



THE LONG AND WINDING ROAD THAT LEADS TO IRAN...

Many of our members have been waiting patiently for the Iran trade to reopen. After years of ever-expanding sanctions and astonishing enforcement action, most of us have grown weary about the possibilities in Iran. The sheer complexity of the subject matter and the multi-jurisdictional aspects of the various restrictions have required constant vigilance for those seriously considering Iran business. For most owners, however, the risk has been greater than the reward.

At the beginning of 2016 there was finally a ray of hope in the form of the implementation of the JPCOA – the nuclear deal between Iran and the major world powers. As a consequence, many of the sanctions provisions were rolled back by both the US

and the EU. The US secondary sanctions were effectively removed thereby eliminating the main exposure for non-US persons. The stated intention was to allow trade to recommence. Yet in the shipping segment these good intentions

were met with unexpected resistance.

Although potential trading partners have been delisted and have become eligible to do business, there have been insurance and banking related pitfalls. Thus the level of Western shipping activity in Iran has remained low. Owners have been unwilling to put their vessels at risk without having their full insurance package intact and banks have understandably had difficulty “unringing the bell” after having been fined to the tune of USD 8.9 billion (Bank Paribas) for sanctions violations. While the year opened with good reason for optimism, the year ended with the knowledge that the Trump administration’s stated intention was to discard the nuclear deal.

Despite the doom and gloom, there is still reason to mention the positive developments. Some of the hurdles raised previously have been resolved. The shortfall in P&I cover seems to have been dealt with adequately for the 2017 insurance year. Some banks seem increasingly willing and able to handle payments to and from Iran, although fairly strict compliance procedures need to be followed. The counter party risk in Iran is still an issue, but insofar



as sanctions are concerned there appear to be reasonable means to avoid contracting with or dealing with listed parties. Deciphering the role of the IRGC (Islamic Revolutionary Guard Corps) remains a challenge, but it should be possible to demonstrate that due diligence has been exercised. In this regard OFAC have issued an FAQ indicating that they will be reasonable. Many of our members have been working hard to set up a sound due diligence regime with a checklist of items to be cleared before giving the green light to fix charter parties. Once the appropriate comfort level has been reached on these items, many owners should be good to go – at least in theory.

Some challenges remain. One such problem is the possibility that dual use goods are shipped. As the name implies such goods although having civilian uses, may also have a military use. Consequently, in some contexts there may be a need for an export license. This is typically a task for the exporter, but there may also be a need for the carrier to look into such requirements. As one will understand, these issues are more difficult to deal with for container and ro-ro vessels due to uncertainty about what cargo is actually on board. For owners of vessels on bareboat and time charters there is natural hesitancy to allow trade to Iran under existing charter parties due to the inability to fully control the exposure. Thus, charterer's requests to include Iran within trading limits are often politely declined. In all segments there is also concern about the so-called "snap back" risk, namely the possibility that the US may re-impose sanctions

in case of breach by Iran of the JPCOA conditions. Hence, there is natural reluctance to do long term business. If at all, owners are keen to test the waters with single voyages in the first instance.

While trading to Iran sounds workable in theory, one cannot disregard the elephant in the room. So far Trump has shown a strong desire to follow through on campaign promises. Will he also seek to dismantle the Iran deal or is he going to be so preoccupied with North Korea that he will leave Iran for another day? Or might he listen to the universal call from European countries to respect the deal? The expectation, however, is that we will probably know more about his intentions in coming weeks. While most of the US Iran sanctions' "architecture" is in place, it is currently suspended by reason of waivers issued by the Obama administration. These waivers, however are only temporary and will reportedly come up for renewal as early as mid-April for some of the legislation. It may therefore be wise for members to sit on the fence a few more weeks before making any major moves.

Whether we like it or not, the twists and turns of the Iran sanctions saga are unlikely to come to an end any time soon.





PIRACY UPDATE – SULU SEA

The Sulu Sea is a body of water lying to the west of the Philippines and Malaysia. Since Spring 2016 there has been increased piracy activity in the region with ReCAAP (the Regional Cooperation Agreement on Combatting Piracy and Armed Robbery against Ships in Asia) reporting a total of 11 incidents from March 2016 to January 2017, involving the abduction of a total of 51 crew members.

The attack on the GIANG HAI in February 2017 resulted in the abduction of 6 crew members and the death of another. More recent reports indicate that one of the hostages has now also been killed. The latest attack against a Vietnamese bulker, the PHU AN, on 8 March 2017 was successfully prevented by the intervention of Malaysia's Eastern Sabah Security Command (ESSCOM).

The increased activity is thought to be attributable to the Abu Sayyaf Group ("ASG"), an Islamist separatist group operating in the Southern Philippines. Crew are typically abducted and then released against payment of a ransom. Where payment has not been forthcoming there have been instances of executions.



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Against a general trend of a reduction in piracy activity, both within Asia and globally, the Sulu Sea continues to be a concern. Although the area has a long standing history of piracy, this has traditionally involved smaller vessels such as fishing trawlers or tugs. In recent months there has been an increase in attacks on merchant vessels, which has led to a number of shipping companies re-routing their vessels to avoid the area. The Norwegian Shipowners' Mutual War Risks Insurance Association has recently published its monthly threat assessment for March 2017. They consider the Sulu Sea area to be at high risk for terrorism with a high likelihood that ASG will continue to target merchant vessels. In an attempt to combat pirate activity, the Philippines, Malaysia and Indonesia have announced they will be launching joint patrols to enable commercial vessels to transit under protection via a designated channel. Patrols are expected to start in May this year.

In the meantime, the advice from ReCAAP is to re-route to avoid the area where possible. Failing which, crew should be extra vigilant and vessels should report to the Philippines authorities and ESSCOM prior to entering or passing the Sibutu Passage and Sulu-Cebu Sea. Appropriate anti-piracy measures should also be taken in compliance with the BMP4

and with reference to the Regional Guide to Counter Piracy and Armed Robbery Against Ships in Asia.

Contractually, the risk of piracy is typically dealt with either by the inclusion of a specific piracy clause or by relying on a more general war risk clause. If relying on a war risk clause, it is important to ensure that this will respond to piracy. The BIMCO Piracy clauses (for time and voyage charters) both entitle owners to refuse to proceed through an area which in the reasonable judgment of the Master/owners becomes dangerous or the level of danger increases due to actual, threatened or reported acts of piracy, violent robbery or capture/seizure. To refuse an order under a general war risk clause such as Conwartime, following the 2012 decision in *The Triton Lark*, there must be a real likelihood that the vessel will be exposed to acts of piracy. Both the degree of probability that an act of piracy would occur and the gravity of the consequences to the vessel, crew and cargo, are taken into account when assessing this. We might add that that the *Triton Lark* was a Nordisk case where we successfully argued that owners, who were proceeding from Europe, were entitled to sail

around the Cape of Good Hope to avoid the piracy risk in the Gulf of Aden.

Whether to refuse orders is never an easy assessment to make. The consequences of seizure are high, for the crew and commercially, but statistically, the percentage of vessels affected is likely to be small. A bespoke piracy clause will generally provide better protection, dealing not only with an owners' right to refuse an order, but also (as appropriate for time and voyage charters) their right to take preventative measures, who bears the cost of said measures and the allocation of risk in the event a vessel is hi-jacked.

