

# Iran Sanctions

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### Disclaimer

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Unless the contrary is indicated, all articles are written with reference to English Law. However it should be noted that the content of this publication does not constitute legal advice and should not be construed as such. Members should contact North for specific advice on particular matters

## Introduction

There are three main sanctions regimes in place with the United Nations (UN), the United States (US) and the European Union (EU), all taking measures against Iran. In addition, individual states will have interpreted the UN and EU rules in slightly different ways, or indeed may have imposed their own set of regulations. This creates a patchwork of laws and regulations, which makes it more difficult for parties to ascertain exactly what the law is and what sanctions are in place.

EU/US and a number of other sovereign state sanctions are more onerous than the UN sanctions. As a result, general compliance with US and EU regulations on Iran – which are the primary focus of this briefing – should ensure that Members are in compliance with UN sanctions.

As of 1 July 2013, the EU and US sanctions are very closely aligned, with targets including the following activities:

- Dealings with designated individuals and entities.
- Supplying refined petroleum products to Iran.
- Developing Iranian petroleum resources.
- Facilitating Iran's domestic production of petrochemical products.
- Contributing to Iran's development of petroleum resources.
- Contributing to Iran's domestic production of refined petroleum products.
- Purchasing or transporting petroleum or petroleum products from Iran or of Iranian origin.
- Purchasing or transporting petrochemical products from Iran or of Iranian origin.
- Owning, operating or controlling a vessel involved in Iran's crude exports.
- Concealing the Iranian origin of crude or RPP.
- Supporting Iranian proliferation or terrorism activities.
- Supporting NIOC, Naftiran or the Central Bank of Iran.
- Transacting with Iran's energy, shipping and shipbuilding sectors or Iranian ports.
- Selling or transporting precious metals, graphite, raw or semi finished metal, coal.
- Purchasing or transporting natural gas from Iran or of Iranian origin.

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It is of critical importance for Members to understand that whilst a particular trade may be lawful for the Member (because, for example, they fall outside of the EU's jurisdiction), that is not a consideration in determining the Club's ability to provide insurance, in respect of which there are specific and targeted provisions.

The onus is on every company and individual to know the law and to conduct due diligence by checking the available information to ensure that the **goods being carried** and the **individuals/companies** being traded with are not on the sanctions lists, that the transaction is not otherwise prohibited, and that it would not constitute sanctionable activity.

Detailed records of the checks made on all parties involved in the transaction including shippers, charterers, sub-charterers, receivers, the loading or discharge port, and the nature and end use of the goods should be examined and kept to ensure compliance and prevent violations. Putting in place and being able to demonstrate a working sanctions compliance program is extremely important.

## United Nations

The UN Security Council has passed six resolutions in connection with Iran's controversial nuclear program. Each resolution was designed to increase pressure on Tehran to suspend its uranium enrichment and ballistic missiles development programs, two of three critical steps in obtaining nuclear weapons capability. UN Security Council resolution No. 1929 ("UNSCR 1929") is the latest UN resolution concerning Iran's nuclear program.

UNSCR 1929 broadens the scope of previous sanctions. Inter alia, the sanctions call for states to ensure that individuals and financial institutions exercise vigilance when doing business with Iranian entities and to prevent such business if there are reasonable grounds to believe that it could contribute to Iran's proliferation activities.

Specifically, as it concerns shipping and insurance, UNSCR 1929, inter alia, required UN Member States to prevent the transfer of missile-related technology to Iran. It calls on states to inspect ships bound to or from Iran if they suspect banned cargo is aboard. The resolution

especially targeted the Revolutionary Guards and the Islamic Republic of Iran Shipping Lines (IRISL), a state-owned shipping conglomerate that was allegedly involved in transporting items related to Iran's nuclear and ballistic missile development. It called on the international community to refuse financial and insurance services to both the IRGC and IRISL.

## United States Sanctions

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### For US-persons

For **US-persons** the position is relatively straightforward. US-persons are defined as any US citizen, permanent resident alien, entity organized under the laws of the US (including foreign branches), or any person (individuals and entities) in the territory of the US. These are the sanctions governed by the ITSR (Iranian Transactions and Sanctions Regulations) which provide for:

- (1) Comprehensive prohibitions on any trade (goods, services, technology) and business between (a) the US/US persons (individuals and entities) or foreign entities owned or controlled by US entities, and (b) Iran and other Iranian sanctions targets (generally all persons (entities and individuals) in Iran and Iranian government entities) (Iranian Transactions and Sanctions Regulations).
- (2) A prohibition on investment in Iran by U.S. persons and entities owned or controlled by U.S. persons.
- (3) Prohibitions on transactions with or involving persons (entities and individuals) designated (so called Specially Designated Nationals ("SDNs") whose property is blocked), and persons owned or controlled by designated persons. Ownership means 50% or more, and control means control in fact (Executive Order 13382 and its implementing regulations, the WMDPSR).

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A list of the names of designated sanctions targets designated appears on OFAC's List of SDNs and Blocked Persons, available at:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

This list is illustrative and not comprehensive.

## For non US-persons

For **non-US persons** from 1 July 2013 the list of sanctionable activities has increased substantially (see paragraphs 11-13 below). The following activities, amongst others, are potentially sanctionable:

- (1) Supplying Iran with **refined petroleum products** (RPP), or facilitating Iran's ability to import and produce RPP, or investing in Iran's petroleum sector, or supporting or facilitating Iran's efforts to acquire weapons of mass destruction (CISADA).
- (2) Selling, leasing or providing goods, services, technology, or support to Iran that could directly and significantly contribute to the enhancement of Iran's ability to **develop petroleum resources** located in Iran (Executive Order 13590).
- (3) Selling, leasing or providing goods, services, technology, or support to Iran that could directly and significantly facilitate the maintenance or expansion of its domestic production of **petrochemical products** (Executive Order 13590 and The Iran Threat Reduction and Syria Human Rights Act ("ITRSHRA")).
- (4) Selling, leasing or providing to Iran goods, services, technology or support that could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop **petroleum resources** located in Iran; or the domestic **production of refined petroleum products**, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries or directly associated infrastructure, including port facilities, railroads, or roads, if the primary use of those facilities, railroads, or roads is for the **transportation of refined petroleum products** (ITRSHRA).
- (5) Knowingly engaging in a significant transaction for the **purchase or acquisition of petroleum or petroleum products from Iran** (Executive Order 13622). Under Executive Order 13622 the term "petroleum" (also known as crude oil) means a mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. The term "petroleum products" includes unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products obtained from the processing of: crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. The term does not include natural gas, liquefied natural gas, biofuels, methanol, and other non-petroleum fuels.
- (6) Knowingly engaging in a significant transaction for the purchase or acquisition of **petrochemical products from Iran** (Executive Order 13622). "Petrochemical products" includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea.
- (7) Owning, operating, or controlling, or insuring, a vessel involved in **Iran's crude exports** (ITRSHRA).
- (8) Concealing the **Iranian origin of crude oil** or refined petroleum products transported on a vessel (ITRSHRA).
- (9) Selling, leasing, or providing a vessel or providing insurance or reinsurance or any other shipping service that could support **Iranian proliferation or terrorism activities** (ITRSHRA).
- (10) Materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services in support of, **National Iranian Oil Company, Naftiran Intertrade Company, or the Central Bank of Iran**, or the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran (Executive Order 13622).

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(11) Transacting with Iran's **energy, shipping and shipbuilding sectors, Iranian Ports or Iranians on the SDN list** (Iran Freedom and Counter-Proliferation Act of 2012 ("IFCA")). Sanctions can be imposed against any person who "sells, supplies or transfers" to Iran "significant goods or services in connection with the energy, shipping or shipbuilding sectors of Iran" or provides goods, services or support for the benefit of any person determined to be part of the energy, shipping or shipbuilding sectors of Iran or determined to operate a port in Iran. Guidance suggests that the "shipping sector" provisions are designed to target activities that relate to Iran's ability to engage in ocean transportation itself. Further, it is understood that routine calls to Iranian ports with non-sanctionable cargo would not generally fall within the scope of these provisions.

(12) **Transacting with those on the ("SDN") list** (IFCA 2012). Sanctions can be imposed on any person who provides significant goods and services to or for the benefit of Iranian persons on the SDN list.

(13) The sale, supply or transfer of **precious metals, graphite, raw or semi-finished metals such as aluminium and steel**, coal and software for integrated industrial processes directly or indirectly to or from Iran (IFCA 2012). Transactions involving graphite, raw or semi-finished metals, coal and software are sanctionable where Iran is using those materials as a medium for barter, swap or any other exchange or transactions or listing those materials as assets of Iran for purposes of its national balance sheet; or (i) to be used in connection with the energy, shipping or shipbuilding sectors of Iran or any sector controlled directly or indirectly by Iran's Revolutionary Guard Corps (ii) sold, supplied or transferred to or from an Iranian person on the SDN list; or (iii) to be used in connection with Iran's nuclear, military or ballistic missile programs.

*Also note that:*

- Whilst no sanctions are provided for, IFCA directs the President to annually provide Congress with a report on the names, owners and operators of "large or otherwise significant vessels" that have visited

Iranian ports which are controlled by Tidewater Middle East Company.

- The President is required to block the property of and prohibit all transactions with or involving the Government of Iran and Iranian financial institutions.
- Sanctions can be imposed against financial institutions engaging in a significant transaction in connection with the purchase or acquisition of crude oil from Iran. Waivers in this regard have been granted for financial institutions handling transactions for certain countries that have reduced their importation of crude oil from Iran.
- A foreign person may be subject to civil and criminal penalties if it otherwise conducts substantial business in the U.S. and "causes" a U.S. person to violate the regulations which apply to "U.S. persons".
- The activities listed above are examples of potentially sanctionable activity. In some cases, threshold levels apply and so it is only if the value of the transaction is above that threshold (or is one of a series of transactions which are above a threshold) that sanctions may be triggered and imposed. The laws are complex and whether a certain activity constitutes sanctionable activity entails a fact-sensitive analysis.

## Penalties for non US-persons

The penalties that can be imposed against non-US persons (in the form of sanctions against them) are wide ranging and dependent upon the sanctionable activity performed. CISADA, for example, provides for 9 potential penalties including the freezing of the assets within US jurisdiction. This would mean complete exclusion from conducting business with the US or US Persons, and most likely the denial of or difficulty in obtaining visas to enter the US.

Further, by Executive Order 13608, foreign individuals and entities that have violated, attempted to violate, conspired to violate, or caused a violation of U.S. sanctions against Iran or Syria, or that have facilitated deceptive transactions for persons subject to U.S. sanctions concerning Syria or Iran can be targeted and made to be US sanctions targets as if they were themselves Iranian or Syrian entities.

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## Foreign financial institutions

There are additional sanctions which apply specifically to foreign financial institutions. Although not the focus of this briefing, these sanctions are significant. For example, under the NDAA, subject to certain exemptions, the President is to prohibit or restrict the opening and maintaining in the United States of correspondent account or payable-through account by a foreign financial institution that the President determines has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution.

## Insurance, Reinsurance & underwriting activities

The Iran Freedom and Counter-Proliferation Act of 2012 ("IFCA") directly targets insurers and underwriters. Foreign insurers can be sanctioned if they knowingly provide underwriting, insurance or reinsurance services:

- (a) For any Iran-related activity for which sanctions have been imposed under any U.S. law;
- (b) To or for any person with respect to, or for the benefit of any activity in the energy, shipping or shipbuilding sectors for which sanctions can be imposed under IFCA;
- (c) To or for any person for the sale, supply, or transfer to or from Iran of the precious metals and raw materials for which sanctions can be imposed under IFCA;
- (d) To or for any person designated for the imposition of sanctions under the International Emergency Economic Powers Act in connection with Iran's proliferation of weapons of mass destruction or support for international terrorism;
- (e) To or for any Iranian person on the SDN list.

There is a "due diligence" exemption if the insurer, reinsurer or underwriter can evidence that they had exercised due diligence in establishing and enforcing "official policies, procedures and controls" to attempt to ensure that they did not insure or underwrite such activities.

## The 180 day rule

A ban on vessels from US ports if the vessel has called at a port in Iran, Syria or North Korea within the previous

180 days was considered for inclusion in ITRSHRA. The so called 180 day rule was not, however, included in the final version. However, ITRSHRA does provide that if a vessel is used "*in a manner that conceals the Iranian origin of crude oil or refined petroleum products transported on the vessel*" all that owner's vessels could be barred from US for up to 2 years.

## European Union Sanctions

The key EU Regulation is 267/2012 (as amended by Regulation 1263/2012). The EU sanctions impact both on the parties companies and individuals can do business with and also the activities that companies and individuals can conduct.

Penalties are determined at member state but can include substantial fines and custodial sentences.

Members should also be aware that it is an offence to circumvent the prohibitions and so should not participate in activities the object or effect of which is to try to avoid these measures.

## Party based sanctions

There a number of entities and individuals (the "sanctioned parties") whose assets are frozen. It is an offence to make funds (or other assets that can be converted into funds) available, directly or indirectly to or for the benefit of these sanctioned parties. Exclusions to this prohibition are extremely limited and unlikely to be relevant.

The lists of the sanctioned parties which are updated to reflect any changes are at:

<http://www.hm-treasury.gov.uk/d/irannuclear.htm>

<http://www.hm-treasury.gov.uk/d/iranhuman.htm>

Questions arise as to how "indirect" the transaction can be for an offence still to be committed. For example, if a sub-charterer pays hire to its charterer knowing that the vessel has been chartered on back to back terms from the owner who is a sanctioned party; it could be argued that the sub-charterer, although not in a contractual

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relationship with the sanctioned party, is committing a breach in paying hire to its contractual partner.

## Activity based sanctions

### Crude oil, petroleum and petrochemical products and natural gas

By Regulation 267/2012 the importation, transport (including storage), purchase, financing, insurance and reinsurance of crude oil, petroleum and petrochemical products from Iran or of Iranian origin was prohibited.

Regulation 267/2012 has now been amended by Regulation 1263/2012 to extend the prohibitions to the purchase, transport or import of natural gas which originates in Iran or has been exported from Iran.

It is unlawful for North to provide P&I or other insurance to a vessel engaged in trades which contravene these prohibitions. Members are reminded that under club rules, the entry of a vessel will cease in circumstances where the vessel is employed in a carriage, trade or voyage which, or the provision of insurance for which, will expose the Club to the risk of being or becoming subject to any sanction, prohibition or adverse action. The trading of a vessel in breach of applicable sanctions legislation may also reduce or extinguish the Club's liability to pay claims.

The Club is unable to insure **any** vessel carrying Iranian crude, petroleum or petrochemical products, or natural gas, regardless of its flag, place of ownership, and the destination of the cargo. Further, Regulation 1263/2012 now prohibits the supply (which is likely to include both the sale or charter) of vessels designed for the transport or storage of oil or petrochemical products, to Iranian persons, entities or bodies and to anyone for the transport or storage of Iranian-origin oil or petrochemical products,

## Bunkers

The provisions of Regulation 267/2012 do not expressly extend the prohibitions on transportation and insurance to oil or petroleum products used as ship's bunker fuel or to lube oils, but the generic descriptions of oil and petroleum products could include bunker fuels and lube oils.

The UK's Competent Authorities indicated their view that fuel oil and lube oils used for the purposes of propulsion of the ship and the operation of the vessel's machinery (i.e. not fuel oil or lube oils carried as cargo) would not trigger the prohibitions contained in the Regulation. The UK's views are not legally binding, however, and it should particularly be borne in mind that they may not be shared by the Competent Authorities of other EU Member States.

Regulation 1263/2012 provides that bunkers that contain a blend of Iranian origin crude oil will not be caught by the prohibitions (assuming not carried as cargo) so long as the blended bunkers were not produced in Iran, unless they were stemmed in a port of refuge in Iran as a result of a force majeure event,

## Other goods and technology

There are also prohibitions and restrictions in relation to the transport in and out of Iran of nuclear related goods, dual use goods, goods that could be used for internal repression, key items for the oil, gas and petrochemical trades, gold, precious metals and diamonds, telecommunications monitoring equipment, key naval equipment and technology for shipbuilding, graphite, raw or semi-finished materials (such as aluminium and steel) and software for certain industrial processes.

The first step in establishing whether a particular good or service is prohibited is to check the annexes to the relevant Regulation (see Regulations 267/2012, 1263/2012, 359/2011).

The annexes in which these items are listed (and the further documents referred to) are technical and detailed and screening checks should be carried out. This is not a straightforward exercise and comfort should also be sought from relevant parties, such as shippers and charterers.

## Payments

It is prohibited for financial and credit institutions falling within the EU's jurisdiction to transfer funds to / from Iranian credit and financial institution unless the transfer falls within the one of the limited exemptions.

Further, transfers to or from an Iranian person, entity or body (which are not to / from an Iranian financial or credit institution) ordinarily must be notified to the relevant

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authority if over €10,000 and prior authorisation is required if equal to or above €40,000.

## P&I Club Cover

Members will be aware that one function of the sanctions is to stop financial institutions, including insurance providers, from providing services to certain Iranian entities, or to help facilitate trade to Iran.

As such there has been a serious effect on North's ability to handle claims arising in Iran and/or from Iranian claimants and have modified the usual extent of Club cover.

North is not able to insure vessels carrying Iranian crude oil, petroleum or petrochemical products, or natural gas. The Club is precluded from insuring such cargoes wherever the Member is based.

North is also not able to insure vessels engaged in any Iran related activity for which sanctions have been imposed under any U.S. law.

## P&I claims arising through lawful trade with Iran

It will be highly problematic for North to assist Members should a claim arise in Iran or in relation to an Iranian cargo even where the trade is lawful and insurance of it is not prohibited.

Members will not have access to the full claims handling service they would normally expect from the Club. They may also encounter difficulties in handling claims themselves.

When trading to Iran Members should be aware that they are likely to experience difficulties in the following areas:

- an inability to receive funds originating in Iran (e.g. hire, freight and the price of the goods).
- an inability to pay money into Iran (in respect of agency fees, customs dues etc).
- the Club will most probably be unable to handle claims involving an Iranian claimant.

- the Club may not be able to settle claims involving an Iranian claimant or provide security to an Iranian claimant.
- the Member itself may find that it is unable to settle claims of an Iranian Claimant and its vessel may therefore be confiscated to settle the claim.
- an Iranian charterer is unlikely to be able to pay disbursements such as canal dues, bunker invoices etc.

In the light of the above many owners are choosing not to trade with Iran and if possible are inserting a sanctions clause (such as that recommended by BIMCO) in any new charterparties. The BIMCO clause is available from the website: <http://www.bimco.org>

## P&I Club Rules

A number of changes were made to North's rules in order to protect the Club itself from exposure to sanctions.

Cesser of insurance provisions have been introduced to rule 38 which will involve the termination of a vessel's entry, where the employment of that insured ship exposes the Club to the risk of being, or becoming subject to, any sanction, prohibition or adverse action.

A change was also made to Rule 19 which will ensure that North will not be exposed to any sanction, prohibition, adverse action, or risk thereof, arising from the handling or payment of a claim.

Another function of the sanctions is that North's and the International Group's reinsurers will be limited in their ability to contribute to claims. As such a rule was introduced that limits the amount recoverable by a Member from the Club, to the amount the Club can recover from reinsurers.

The Club's Circulars issued on 23 December 2010 and 25 May 2012 outline the changes in detail:

<http://www.nepia.com/cache/files/5358-1293620465/2010-041PIRULESAMENDMENTS20112012-21DECEMBER2010FINAL.pdf#zoom=70>

<http://www.nepia.com/publications/clubcirculars/pandigeneral/1252/>

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## Further information

North publishes updates on the situation through industry news:

<http://www.nepia.com/publications/industrynews/listing/>

Visiting the websites below will assist you in checking the position in respect of sanctions.

## UK/UN/EU sanctions

For UK, UN and EU sanctions visit:

<https://www.gov.uk/sanctions-on-iran>

For EU designated nationals visit:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

Cargoes that are subject to sanctions can be viewed in the annexes to Regulation 267/2012.

[Click here](#) for the Regulation.

New **IG FAQs** have been issued to assist Members with issues in connection to Council Regulation 1263/2012.

These should be read in conjunction with previous FAQs.

[FAQs issued 01 November 2012](#)

[FAQs issued 14 August 2012.](#)

[FAQs issued 25 May 2012.](#)

[FAQs issued 19 April 2012.](#)

[FAQs issued 27 March 2012.](#)

[FAQs issued 8 February 2012](#)

## US sanctions

For US sanctions visit:

<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

For a list of US specially designated nationals visit:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

The International Group has published a FAQ regarding enforcement of US Trade Sanctions against Iran:

<http://www.igpandi.org/downloadables/news/news/US%20sanctions%20FAQs%20-%20Rev%201%202013%2005%2030.pdf>

North's industry news item on the expansion of US sanctions for non-US entities (with a link to the International Group briefing) can be accessed directly here:

<http://www.nepia.com/publications/industrynews/legal/worldwide/1358/>

If in any doubt as to the legality of any trade legal advice should be sought.