

Shipping - Iran Sanctions Update: Council Regulation (EU) No. 961/2010

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Context

The EU Council Decision of 26 July 2010 was only immediately effective against those to who it was addressed, i.e. the Governments of the Member States, and not against individuals or corporates. A further Regulation was required in order for the sanctions to take effect against corporates and individuals. This Regulation has been published today, 27 October 2010. It has immediate effect and does not require national implementing legislation.

This briefing note is an immediate reaction to that Regulation and its purpose is to highlight some of the key issues which emerge for our clients. It is not intended to be an exhaustive analysis of the Regulation, and further Client Alerts will inevitably follow.

The new Regulation replaces Regulation (EC) No 423/2007 and incorporates the previous restrictions on dealing with certain designated persons.

The regulation applies:

- (a) within the territory of the Union, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union 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;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Key provisions

There are at least four key reasons why trade with Iran for those in the shipping, trading and marine insurance sector is now more complicated. These are:

(1) It is prohibited to sell, supply, transfer or export (directly or indirectly) a wide ranging list of goods and technology (set out in the annexes to the Regulation) to any Iranian person, entity or body or for use in Iran.

The terminology used is thought to be intended to encompass the carriage of such goods. Importation, purchase and transport from Iran are also affected.

The relevant annexes in which these goods are listed are lengthy and detailed. This is likely to pose challenges in terms of identifying whether goods proposed for carriage are prohibited and the due diligence that needs to be carried out to establish whether there is a risk of a breach. These are magnified in the context of containerised cargo.

The areas targeted are nuclear related goods and technology, so called "dual use" items, goods that could be used for internal repression and notably key **equipment and technology for key sectors of the oil and gas industry**.

(2) Prior authorisation is required for a transfer of funds to or from an Iranian person, entity or body of or over €40,000.

We wait to see in practice how quickly such authorisation will be given by the competent authorities. One of the grounds for refusing authorization is that the competent authority has reasonable grounds for determining that the transfer of funds would contribute to prohibited activities relating to the exploration of crude oil and natural gas, production of crude oil and natural gas, refining, or liquefaction of natural gas by an Iranian person, entity or body.

If you are contracting with any Iranian entity, there is therefore no guarantee that you will be able to obtain or make payment (even if the entity is not a designated person).

Additionally, with some limited exceptions, transfers between €10,000 and €40,000 have to be notified to the competent authorities in the Member State.

(3) All goods brought into or leaving the customs territory of the Union to or from Iran shall be the subject to pre-arrival or pre-departure information to be submitted to the competent customs authorities.

(4) It is prohibited for an insurer to provide insurance to Iranian entities, persons or bodies or entities acting on behalf of or at the direction of an Iranian entity although: (a) provision of insurance to the Owners of an Iranian chartered vessel is not prohibited, unless not prohibited. that Charterer is designated; and (b) compliance with pre-existing agreements is

Article 26 reads:

1. It shall be prohibited:

(a) to provide insurance or re-insurance to:

(i) Iran or its Government, and its public bodies, corporations and agencies;

(ii) an Iranian person, entity or body other than a natural person; or

(iii) a natural person or a legal person, entity or body when acting on behalf or at the direction of a legal person, entity or body referred to in (i) or (ii).

(b) to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibition in point (a)...

3. [second para] Point (iii) of paragraph 1(a) shall not prevent the provision of insurance or re-insurance to the owner of a vessel, aircraft or vehicle chartered by a person, entity or body referred to in point (i) or (ii) of paragraph 1(a) and which is not listed in Annexes VII or VIII.

For the purpose of point (iii) of paragraph 1(a), a person, entity or body shall not be considered to act at the direction of a person, entity or body referred to in points (i) and (ii) of paragraph 1(a) where that direction is for the purposes of docking, loading, unloading or safe transit of a vessel or aircraft temporarily in Iranian waters or airspace.

4. This Article prohibits the extension or renewal of insurance and re-insurance agreements concluded before the entry into force of this Regulation, but, without prejudice to Article 16(3), it does not prohibit compliance with agreements concluded before that date.

Insurers will also be affected by the need for prior authorisation for any transfer to be made to or from an Iranian entity. It appears prior authorisation would be required from the competent authority in the Member State to both provide and comply with Club letters to Iranian entities and there are no guarantees that such authorisation would be given. Providing security in the event of difficulties being experienced in Iranian waters will not be straightforward.

Conclusions

Trading with or through Iran has never been more complicated and the sanctions pitfalls harder to avoid.

If you are entering into new charterparties or contracts, consideration should be given expressly to excluding Iran as a permitted destination or including a protective clause such as those developed by BIMCO or Intertanko. If you are concerned that the performance of existing contractual obligations might be prohibited by the international sanctions regime, withdrawing from these or refusing performance may not be straightforward and legal advice should be sought.

If you wish to continue trading with Iran then it is essential that you are able to take steps to identify (1) the Iranian parties involved and (2) the exact goods being carried, and that you liaise with the relevant authorities where necessary.

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