

No. 2 2010/2011 - Iran Sanctions: Current and Pending Legislation

February 2010

Dear Sirs

Iran Sanctions: Current and Pending Legislation

The International Group of P&I Clubs has been monitoring current and pending legislation in the US and the UK prohibiting or imposing further sanctions in relation to dealings with Iran and Iranian entities and trading activities involving such entities. There have been a number of recent developments which impact or may impact on Members and on Clubs which are summarised below for Members' guidance.

1. US legislation

A number of Iranian shipping companies (including IRISL and a number of its subsidiary and affiliated companies) are already "specially designated" by the US Treasury's Office of Foreign Assets Control ("OFAC"). The effect of this designation is to prohibit dealings by US persons (which would include provision of insurance services) with these companies. This prohibition is specifically targeted at the activities of Iranian companies and their vessels and does not extend to the wider shipowning community.

Of greater concern and potential impact however is proposed legislation to amend the Iran Sanctions Act of 1996 to enhance US diplomatic efforts with respect to Iran and expanding economic sanctions against Iran.

Two similar but not identical bills are pending in Congress (H.R.2194 and S.2799 both confusingly titled the Iran Refined Petroleum Sanctions Act). Both bills seek to broaden the scope of the Iran Sanctions Act of 1996. If passed, either bill would provide for sanctions in respect of the export and carriage of refined petroleum products to Iran. Both bills have recently passed each of the two chambers of the US Congress. The House of Representatives has passed H.R. 2194 and the Senate has passed S.2799. For a bill to become an Act or law in the US, it must pass both chambers in identical form. Where, as in this case, there are similar, but not identical bills originating from each chamber, a process of reconciliation is initiated in which representatives from both bodies meet to negotiate a reconciled bill. That reconciliation is not confined to mere middle ground between the two versions, but also can include new approaches. Once the language is made uniform, each chamber must vote again to approve the reconciled language. The act is then sent to the President for signature or, as happens in rare instances, veto. Congress can override a presidential veto by a 2/3 majority vote of both chambers.

In the House of Representatives version of the Iran Refined Petroleum Sanctions Bill, sanctions could be imposed against both domestic and foreign entities that;

(i) Provide ships, vehicles or other means of transportation to deliver refined petroleum products to Iran, or provide services relating to the shipping or other transportation of refined petroleum products to Iran.

(ii) Underwrite or otherwise provide insurance or reinsurance for an activity described in clause (i) above.

The Senate bill provides for the imposition of sanctions against persons who with actual or constructive knowledge provide Iran with refined petroleum resources or engage in any activity that could contribute to the enhancement of Iran's ability to import refined petroleum resources, including

(A) providing ships or shipping services to deliver refined petroleum resources to Iran;

(B) underwriting or otherwise providing insurance or reinsurance for such activity.

The wide drafting under both draft bills could, in relation to shipping activity include owners, charterers, managers, crew, and, in relation to insurance cover, could include the Club in which an offending vessel is entered and its reinsurers. As drafted the sanctions would apply in relation to any identified shipping and insurance activities relating to any vessel, regardless of country of flag, registry or beneficial ownership, which carries refined products to Iran and notwithstanding that, as a matter of the law governing the relevant contracts of carriage and insurance, the adventure is lawful. Potential sanctions for transgression could include barring sanctioned persons or companies from access to US financial institutions and blocking of assets and dollar transactions of an offending insurer located within or routed through the US.

The International Group is continuing to monitor developments in relation to the pending legislation and is also considering making representations to the relevant US authorities with a view to clarifying the impact of the proposed legislation both on shipowners and on their Clubs and to exploring the possibility of measures which may be implemented by shipowners and Clubs to mitigate the impact of the proposed legislation if and when it enters into force.

2. UK legislation

The UK Financial Restrictions (Iran) Order 2009 came into effect on 12 October 2009. The material provisions of the Order (as clarified in subsequent discussions with the UK Treasury) prohibit anyone from doing business with Islamic Republic of Iran shipping Lines (IRISL) and one Iranian bank. The West of England does not do business with IRISL or the identified Iranian bank.

The International Group has not been advised of any further intended action by the UK Treasury in relation to insurance arrangements for other Iranian companies or in relation to trading to Iran but, depending on developments in the US, this possibility cannot be ruled out. The Group is continuing to monitor the situation and will inform Members of any further material developments in this respect.

3. Club cover

The effect of the current UK legislation on cover is limited in scope, but Members having concerns about its impact may wish to contact the Managers.

If the US legislation is passed substantially in the form and substance seen in the two bills, it represents a significant risk of US Government intervention in P & I Clubs' business which may only be avoided by the Club restricting cover in general in connection to Members' trade directly or indirectly with Iran. The Club is considering the extent to which such restrictions might be required in the interest of the Membership as a whole.

A further Notice to Members will be issued in due course.

4. Shipowners obligations arising under contracts of carriage

The International Group will liaise and coordinate with relevant shipowner associations with a view to the development of appropriate protective clauses for incorporation into charter party and bill of lading contracts

Yours faithfully

For: **West of England Insurance Services (Luxembourg) S.A.**
(As Managers)

