, if it is suspected that a vessel is taking on bunkers of Iranian origin.

Prohibited Services related to the Import and Export of Cargo

It is prohibited to provide the following services, both directly and indirectly, in respect of all prohibited cargo:

- (a) technical assistance;
- (b) brokering services;
- (c) financing; and
- (d) financial assistance.

In respect of crude oil, petroleum and petrochemical products:

- (a) It is prohibited to provide insurance and reinsurance in respect of crude oil and petroleum not falling within HS Code 2709 (the prohibition in respect of that HS Code is suspended until 14 January 2016).
- (b) The prohibitions on the provision of insurance and reinsurance in respect of petrochemical products have also been suspended until 14 January 2016.

Note, however, that US sanctions in respect of crude oil, petroleum and petrochemical products still apply to US reinsurers.

FINANCIAL TRANSFERS

What is prohibited?

There are prohibitions in place in respect of transfers between EU and Iranian banks. It is prohibited to transfer funds between EU financial and credit institutions and:

- (a) credit and financial institutions and bureaux de change domiciled in Iran;
- (b) branches and subsidiaries, both within and outside the EU, of such institutions domiciled in Iran; and
- (c) credit and financial institutions and bureaux de change which are not domiciled in Iran, but which are controlled by a party domiciled in Iran.

The aim of this prohibition is to cut off the Iranian banking system. It essentially means that no payments can be made from within the EU to Iran, which will make doing any business with Iranian parties, either directly or indirectly, extremely difficult.

It should be borne in mind that rerouting a payment via a non-EU country may itself amount to sanctionable conduct, as the aim will be to circumvent the sanctions.

→ Are there any exceptions?

Certain transfers may be authorised, including:

- (a) transfers regarding foodstuffs, healthcare, medical equipment, or for agricultural or humanitarian purposes;
- (b) transfers regarding personal remittances;
- (c) transfers in connection with a specific trade contract, provided the transfer is not otherwise prohibited;
- (d) certain transfers regarding diplomatic missions, consular posts or international organisations;
- (e) transfers regarding payment to satisfy claims by or against an Iranian party, or transfers of a similar nature, provided they do not contribute to activities prohibited by the EU Regulations, to be authorised on a case by case basis; and
- (f) transfers necessary for the execution of certain contracts, concluded before 23 January 2012, in respect of the supply of Iranian crude oil and petroleum products.

The thresholds below which permitted transfers do not require notification and/or authorisation have been increased. This increase is currently in place until 14 January 2016. For that period, the following thresholds apply:

- (a) transfers due on transactions regarding foodstuffs, healthcare, medical equipment, or for agricultural or humanitarian purposes, below Eur.1m or equivalent, and transfers due on transactions regarding personal remittances, below Eur.400,000 or equivalent, shall be carried out without any prior authorisation. The transfer must be notified in advance in writing to the relevant Member State authority if it is equal to or above Eur.10,000 or equivalent;
- (b) transfers due on transactions regarding foodstuffs, healthcare, medical equipment, or for agricultural or humanitarian purposes, equal to or above Eur.1m or equivalent, and transfers due on transactions regarding personal remittances, equal to or above Eur.400,000 or equivalent, shall require prior authorisation of the relevant Member State authority; and
- (c) any other permitted transfer equal to or above Eur.100,000 or equivalent shall require prior authorisation by the relevant Member State authority.

It remains the case that transfers below Eur.10,000 or equivalent do not require any prior authorisation or notification.

The EU legislation sets out, in detail, exactly how authorised transfers must be processed.

FINANCIAL SERVICES

1. Public or Public-Guaranteed Bonds

It is prohibited to sell or purchase public or public-guaranteed bonds issued after 26 July 2010, directly or indirectly, from or to:

- (a) Iran, its Government, public bodies, corporations and agencies;
- (b) a credit or financial institution domiciled in Iran or any other institution to whom it is prohibited to transfer funds;
- (c) a party acting on behalf or at the direction of, or owned or controlled by, a party referred to in (a) or (b) above.

It is prohibited to provide brokering services in respect of such bonds to a party referred to in (a) above.

It is also prohibited to assist a party referred to in (a) above to issue bonds, by providing brokering services, advertising or any other service.

2. Insurance and Reinsurance

The prohibitions on the provision of insurance and reinsurance in respect of petrochemical products are currently suspended until 14 January 2016.

The prohibition on the provision of insurance and reinsurance in respect of crude oil and petroleum products with HS Code 2709 00 has also been suspended, currently until 14 January 2016.

All contracts falling within the suspensions enacted by these latest measures must be executed by 14 January 2016. Prudence dictates that “executed” should be taken to mean “occur and be completed” by 14 January 2016.

Please note, however, that US sanctions in respect of crude oil, petroleum and petrochemical products still apply to US reinsurers.

- (a) It is prohibited to provide insurance or reinsurance, or to broker the provision of insurance or reinsurance, to:
 - (i) Iran, its Government, public bodies, corporations and agencies;
 - (ii) an Iranian party other than a natural person;
 - (ii) a natural person or other party acting on behalf or at the direction of a party referred to in (a) or (b) above.

The extension or renewal of insurance and reinsurance agreements concluded before 27 October 2010 is prohibited. However, without prejudice to the asset freeze provisions, the compliance with agreements concluded before that date is not prohibited.

→ Are there any exceptions?

Points (a) and (b) do not apply to the provision or brokering of compulsory or third party liability insurance or reinsurance to Iranian parties based in the EU, nor to the provision of insurance for Iranian diplomatic or consular missions in the EU.

Point (c) does not prevent the provision of insurance or reinsurance or brokering of insurance to the owner of a vessel, aircraft or vehicle chartered by a person referred to in points (a) or (b).

Point (c) does not apply to the provision of insurance or brokering insurance to individuals acting in their private capacity, unless otherwise designated by the sanctions regime. For the purposes of point (c), a party shall not be considered to act at the direction of a party referred to in (a) or (b) where that direction is for the purposes of docking, loading, unloading or safe transit of a vessel temporarily in Iranian waters.

(b) Insurance related to crude oil and petroleum products

It is prohibited to provide insurance and reinsurance related to the import, purchase or transport of certain crude oil and petroleum products of Iranian origin or which have been imported from Iran.

→ Are there any exceptions?

The prohibition on the provision of reinsurance and insurance has been suspended so far as it relates to the import, purchase or transport of crude oil and petroleum products with HS Code 2709 00. The suspension is in place until 14 January 2016.

All contracts falling within the suspensions enacted by these latest measures must be executed by 14 January 2016. Prudence dictates that “executed” should be taken to mean “occur and be completed” by 14 January 2016.

Further, the prohibition does not apply to:

- (i) the execution of contracts concluded before 23 January 2012, or of ancillary contracts necessary for the execution of such contracts, where such a contract specifically provides that the supply of Iranian crude oil and petroleum products or the proceeds derived from their supply are for the reimbursement of outstanding amounts to persons, entities or bodies under the jurisdiction of Member States;

- (ii) the import, purchase and transport of crude oil or petroleum products which had been exported from Iran prior to 23 January 2012;
- (iii) the import, purchase and transport of crude oil or petroleum products which had been exported from Iran in execution, prior to 1 July 2012, of a trade contract concluded before 23 January 2012;
- (iv) the import, purchase and transport of crude oil or petroleum products which had been exported from Iran pursuant to point (i) above.

(c) Insurance related to natural gas

It is prohibited to provide insurance, reinsurance and brokering services related to insurance and reinsurance in respect of:

- (i) the purchase, transport or import into the EU of natural gas which originates in Iran or has been exported from Iran; and
- (ii) the swapping of natural gas which originates in Iran or has been exported from Iran.

Notably, the definition of “natural gas” is not clear. Presumably it includes LNG but it is unclear if it includes LPG. Members are recommended to seek further guidance on the point.

→ Are there any exceptions?

These prohibitions do not apply to:

- (i) natural gas that has been exported from a State other than Iran when the exported gas has been combined with gas originating from Iran within the infrastructure of a State other than Iran;
- (ii) the purchase of natural gas within Iran by nationals of Member States for civilian purposes, including residential heating or power, or for the maintenance of diplomatic missions; or
- (iii) the execution of contracts for the delivery of natural gas originating in a State other than Iran into the EU.

TRANSPORT AND MISCELLANEOUS SHIPPING-RELATED SANCTIONS

1. Bunkering, ship supply and other services

It is prohibited to provide bunkering, ship supply services, or any other servicing of vessels, to vessels owned or controlled, directly or indirectly, by an Iranian party where the providers of the service have information which provides reasonable grounds to determine that the vessels carry goods on the Common Military List, or goods whose supply, sale, transfer or export is prohibited.

This prohibition will apply until the cargo has been inspected and, if necessary, seized and disposed of.

→ Are there any exceptions?

The only exception to this prohibition is if the provision of the services in question is necessary for humanitarian and safety purposes.

2. Classification services

It is prohibited to provide classification services in respect of oil tankers and cargo vessels flying the Iranian flag or owned, chartered or operated, directly or indirectly, by an Iranian party. This includes the following services:

- (a) the production and application of classification rules or technical specifications concerning the design, construction, equipment and maintenance of ships, as well as shipboard management systems;
- (b) the carrying out of surveys and inspections in accordance with classification rules and procedures;
- (c) the assignment of a class notation and the delivery, endorsement or renewal of certificates of compliance with classification rules or specifications.

→ Are there any exceptions?

There are no exceptions to this prohibition.

3. Design, construction and repair of ships

It is prohibited to supervise and participate in the design, construction and repair of ships and their parts, including related technical assistance, financing and financial assistance, where those ships fly the Iranian flag or are owned, chartered or operated, directly or indirectly, by an Iranian party.

→ Are there any exceptions?

There are no exceptions to this prohibition.

4. Inspection, testing and certification of marine equipment

In respect of vessels flying the Iranian flag or owned, chartered or operated, directly or indirectly, by an Iranian party, it is prohibited to inspect, test and certify marine equipment, materials and components, as well as supervise their installation on board and system integration.

→ Are there any exceptions?

There are no exceptions to this prohibition.

5. Surveys, inspections, audits and visits

In respect of vessels flying the Iranian flag or owned, chartered or operated, directly or indirectly, by an Iranian party, it is prohibited to carry out surveys, inspections, audits and visits and issue, renew or endorse relevant certificates and documents of compliance on behalf of Flag State administration, in accordance with various maritime conventions including SOLAS and MARPOL.

→ Are there any exceptions?

There are no exceptions to this prohibition.

6. Provision and chartering of vessels

The EU Regulations contained a prohibition on making available vessels designed for the transport or storage of oil and petrochemical products:

- (a) to any Iranian party; or
- (b) to any other party unless the provider of the vessel had taken appropriate action to prevent the vessel from being used to carry or store oil or petrochemical products that originated in Iran or had been exported from Iran.

This extended to a prohibition on chartering out vessels which would be used for this purpose, unless appropriate action had been taken to prevent this.

This prohibition is currently suspended until 14 January 2016.

Note that all contracts, including charterparties, falling within the suspensions enacted by these latest measures must be executed by 14 January 2016. Prudence dictates that “executed” should be taken to mean “occur and be completed” by 14 January 2016.

RECOMMENDED CHARTERPARTY CLAUSE

For owner members, in order to safeguard their interests vis a vis their Charterers and minimise the risk they will become exposed to sanctions, The Club recommends, if possible, agreeing a wide-ranging warranty by which Charterers agree that their orders will not breach any applicable sanctions. The following clause, for example, is very wide-ranging:

Quote

Charterers warrant that no voyage, shipment, carriage, sub-charter and/or operation, including the provision, stem and use of bunkers to and by the Vessel, will expose (i) the Vessel and/or (ii) Owners and/or (iii) Owners' affiliates, subsidiaries, servants, agents, employees, managers, crew and/or Master and/or (iv) the Vessel's insurers or their reinsurers and/or (v) vessels (and/or their owners) under the same management as the Vessel and/or (vi) third party contractors and/or (vii) any entity directly or indirectly related to Owners to any sanction or prohibition imposed by any State, Supranational or International Governmental Organisation (including but not limited to the United States of America, the European Union and the United Nations).

Charterers warrant that no voyage, shipment, carriage, sub-charter and/or operation, including the provision, stem and use of bunkers to and by the Vessel, will be unlawful under and/or in breach of any law or regulation of any applicable State, Supranational or International Governmental Organisation (including but not limited to the United States of America, the European Union and the United Nations).

Should the vessel become arrested or detained in Iran for whatever reason charterers warrant to provide security to release the vessel and all time losses shall be for charterer account. Charterers shall indemnify owners and hold owners harmless for any losses, claims and liabilities of whatsoever nature that owners will suffer as a direct or indirect result of any sanction or prohibition imposed by any State, Supranational or International Governmental Organisation (including but not limited to the United States of America, the European Union and the United Nations).

Unquote

Legal advice should be obtained to ensure that any proposed clause is appropriate for the particular circumstances and in line with all other contract terms.