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Additional Economic Sanctions against Iran Impacting Insurers, Ship Owners and Charterers

Introduction

To increase the economic sanctions pressure on Iran, many states have taken or are in the process of taking further measures to prohibit trade with Iran pursuant to UN Security Council Resolution (UNSCR) 1929 of June 9, 2010. From the U.S. perspective, these additional measures impact companies that insure certain trade with Iran, entities that transport and otherwise support the supply of certain items to Iran such as refined petroleum products and items that could be used in Iran's petroleum industry, and they prohibit transactions with or involving Iranian shipping interests and vessels.

The United States

In the United States, additional measures, consistent with UNSCR 1929, have been taken by the enactment, on July 1, 2010, of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA), formerly known as the Iran Refined Petroleum Sanctions Act or IRPSA. CISADA became effective on July 1, 2010.

CISADA, among other things, provides for the imposition of sanctions on non-U.S. insurers and non-U.S. ship owners and ship charterers (entities and individuals) that, respectively, provide insurance and transportation services for certain trade with Iran.

U.S. insurers and ship owners are, and since 1995 have been, prohibited from engaging in or supporting trade with or involving Iran under the Iranian Transactions Regulations and underlying Executive Orders.

Additional measures taken by the United States against Iran in the aftermath of UNSCR 1929 have also come in the form of the inclusion of additional Iranian entities, individuals, and vessels on the U.S. Treasury Department Office of Foreign Assets Control ("OFAC")'s List of Specially Designated Nationals and Blocked Persons List. See, below.

CISADA Sanctions-Triggering Activity

CISADA provides for the imposition of sanctions if a person has *knowingly*:

1. sold, leased, or provided to Iran goods, services, technology, information, or provided support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries. (Sanctions in this regard would be triggered if any of the foregoing activities individually has a fair market value of \$1 million or more, or during a 12 month period, has an aggregate fair market value of \$5 million or more);
2. sold or provided to Iran *refined petroleum products* that have a fair market value of \$1 million or more, or during a 12 month period, have an aggregate fair market value of \$5 million or more; or
3. sold, leased, or provided to Iran goods, services, technology, information, or support (that have a fair market value of \$1 million or more, or during a 12 month period, have an aggregate fair market value of \$5 million or more) that could directly and significantly contribute to Iran's ability to import *refined petroleum products*, including:
 - a. underwriting or entering into a contract to insure or reinsure the sale, lease or provision of such goods, services, technology, information or support;
 - b. financing or brokering such sale, lease or provision; or
 - c. providing ships or shipping services to deliver *refined petroleum products* to Iran.

Safe Harbor: CISADA provides that no sanctions are to be imposed on an underwriter, insurer, or reinsurer if a person has exercised due diligence in establishing and enforcing official policies,

procedures, and controls to ensure that the person does not underwrite, insure, or reinsure the sale, lease or provision of goods, services, technology, information, or support that could directly and significantly contribute to Iran's ability to import *refined petroleum products*.

Definitions

CISADA defines *person* to include a natural person, business enterprise, government entity operating as a business enterprise, financial institution, insurer, underwriter, guarantor, any other business organization. This definition also includes a person that owns or controls a sanctioned person (*e.g.*, a parent company), or a person that is under common ownership or control with a sanctioned person (corporate affiliates of a sanctioned person).

Under CISADA, *knowingly* means *knew* (actual knowledge) or *should have known* (constructive knowledge).

CISADA defines *refined petroleum products* to mean diesel, gasoline, jet fuel (including naphtha-type and kerosene type jet fuel), and aviation gasoline.

The meaning of *directly and significantly* will be determined by the facts and circumstances of a given case.

CISADA Sanctions

The sanctions available under CISADA against insurers and ship owners (and charterers) who engage in the CISADA-offending activities described above are:

1. Prohibition within U.S. jurisdiction of foreign exchange transactions in which a sanctioned person (sanctions target) has any interest;
2. Prohibition within U.S. jurisdiction of payments and other transactions which involves any interest of a sanctioned person (sanctions target);
3. The blocking of the property (freezing of the assets) within U.S. jurisdiction of a sanctioned person (sanctions target). This would mean complete exclusion from conducting business with the United States or *United States Persons*, and most likely the denial of or difficulty in obtaining visas to enter the United States.
4. Denial of U.S. Export-Import Bank loans or credit facilities for U.S. exports to the sanctioned person;

5. Denial of U.S. bank loans exceeding \$10 million in one year;
6. Prohibition on U.S. government procurement from the sanctioned person; and
7. Restriction on imports into the United States from the sanctioned person.

If sanctions are triggered, CISADA requires the imposition of at least 3 of the 7 sanctions described above. However, perhaps the greatest negative consequence of the imposition of sanctions would be the reputational damage that would flow from being included on a U.S. government list that “names and shames” and provides public notice of such fact.

The European Union

The European Union has indicated that new restrictive measures/sanctions against Iran will entail restrictions on “trade, especially dual use goods and further restrictions on trade insurance; the financial sector, including freezing of additional Iranian banks and restrictions on banking and insurance; the Iranian transport sector, in particular the Islamic Republic of Iran Shipping Line (IRISL) and its subsidiaries and air cargo; key sectors of the gas and oil industry with prohibition of new investment, technical assistance and transfers of technologies, equipment and services related to these areas, in particular related to refining, liquefaction and LNG technology; and new visa bans and asset freezes especially on the Islamic Revolutionary Guard Corps.” EU regulations implementing the foregoing are expected to be issued in the next coming days.

The Lists: Expansion of the Universe of Iran Sanctions Targets (Prohibited or Forbidden Iranian Entities)

UNSCR 1929 identified additional Iran sanctions targets. The United States and the United Kingdom have, accordingly, taken action in the aftermath of UNSCR 1929 to expand the universe of Iranian sanctions targets and thus extend applicable prohibitions to such new Iranian sanctions targets.

The United States, the United Kingdom and the European Union

The additional Iranian entities, individuals, and vessels that OFAC has designated, identified and exposed as targets of U.S. sanctions against Iran in the aftermath of UNSCR 1929 are included on OFAC’s (searchable) List of Specially Designated Nationals and Blocked Persons List, which is available at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.shtml>.

Many of the additions to the U.S. universe of Iranian sanctions targets include vessels of the Islamic Republic of Iran Shipping Lines (IRISL) and several ship owners and managers acting for or on behalf of IRISL or entities who have been deemed to be successors to IRISL. The Iranian sanctions targets on this

list relate to compliance by *United States persons* with the prohibitions of the Iranian Transactions Regulations and U.S. Executive Order 13382.

The United Kingdom has taken action similar to that of the United States. A consolidated and searchable list of all persons (entities, individuals and vessels) targeted by United Nations, European Union, and United Kingdom economic sanctions, including pre-existing and the now additional Iranian sanctions targets is available at www.hm-treasury.gov.uk/financialsanctions. Transactions with such Iranian sanctions targets are prohibited under relevant U.K. and E.U. laws and regulations.

Several and Dynamic Sanctions Lists

Which List?

Insurers, ship owners and charterers are often confounded in their decisions as to what list to consult when in order to avoid sanctions violations and potential violations. The sanctions lists of the United States and the United Kingdom are the most comprehensive when it comes to Iranian sanctions targets (or forbidden Iranian entities and individuals), and when consulted together, they are a good and reliable source of sanctions compliance information.

Applicable law should be considered in connection with sanctions lists. For example, an entity may be on the OFAC list but not on the UK/EU list and it may not be controlled by or acting for or on behalf of an entity on the UK list, and the European ship owner and the contemplated transaction in question (including related payments and wire transfers) may be completely lawful under UK or EU law and outside U.S. jurisdiction. In such a case, the transaction would not be prohibited by U.S. law or by reason of an entity being solely on the OFAC list, and the European ship owner or charterer would not be sanctionable under CISADA if the transaction or voyage does not include CISADA sanctions-triggering activity such as transportation of refined petroleum products to Iran.

When?

The sanctions lists maintained by the United States and the United Kingdom are not static. Names of entities and individuals are constantly added to and deleted from the lists. Additions to lists are made as new sanctions targets are discovered and exposed or there is a change in sanctions law. Deletions from the list occur when a previously targeted person (entity or individual) no longer meets the criteria for targeting or designation, or when, for example, sanctions are relaxed or lifted. Consequently, sanctions compliance requires periodic consultation with relevant sanctions lists to know the transactions that are prohibited, and those that are not and which do not to be foregone.

Lists Not Exhaustive

Sanctions lists are not an exhaustive list of sanctions targets. For example, OFAC's List of Specially Designated Nationals and Blocked Persons List, while a good guide is not an exhaustive list of sanctions targets, including Iranian sanctions targets. Under U.S. law, Iranian sanctions targets include those entities and individuals that are listed, but also those that are owned or controlled by, or acting for or on behalf of listed Iranian sanctions targets.

Ship Charters

In light of the number of Iranian sanctions targets pursuant to sanctions administered by the United States and the United Kingdom which appear on the relevant lists, as it relates to ship charters, to comply with applicable or anticipated prohibitions, insurers may consider excluding insurance for any vessel that:

- is on charter to or from an Iranian sanctions target;
- is owned, controlled, managed, operated by, or otherwise connected with an Iranian sanctions target, or with individuals or entities in Iran; or
- which flies the Iranian flag or which is registered in Iran.



Similarly, ship owners and others should exercise due diligence to ensure that they do not run afoul of applicable or anticipated prohibitions by chartering a vessel to or from a Iranian sanctions target, or by chartering a vessel that is an Iranian sanctions target.

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The Eren Law Firm will continue to very closely monitor CISADA's interpretation and implementation by the designated agencies of the U.S. government and the implementation of UNSCR 1929 by the European Union and other states. With respect to CISADA, lawyers of The Eren Law Firm will continue to interface with the policy-making, administration, as well as the enforcement offices of the U.S. government to address questions and issues with respect to CISADA, and advise clients on CISADA's application and the exception or "safe harbor" that CISADA provides for non-U.S. insurers.

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The Eren Law Firm is an economic sanctions boutique. Its other core areas of concentration and practice include corporate transactions, and international dispute resolution, anti-money laundering, and international trade regulation. The Firm's clients from around the world include banks and financial institutions; insurance, reinsurance and other financial services companies; natural resource extraction companies, industrial companies, marine and air transportation companies; sovereign governments; foreign state enterprises; and individuals.

Mr. Pinter and Mr. Eren of the Firm served at the U.S. Treasury's Office of Foreign Assets Control (OFAC), the US government agency that administers and enforces US economic sanctions, for a combined 25 years prior to entering private law practice, respectively 8 and 10 years ago. While at OFAC, Mr. Eren and Mr. Pinter played a major role in analyses and deliberations with respect to numerous issues related to sanctions against Iran and other countries, provided interpretations of sanctions prohibitions, reached determinations with respect to exceptions to sanctions prohibitions. The major portion of Mr. Eren's portfolio at Treasury consisted of issues and matters arising under the sanctions against Iran and the former Yugoslavia. Mr. Pinter was a prime arbiter in all major OFAC decisions.

Mr. Comras of the Firm, a former diplomat of the United States, served at the US State Department, where he was in charge of numerous economic sanctions programs and issues, most notably in the context of the past multilateral sanctions against the former Yugoslavia and those against Iraq, and sanctions issues arising under the Iran Sanctions Act. Mr. Comras has also served at the United Nations and he is currently a member of the UN Panel of Experts dealing with sanctions against North Korea.

For more information about the Firm, and its lawyers, please visit: www.erenlaw.com.

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