

29 May 2018

US sanctions against Iran

On 8 May 2018 President Trump announced that the US would cease participation in the JCPOA and begin re-imposing US nuclear-related sanctions which had been lifted to implement the JCPOA. This is likely to have significant ramifications for maritime trade with Iran and the insurance of such trade.

The US Department of the Treasury FAQs issued on 8 May relating to the effect of the re-imposition of US secondary sanctions measures can be accessed via the web link below:

https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf

The International Group is already engaged with OFAC directly, seeking clarification on a number of aspects of the application of the Presidential Memorandum of 8 May including the continuation of pre-8 May contractual obligations during the “wind-down” period, permitted trade with Iran after the 6 August and 4 November deadlines and to the wind down of the General Licence H arrangements applying to non-US domiciled affiliates and subsidiaries of US domiciled insurers and reinsurers. As the remaining JCPOA partners have reaffirmed their support for the JCPOA, the Group is also engaging with the UK Treasury and with the European Union External Action Service in relation to the impact of the US decision, and possible EU measures, on the Clubs and their reinsurers. The position may become more complex in the short-term by virtue of the continued support for the JCPOA by its other signatories and by the recent threat of further sanctions being imposed by the US.

The US position has reverted to that prior to the relaxation of US nuclear related sanctions on Implementation Day on 16 January 2016 when the JCPOA took effect. Shipowners and charterers who are considering trading to Iran should understand that P&I cover for such trade is unlikely to remain in place where there is a risk that providing insurance risks the imposition of sanctions by the US.

Calls at Iranian ports

One potential ramification of the US withdrawal from the JCPOA could be that, in the event of ship detention, Clubs could encounter difficulties putting up security in the context of any claim with an Iranian connection.

This is particularly relevant if security is required for a major claim relating to Iranian port, since the US will re-impose sanctions against Iran’s port operators, which sanctions provide for penalties against any person who provides “significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of...a person determined to operate a port in Iran.” The ramifications of the re-imposition of secondary sanctions against Iranian ports are uncertain and the group is seeking clarification from OFAC on this point.

The position in relation to calls at Iranian ports under pre-8 May contracts during the wind down periods up to 6 August and 4 November 2018 is unclear in a number of respects and the Group is awaiting clarification and/or guidance from OFAC.

Due to the uncertainty surrounding the application of the re-imposed secondary sanctions against Iranian ports, caution should be exercised in respect of all calls at Iranian ports, especially if they are made under post-8 May contracts and under all transactions after 4 November 2018. Due diligence should be exercised to ensure that neither the cargoes carried nor the parties involved in the transactions offend US sanctions. However, we emphasise that there is at this point no clear guidance from the US authorities on the issue of routine transactions with Iranian port operators.

Party related sanctions

On JCPOA implementation day in January 2016, hundreds of individuals and entities were removed from the US sanctions lists. These parties will now be relisted by the US no later than 5 November 2018. After their relisting, most of these parties will be subject to secondary sanctions.

Maritime activities related to the 90 days' wind-down period

From 6 August 2018, the sale, supply or transfer, directly or indirectly, to or from Iran of the following materials: graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes is sanctionable where the material is:

- to be used in connection with the energy, shipping or shipbuilding sectors of Iran or any sector of the economy of Iran controlled directly or indirectly by Iran's Revolutionary Guard Corps;
- sold, supplied or transferred to or from an Iranian person on the SDN List (other than Iranian financial institutions that have not been designated for the imposition of sanctions); or
- to be used in connection with the nuclear, military or ballistic missile programs of Iran.

In addition, from 6 August 2018, the following activities will be subject to the re-imposition of sanctions:

- Iran's trade in gold or precious metals;
- Significant transactions related to the purchase or sale of Iranian currency, or the maintenance of significant funds or accounts outside the territory of Iran that occurs in Iranian currency;
- The purchase, subscription to, or facilitation of the issuance of Iran sovereign debt; and
- Iran's automotive sector.

Maritime and non-maritime activities related to the 180 days' wind-down period

From 4 November 2018, US sanctions will be re-imposed on:

- Iran's energy sector;
- Iran's port operators;
- Iran's shipping and shipbuilding sectors, including the Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line, or their affiliates;
- Petroleum related transactions, with, among others, the National Iranian Oil Company ("NIOC"), Naftiran Intertrade Company ("NICO"), and National Iranian Tanker Company ("NITC") including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- The provision of underwriting services, insurance, or reinsurance;
- Transactions by foreign financial institutions with the Central Bank of Iran and other foreign financial institutions that have been designated under NDAA Section 1245; and
- The provision of specialised financial messaging services to the Central Bank of Iran and other Iranian financial institutions.

The US Treasury FAQs have stated that any persons engaged in these activities should take steps necessary to reduce such activities by the end of the wind-down periods to avoid exposure to sanctions or enforcement actions.

The wind-down periods permit the winding down of Iranian transactions which had been commenced before 8 May 2018. OFAC FAQ 2.2 addresses the issue of whether, after 8 May 2018, parties can engage in new Iran-related transactions if they will be concluded within the applicable wind-down periods. FAQ 2.2 is less than clear but in informal discussions OFAC has indicated that penalties could be imposed on sanctionable activities entered into after 8 May 2018 even if they are concluded within the applicable wind-down period.

In addition, the US plans to revoke specific and general licenses issued in connection with sanctions relief provided under the JCPOA, again subject to wind-down periods, including General License H, which authorised US-owned or controlled foreign entities to engage in certain activities involving Iran.

The Group will continue to engage with the relevant US and EU regulatory bodies on these issues with a view to obtaining further clarity, especially with regard to implementation of the reinstatement of sanctions in the US and the impact this will have in relation to shipowners' liability and club cover. In the meantime, Members should contact the Club directly for advice/guidance in relation to the provision of their insurance cover arrangements and / or take legal advice from specialist lawyers.

Further information on the issues raised in this circular can be obtained by clicking the links to US based law firms Freehill, Hogan & Mahar [click here](#) and Gibson Dunn [click here](#).

All Clubs in the International Group have issued a similar circular.