LOSS PREVENTION Briefing

NORTH SERVICE, STRENGTH, QUALITY

LOSS PREVENTION BRIEFING FOR NORTH MEMBERS LEGAL / JUNE 2017

Qatari Restrictions

Introduction

Saudi Arabia, the UAE, Bahrain, Egypt, Yemen and Libya cut diplomatic ties with Qatar on 5 June 2017.

Currently, Qatari flagged vessels and any vessels destined to or coming directly from Qatar are prohibited from calling at specific ports in the states aligned against Qatar.

Members are referred to North's overview of Qatari restrictions and which is being updated as more information becomes available. It can be accessed here.

It is important for Members to ensure that their trading does not infringe the measures recently introduced by neighbouring / Arab states as a failure to do so may result in significant delays and losses which may not be covered by the usual marine insurance policies.

Container Operators

One particular issue of note is the use by container operators of the UAE as a hub for their operations. We set out below our current understanding of the issues relevant to the carriage of Qatar-intended cargo, but recommend that Members undertake an independent check with their local agents to establish the legitimacy of the intended cargo operation.

- Vessels calling the UAE part laden with Qatar-intended cargo should not experience any problems in calling the UAE, where Qatar is not the next intended port.

- Transhipment operations in the UAE - Vessels intending to load Qatar-intended cargo which is in storage in the UAE and not of UAE origin, should be able to load such cargoes, where Qatar is not the next port.

- Export to Qatar of cargo originating in the UAE is prohibited from being loaded in the UAE ports even if the next port on departure from the UAE is not Qatar.

Charterparty Issues

The starting point in evaluating legal rights and obligations following the introduction of these restrictions must of course be to review the specific terms of the charterparty.

Members currently negotiating charterparties will wish to ensure that they are sufficiently protected by the terms of the charter.

We set out some introductory comments below but Members should contact their usual FD&D team if they require further information or any legal advice on these issues.

In recent years, and in particular as a result of the increased use of sanctions by the European Union and the United States, the inclusion of **sanctions clauses** in charterparties has become commonplace. Standard clauses have been developed such as the BIMCO Sanctions Clause for Time Charter Parties.

Each sanctions clause will need to be analyzed in detail. There are at least two critical questions to be asked. Firstly, is the clause in principle broad enough to encompass the restrictions? The clause may refer to "restrictions", "prohibitions", "sanctions" ,"embargoes", "blockades" or "boycotts". It will need to be established whether the relevant measure falls within the scope of the clause. Secondly, the clause may define the state or organization which must impose the sanctions for them to fall within the clause. For example, the clause may only refer to "UN,US,EU" sanctions and not to measures imposed by particular states.

Any sanctions clauses in the charterparty should not be read in isolation and there may be other similar clauses

The North of England P&I Association The Quayside, Newcastle upon Tyne, NE1 3DU, UK
Telephone: +44 191 2325221 Facsimile: +44 191 261 0540 Email: loss.prevention@nepia.com www.nepia.com

which might have application. For example CONWARTIME 2013 includes "**blockades**" in its definition of **war risks**.

Trading exclusions clauses may also be relevant particularly if they include a mechanism by which further countries are deemed to be excluded if, for example, sanctions are imposed. For new charterparties, the parties may seek to agree that Qatar be excluded, at least pending any restoration of diplomatic relations or withdrawal of the restrictions. Clear wording will however be required to ensure clarity regarding the trigger required to change the ability of the vessel to trade Qatar.

Force majeure clauses may also provide an entitlement of one of the parties to cancel the charterparty or be excused from non-performance in whole or in part. Again, the precise wording of any force majeure clause will be critical in establishing whether it applies. Members should also be aware that such clauses can include strict notice provisions, giving notice of the force majeure event, which must be complied with.

Supervening events which mean that, without fault on either party, a charterparty is impossible to fulfil or performance of it becomes radically different to that contemplated can lead to the charter being **frustrated.** If the parties have contemplated the possibility of such an event and included clauses in the charterparty to allocate risk accordingly, it is less likely that it would be found to have been frustrated. Charterparties can be frustrated because performance is interrupted by a supervening event if the delay is sufficiently lengthy. One of the complexities is that the length and effect of the delay must be evaluated at the time of the delay and not with the benefit of hindsight at a future date. Whether a charterparty is frustrated is thus rarely a straightforward matter and requires a detailed analysis of the contract and factual situation. Legal advice should always be obtained.

Safe port warranties in the charterparty should also be considered. A port may be unsafe not just because of exposure to physical dangers but also because of political unsafety. Under a time charterparty, if charterers nominate what is an unsafe port, owners should be entitled to refuse to comply with that order. The position may be more complicated under a voyage charter where it is unclear whether there is a right or an obligation on the charterers to nominate an alternative port.

Finally, there may be a question as to the right of the vessel to **deviate** in order to avoid the risk of detention. There is, however, little useful that can be said on this topic without a specific consideration of the terms of the charterparty and contracts of carriage.

The situation is still developing. Our FD&D team is on hand to assist with any queries or disputes that arise as a result of the restrictions.