

Alert 10-155

A red banner with the ReedSmith logo in white on the right and the text "Shipping Alert" in white on the left. The background of the banner shows a close-up of a pen nib writing on a document.

Shipping Alert

ReedSmith

The Comprehensive Iran Sanctions, Accountability and Divestment Act 2010: Impact on charterparty obligations

Introduction

This is an update to our [March shipping briefing](#).

Our March briefing discussed the impact of U.S. legislation then under discussion to strengthen and widen the impact of sanctions against Iran. This legislation is now known as the Comprehensive Iran Sanctions, Accountability and Divestment Act 2010 (the "Act"). The Act was signed by President Obama yesterday, 1 July and has therefore now come into force.

Before discussing the Act and its impact it is also important to note that this is not the only development in this area, as set out in the [Reed Smith June alert](#) on United Nations, U.S. and EU sanctions against Iran.

More detail of the EU sanctions is expected shortly.

The Act

The Act substantially strengthens the current Iran Sanctions Act ("ISA") by imposing several new trade sanctions on Iran and parties trading with Iran. Shipping and marine insurers are directly affected by the legislation, part of a series of mounting global sanctions aimed at curbing Iran's weapons programme and other areas of concern.

The Act goes far beyond simply sanctioning Iranian companies; instead, it targets companies worldwide, whether Iranian or not, that engage in certain dealings with Iran's energy and financial services sectors. Primary targets include firms selling refined petroleum to Iran and otherwise providing investment, technology or support for its petroleum sector, persons trading in nuclear technology with Iran, and financial services companies that deal with Iran's Revolutionary Guard Corps or a number of blocked Iranian financial institutions. In addition, the existing broad U.S. trade embargo on Iran is written into positive law.

A focus of the legislation of particular concern to shipping is a provision to cut off Iran's access to refined petroleum products by sanctioning companies that export refined products, or provide support for such trade. Specifically, companies, wherever located, are subject to strict sanctions if they provide services (including shipping, financing, brokering or insurance) with a fair market value of \$1 million or more (or during a 12-month period, with an aggregate fair market value of \$5 million or more) that "directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products."

New sanctions authorized under the legislation include a prohibition on access to foreign exchange in the U.S., a prohibition on access to the U.S. banking system, and a prohibition on property transactions in the U.S., all potentially crippling measures for international shipping concerns. Enforcement efforts are expected to increase as well, as the Act authorizes stepped up funding for policing and stiffened penalties, including an increase in fines from \$10,000 to \$1 million and in jail time from 10 to 20 years.

In a departure from previous versions of the bill, Congress has adopted new provision stating that sanctions cannot be imposed on an insurer if it has "exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not underwrite or enter into a contract to provide insurance or reinsurance for the

sale, lease, or provision of goods, services, technology, information, or support" that is barred by the Act.

The new Act also provides some limited individual waiver authority for companies from countries supporting U.N. multilateral sanctions efforts on Iran, but the authority is relatively constrained, and likely will be used sparingly.

Discussion – Impact on future charters

In respect of *future* charters, there are protective clauses available, such as the clause circulated by Intertanko in response to the draft legislation:

Any trade in which the vessel is employed under this Charterparty which could expose the vessel, its Owners, Managers, crew or insurers to a risk of sanctions imposed by a supranational governmental organisation or the United States, { insert other countries } shall be deemed unlawful and Owners shall be entitled, at their absolute discretion, to refuse to carry out that trade. In the event that such risk arises in relation to a voyage the vessel is performing, the Owners shall be entitled to refuse further performance and the Charterers shall be obliged to provide alternative voyage orders.

It had been expected that Intertanko would review the clause in light of the final legislation and so it may be that a revised clause will now be released.

The Intertanko clause has a broad scope and is owner friendly, in that all that is required is that the trade "could" expose the "vessel, its Owners, Managers, crew or insurers" to a "risk" of sanctions. It does, however, leave open the possibility that the parties could disagree as whether the subject "trade" could lead to such a risk. Owners may seek to amend the clause expressly to provide that it is for owners to decide, in their reasonable judgment, whether such risk exists. Charterers may wish to restrict the scope of the clause to trade which "does" expose the Owners to risk.

It may of course also be that the parties are able to include Iran as one of the excluded countries in the trading restrictions clause of the charter.

Further protective clauses are expected to be released imminently. BIMCO has been working on a standard clause for Time Charters with the International Group which, it is anticipated, will be released any day.

Discussion – Impact on existing charters

In respect of *existing* charters where the charterer might order the vessel to load refined petroleum products for discharge in Iran, or conduct another voyage which would be in breach of the Act, the position is more complicated and whether or not that order can be legitimately refused will depend upon the terms of the charter. The arguments highlighted in our March briefing – illegality, frustration, potential breach of the war risks clause, should also be considered.

The parties may consider agreeing an Addendum to existing charters to include a trading restriction to Iran or a protective clause such as the Intertanko clause set out above.

Implementation

Treasury is expected to begin developing informal guidance, outreach, and implementing rules in the weeks ahead. Reed Smith's Washington Shipping team will continue to work with Treasury officials to resolve emerging questions and concerns regarding application of the new sanctions to the shipping sector.

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