

Explanatory Note to BIMCO Sanctions Clause for Time Charter Parties

BIMCO, working together with the International Group of P&I Clubs, has drafted a Sanctions Clause for Time Charter Parties. The development of the Sanctions Clause has been prompted by the recent imposition of a fourth round of UN sanctions against Iran and by amended legislation expanding existing US sanctions against Iran that came into force on 1 July 2010.

Of particular concern is that involvement by foreign entities in the importation of refined petroleum products (diesel, gasoline, jet fuel (including naphtha - type and kerosene - type jet fuel), and aviation gasoline) into Iran, or any assistance in the development of Iran's domestic refining capability, may result in sanctions imposed not only on foreign shipowners (including parent companies), but also on the crew and those who provide services, information and insurance to the vessel such as managers, the ship's insurers and their re-insurers.

The penalties for breaking the US sanctions are severe and may result in foreign businesses that break the sanctions finding their dollar transactions blocked by the US banking system. Many P&I Clubs have already implemented Rule changes whereby cover will be terminated if a member engages in trades likely to expose the Club to sanctions.

The objective of the new 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 judgement" by the owners in determining whether the risk of the imposition of sanctions is tangible.

As sanctions are often brought into force within a short period of time, the Clause covers the application of sanctions after the vessel has begun an employment under the charter. Whether the sanctions existed at the time the order of employment was issued or whether they were subsequently applied, the owners will have the right not to comply with such orders or to refuse to proceed. The owners must advise the charterers promptly of their refusal to proceed with the voyage and the charterers must provide alternative voyage orders with 48 hours of being notified by the owners. Failure by the charterers to issue alternative voyage orders will result in the owners having the right to discharge any cargo on board at a safe port at charterers' cost. In all circumstances the vessel will remain on hire and the charterers will be obliged to indemnify the owners against any claims brought by the cargo owners or holders of bills of lading or sub-charterers as a consequence of the change of orders or the owners' discharge of the cargo.