

The Impact of International Economic Sanctions on the Shipping Industry with a Special Focus on Marine Insurance

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Agenda

1. Charterparties
2. Insurance

Charterparties

A hypothetical case in relation to charterparties

- five tanker vessels registered and flagged in China
- shipowning companies incorporated in China
- All shipowning companies are owned subsidiaries of the “Mars Shipping Co” which is registered in the Philippines but conducts its business through its subsidiaries and affiliates in Italy. The board of Mars Shipping consists of Italian nationals, and the company reports the address of the subsidiaries as its main place of business.
- Charterparties related to all five vessels are governed by English law.
- For technical and operational matters, the vessels are managed by Sailor Ltd. which is incorporated in and operates from China. However, the Chief Executive Officer of the company is an EU citizen, and its board of management consists of British nationals.
- For legal and insurance matters, the vessels are managed by HN Consultant Ltd. HN Consultant is incorporated in the Philippines but they have offices also in Italy
- The vessels had cargo commitments that required ACG to instruct the vessels after 1 July 2012. Such commitments derived from a long-term contract of affreightment, which was concluded before 23 January 2012, for crude oil lifting from Iran to China.

Questions involved in the case

1. Does the Regulation apply to the owners, management companies (for either operational or legal matters), and their directors?
2. What is the position of the owners if they refuse the orders for crude oil lifting from Iran?
3. On what grounds can the owners rely to refuse such orders?
4. If the owners are to comply with such orders, what are legal implications for the owners, management companies, and their directors?

1. Does the Regulation apply to the owners, management companies (for either operational or legal matters), and their directors?

[Article 49 \(e\) of the Council Regulation \(EU\) No 267/2012:](#)

This Regulation shall apply to:

- c) to any person inside or outside the territory of the Union who is a national of a Member State;
- e) any legal person, entity or body in respect of any business done in whole or in part within the Union.

[UK Statutory Instrument 2012 No. 925:](#)

If an offence under the Regulations is committed by a director or manager, or secretary of the concerned entity with his/her consent, that person is guilty of the offence as well as the entity

2. What is the position of the owners if they refuse the orders for crude oil lifting from Iran?

- Before 1 July 2012
Article 12 of the Council Regulation (EU) No 267/2012
- After 1 July 2012

3. On what grounds can the owners rely to refuse such orders?
- Unlawful merchandise
 - illegality under the governing law of the charterparties
 - the obligation of insurance under the charterparties on the owners
 - a special clause of the charterparties

4. If the owners are to comply with such orders, what are legal implications for the owners, management companies, and their directors?

Insurance

A hypothetical case in relation to the provision of insurance

- The claimant is an insurance company which is registered and incorporated in Norway.
- The insurance company has insured a jack up rig under a policy which runs from August 2012 to August 2013.
- Under a warranty in the policy it is provided that in case of any shift to be done, the arrangements for the shift shall be accepted by the designated surveyors.
- In January 2013, the rig was operating in Persian Gulf, which is within the Iranian waters.
- Pursuant to the restrictive measures against Iran adopted by the European Council in December 2012, the surveyors avoided carrying out a survey on the rig in February 2013 when the rig was shifted.
- The Sanction Clause (LMA 3100) had been inserted in the concerned insurance policy
- A clause has been inserted in the policy in the form of a warranty: “It is warranted that prior to any shift or transportation of the rig, recommendation of one of the designated surveyors is required, and any change shall be approved by a competent surveyor.”

• Questions involved

1. Is providing insurance or reinsurance to the rig whilst it is operating in Iranian waters prohibited under the EU sanctions?
 - Key equipment and technology to key sectors of the oil and gas industry in Iran (Article 8)
 - Naval key equipment and technology to any Iranian person, entity or body or for use in Iran (Article 10)
2. Is it prohibited under the EU sanctions to carry out warranty surveys in respect of the rig while it is operating in Iranian waters?

Annex VIB of the Regulation: “Surveying (including photogram metrical surveying), hydro graphic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders, solely for the maritime industry”.

3. Would the surveyor's inability to carry out their job on the rig because of its illegality under the EU sanctions justify the insurer's cancellation of the policy?

Thank you for your kind attention!

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