

Impact of Sanctions on Shipping Industry with a Special Focus on Marine Insurance*

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Introduction

Economic sanctions have existed for many years as a part of the foreign policy of states by which the sender state is able to pressure the target state to change its political behavior. Apart from governments imposing sanctions regulations on their nationals, there are also international institutions which are able to impose international sanctions regimes on their member states.

One common approach of recent sanctions legislation is to prevent the targeted state from importing or exporting certain products such as refined petroleum. In this regard, heavy punishments and penalties have been designated against persons or entities that provide the sanctioned target with refined petroleum resources or engage in any activity that could contribute to the enhancement of its ability to import refined petroleum resources. Such activities may include (1) providing vessels or shipping services in order to deliver refined petroleum products to or from the sanctioned target (2) providing the targeted country with a technology that facilitates transportation of petroleum products (3) providing insurance and reinsurance services either for the petroleum products or for such activities (4) undertaking any transaction with the sanctioned target. Therefore, apart from oil traders, a wide range of individuals and entities such as shipowners, charterers, managers, financiers, insurers and reinsurers are involved in activities prohibited by the sanctions.

As the recent economic sanctions regime against Iran represents a prominent example with massive impact on the shipping industry, it is considered as the basis of discussion of this study. According to all three major sanctions regulators ¹against Iran, a shipowner or a charterer is not allowed to transport certain prohibited goods to the sanction targets, or generally to execute an unlawful shipment. Therefore, shipowners and operators should take into consideration the separate products which cannot lawfully be transported. This paper examines some troubles that shipping industry players might encounter in this relation in a form of hypothetical case study. However, discussions about the UN and US sanctions are excluded from this paper and it mainly focuses on the EU sanctions against Iran.²

A hypothetical case in relation to charterparties

In the following paragraphs, the impact of sanctions on charterparties will be discussed by examining the position of the shipowner in case of either compliance or refusal of the charterers' orders based on a fictional scenario.

Facts

- There are five tanker vessels involved in this case which are all registered and flagged in China.
- Each vessel is owned by different shipowning companies some of which are incorporated in China while the others are incorporated in Gibraltar. In addition, the boards of directors of every shipowning company consist of Italian citizens.
- All five shipowning companies are wholly owned subsidiaries of the "Mars Shipping Co". Mars Shipping is a company which offers, among other services, operation and management for marine transportation and logistics.
- Mars Shipping is incorporated and registered in the Philippines. It conducts its business through its subsidiaries and affiliates in Italy. The board of Mars Shipping consists of Italian nationals, and the

* This paper was a prizewinning submission at the AIDA Europe Conference in Copenhagen in June 2015

¹ UN, EU and US sanctions

² Council Regulation (EU) No 267/2012

company reports the address of the subsidiaries (in which administrative services are offered) as its main place of business.

- The vessels are chartered under long-term time charterparties separately. Ships 1,2,3 and 4 are chartered by Atlantic Charterers Group (ACG). Ship 5 is chartered by “Green Mariners” which sub-charters the vessel to ACG.
- Charterparties related to all five vessels are governed by English law. Any dispute concerning Ships 1,2,3 and 4 is to be referred to arbitration in London in accordance with the London Maritime Arbitrators Association (LMAA) rules, whereas any dispute in relation to Ship 5 is subject to the jurisdiction of the English courts.
- For technical and operational matters, the vessels are managed by Sailor Ltd., a ship management company. Sailor Ltd. 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. In addition, its board of management consists of European nationals.
- Although Mars Shipping purchased the vessels in October 2010, the shipowning companies did not change. In other words, only the beneficial ownership of the vessels changed after the purchase of the vessels. In this respect, the charterers concerned, which are ACG and Green Mariners, have the right to transfer shares in ship owning companies to Mars Shipping if there is any acquisition.
- The EU Council passed Council Regulation (EU) No 267/2012 on 23 March 2012. This Regulation contains restrictive measures against Iran.³
- 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,⁴ which was concluded before 23 January 2012, for crude oil lifting from Iran to China.
- The long-term charterparties were already attached to the vessels at the time Mars Shipping purchased the vessels. Accordingly, the hire rates were somewhat higher than the current market rates, and it was not beneficial for the new owner to terminate the charterparties.

Questions involved in the case

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

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

The issue of whether the Regulation applies to the owners, management companies and their directors is of great importance because it might be a ground for the owners to refuse the charterers’ orders. If the Regulation applies to this matter, carrying the Iranian crude oil is rendered illegal, or the transport of such crude oil would become unlawful under English law. Hence, the owners are entitled to refuse to comply with the charterers orders on this ground. Upon such refusal, the charterers could bring a claim before the English courts or arbitration in London depending on the jurisdiction provisions of the concerned charterparty. In this matter, the application of the Regulation will be done by an English court or an arbitral tribunal in London. However, it is also possible that the application of the Regulation will be considered by Italy due to the significant connection of the related companies to Italy through the Italian nationals who sit on their board of management or by conducting business within the country.

³ The Regulation was amended by the Council on 23 April 2012 by which the Regulation No 350/2012 was implemented

⁴ COA

Under the English law, a purposive approach should be employed for interpreting and construing an EU Regulation.⁵ In order to take such an approach, it is necessary to identify the purposes of the Regulation. The Regulation determines a number of purposes in respect of this matter which should be identified from the preamble, the provisions of the instrument and its context. With regard to this matter, the most significant purpose is the prohibition of the transport of crude oil from Iran, which is stated in paragraphs 8 and 12 of the preamble to the Regulation, and Article 11⁶ of the Regulation. According to the purposive approach, the Regulation must be interpreted in a way which achieves this purpose.⁷

Regarding to this matter, the Regulation would not automatically apply to the owners, management companies and their directors. This is because none of these entities are incorporated or constituted under the law of a Member State. Therefore, the provisions of Article 49⁸ do not apply. The only possibility is the application of the provision stated in Article 49(e). Subject to this part of the Article, the regulation applies to the owners, managers and their directors if these entities do any business in the Union. Another risk which imperils the position of the owners and the concerned entities relates to the EU nationality of their directors and the Chief Executive Officer. If any of the owners and/or the operational management company conducts business within any Member State, there is a risk, under Article 49(e), that the Regulation applies to their business.

With respect to Mars Shipping, based on the facts of the case, it conducts its business from Italy. Although this conduct is through its affiliates or through the management company with which it has contractual relationship, there is a great risk that Mars Shipping will be regarded as doing business within the EU. In respect of HN Consultant, the Regulation clearly applies to it as it does business within a Member State given the fact that the contract for the purpose of management services for legal matters between Mars Shipping and HN Consultant has been concluded in Italy. Unlike HN Consultant, Sailor Ltd. does not conduct any business in the Union but it has European nationals on its board of management. Regarding the position of the European directors and members of the management board of the owners, Mars Shipping, HN Consultant, and Sailor Ltd., it should be taken into account that the Regulation applies to them.⁹ However, it cannot be said that the Regulation applies to Sailor Ltd. merely because the members of the management board of a company have European nationality. In each case, the position of the members and the influence of their activities should be considered as a whole. In the present case, the CEO of the technical management company is an EU citizen which creates the risk of the company being subject to Article 49(c).

Assuming that the regulation applies, the important issue is whether the business is done by the owners, Mars Shipping, HN Consultant, and Sailor Ltd. That infringes the Regulation, or whether it is the European nationals who conduct business for these entities who are in breach of the restrictive measures. In this matter, the clearest example of business done by these entities in the Union (which is likely to be regarded as breach of the Regulation) is any decision taken by HN Consultant to comply with the charterers' orders to lift Iranian crude oil. The transport of

⁵ *Lister v Forth Dry Docks* [1990]

⁶ "It shall be prohibited:

...(c) to transport crude oil or petroleum products if they originate in Iran, or are being exported from Iran to any other country; and

(d) to provide, directly or indirectly, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance related to the import, purchase or transport of crude oil and petroleum products of Iranian origin or that have been imported from Iran."

⁷ In relation to the previous restrictive measures against Iran under Regulation No 961/2010, Burton J took purposive approach in *Arash Shipping Enterprises Co Ltd V Groupama Transport*. Tomlinson LJ suggested in his decision in the Court of Appeal that the purposive approach in interpreting the EU Regulation was correctly taken by Burton J. [2011] 2 Lloyd's Rep 607

⁸ "This Regulation shall apply:

...

(c) to any person inside or outside the territory of the Union who is a national of a Member State;

(d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body in respect of any business done in whole or in part within the Union."

⁹ subject to Article 49(c)

crude oil to be lifted from Iran is prohibited by the Regulation.¹⁰ Accordingly, HN Consultant would be guilty of infringing this prohibition. Furthermore, such decision taken by HN Consultant is likely to imperil the position of the Mars Shipping as it in effect acts for Mars Shipping, pursuant to a contract concluded between HN Consultant and Mars Shipping. Consequently, it would be regarded as business done within the European Union by Mars Shipping, which would be in breach of the Regulation if it accepts the crude oil from Iran.

In respect of the individuals who act as directors or members of the management board of the concerning entities, it is obvious that the Regulation applies to the European nationals notwithstanding that they are located within the Union or outside the EU.¹¹ Accordingly, if a European person is involved with the transport of crude oil from Iran, by reason of his position that person is likely to be regarded as breaching the Regulation. For example, either the directors of HN Consultant who take decision to accept the charterers' orders to lift the crude oil from Iran, or the members of Mars Shipping who actually accept such orders, would be specifically in breach of the Regulation if they are European citizens.

Any dispute arising from the charterparties relevant to this matter would be referred to either an English court or arbitral tribunal both of which are subject to English law. Under English law, it is provided by the regulation 20 of a statutory instrument known as The Iran (European Union Financial Sanctions) Regulations¹² that 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. As Article 11 of the EU Sanction Regulation does not clearly refer to the European individuals who are involved in the commitment of the prohibited activities, this regulation has been provided by the UK government to ensure that proper effect is given to the provisions of the Regulation.

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

The position of the owners for the transport of Iranian crude oil before 1 July 2012 is notably different from their position after that date due to the provisions of Article 12¹³ of the Regulation. Therefore, these positions will be discussed separately.

Before 1 July 2012

According to the exemptions provided by Article 12 of the Regulation, the prohibitions of Article 11 in relation to the transport of Iranian crude oil do not apply to trade contracts or their ancillary contracts until 1 July, assuming that the related contracts are concluded before 23 January.

If the time charterparty is considered to be a trade contract, the provision for being included into this exception is to be concluded before 23 January. If the concerned charterparty is regarded as an ancillary contract necessary for the execution of a cargo contract concluded before 23 January, then it falls within the exemption provided that its execution is dated before 1 July 2012.

It should be noted that this exemption would also apply to Hull & Machinery insurance contracts. Insurance contracts in general are considered as necessary contracts for the execution of cargo sale contracts, and hence would fall within the meaning of ancillary contracts in paragraph 12 of the preamble to the Regulation. This is not of great importance in relation to P&I insurance since a separate exemption is provided for such insurance in Article 12.2, which refers to "third party liability insurance and reinsurance."¹⁴

If the exemptions of Article 12 apply as noted above, there would be no ground upon which the owners can lawfully refuse the orders from the charterers to lift crude oil from Iran before 1 July 2012.

¹⁰ Article 11.1(3)

¹¹ Article 49(c)

¹² UK Statutory Instrument 2012 No. 925

¹³ "1. The prohibitions in Article 11 shall not apply to:

(a) the execution until 1 July 2012, of trade contracts concluded before 23 January 2012, or of ancillary contracts necessary for the execution of such contracts;...

2. The prohibition in Article 11(1)(d) shall not apply to the provision, until 1 July 2012, directly or indirectly, of third party liability insurance and environmental liability insurance and reinsurance"

¹⁴ International Group FAQ, published on 19 April 2012

After 1 July 2012

In relation to the voyage orders received from the charterers to lift crude oil from Iran after 1 July 2012, there are a number of grounds upon which the shipowners could refuse such orders. This leads to the next question involved in this scenario.

On what grounds can the owners rely to refuse such orders?

According to the facts of this case, the owners of a vessel are entitled to refuse the orders of a charterer on four grounds: (1) unlawful merchandise; (2) illegality under the governing law of the charterparties (3) the obligation of insurance under the charterparties on the owners; and (4) a special clause of the charterparties.

Unlawful merchandise

According to the facts of the case, all vessels are chartered under “Shelltime 4” standard charterparty form which entitles the charterer to hire the vessel only to carry lawful merchandise under its clause 4.¹⁵ There are a number of factors which might render the goods to be carried unlawful merchandise. First, if the loading of certain goods amounts to a breach of the local law, such goods would be considered to be unlawful merchandise. In addition, the concerned goods would be unlawful merchandise if the discharge of them is illegal at the nominated discharge port. Furthermore, it should not breach the law of country of the ship’s flag and the governing law of the charterparty.¹⁶

In respect of this case, it should be noted that it is not breach of any law in Iran to load crude oil at Iranian ports. It is also lawful to discharge Iranian crude oil in China under Chinese law.. In addition, it is not illegal under the law of the vessel’s flag. However, there is an argument that if it is to be said that the transport of Iranian crude oil is prohibited under the Regulation, such cargo would be unlawful merchandise under English law which is the governing law of the charterparties. This is because of the direct effect of the Regulation in English law and the prohibition of the transport of Iranian crude oil to any country.¹⁷

It is not easy to decide whether this argument could be a justification for refusal of the charterer’s order, for two reasons. First, this argument would be in conflict with the judgement in *Leolga Compania de Navigation v John Glynn & Son Ltd*. It is declared in the decision that the reason for which the phrase “unlawful merchandise” is inserted into charterparties is the protection of the owners.¹⁸ If the owners are not protected by the term in circumstances where it is argued that the merchandise is unlawful under the law of charterparties, it would seem strange. However, it is likely that the English court or arbitral tribunal would approve the suggestion of the time charterparties that goods should be lawful under the governing law of the charter.

Secondly, it is stated by Cook J that the phrase “lawful merchandise” in clause 4 of the Shelltime form refers to cargoes which are not initially unlawful but become unlawful due to certain characteristics. In case of *Golden Fleece*, the cargo of fuel oil was not unlawful but the characteristics of the vessel made it unlawful because it did not meet the requirements of being double-hulled, as provided by MARPOL regulations.¹⁹ In accordance with this opinion, there is a risk that the charterer argues that the Iranian crude oil is not itself unlawful merchandise and would be lawful to be carried in circumstances where the Regulation does not apply. However, this argument is less likely to be approved by either the English court or arbitral tribunal as the circumstances in *Golden Fleece* (which Cook J was tasked with considering) were slightly different. Despite the difficulties of the argument that allows the owners to refuse the charterers’ orders to lift Iranian crude oil due to the unlawfulness of the merchandise as a matter of the governing law of the charter, such an argument would be attractive to the court or tribunal if the applies.

¹⁵ Clause 4(a): “Owners agree to let and Charterers agree to hire the vessel for a period of ... days in Charterers option, commencing from the time and date of delivery of the vessel, for the purpose of carrying all lawful merchandise including in particular.”

¹⁶ Terence Coghlin, Andrew W. Baker, Julian Kenny, John D. Kimball, Previously Wilford, *Time Charterers*, 6th ed., Informa Law, (2008), Paragraph 9.1

¹⁷ Article 11(c)

¹⁸ *Leolga Compania de Navigation v John Glynn & Son Ltd* [1953] 2 Q.B. 374

¹⁹ *Golden Fleece Maritime Inc v ST Shipping & Transport Inc (The “ELI” and The “Frixos”)* [2008] 1 Lloyd’s Rep 262, para 56,57

From the charterers' perspective, it might be argued that the charterer was not aware of the involvement of any European aspect as it hired the vessels from Chinese owners who sail under the flag of China. This argument would not be acceptable as the charterer was aware that the ownership company was transferred to a company with European directors. In addition, the charterer should expect some connections with the EU when the governing law of the charterparties is English law.

Illegality under the governing law of the charterparties

Another ground based on which the owners might be excused from following the charterer's orders to lift crude oil from Iran is the notion of illegality under the governing law of the charterparty. This ground is very much similar to the unlawful merchandise ground as it is also arguable only if the Regulation applies to the transport of Iranian crude oil under the charterparties. The difference is that in this ground the focus is on the activity of the transport of crude oil whereas in the lawful merchandise ground the focus is on the crude oil itself.

According to the approach accepted by English law, the owners are not obliged to follow the charterers' orders if to do so results in the owners' performance of the contract being deemed illegal under the law of the charterparty, which is in this case English law. This approach is reinforced in situations where a court would not assist when one or both parties perform the contract in an illegal way.²⁰

The obligation of insurance under the charterparties on the owners

All the charterparties related to this matter contain a clause which imposes an obligation on the owners to provide insurance for the voyages. This is in circumstances where it seems to be impossible for the owners to provide proper P&I, Hull & Machinery and War Risks insurance for the voyages after 1 July. The difficulty originates from the prohibitions of the Regulation under which the owners are prevented from providing insurance and reinsurance for voyages which involve the import, purchase or transport of Iranian crude oil and petroleum products.²¹ Apart from the exemption to this prohibition for compulsory pollution insurance, it is not possible to find an insurance cover without violating the Regulation. Therefore, there is a ground upon which the owners are entitled to refuse orders from the charterers to carry Iranian crude oil in two different ways. First, it is implied under the terms of the charterparties that the owners are not compelled to follow orders which involve uninsured voyages. Second, the owners are not forced to follow orders which would put them in breach of their obligations under the terms of the charterparties.

Some might argue that the parties have agreed that the owners should follow the charterers' orders even if it results in the vessels being uninsured. It is likely that this view would not be supported by the English courts or arbitral tribunals. It is accepted that the parties have agreed and expected the vessels to be insured if the owners warrant that the vessels shall be insured. This argument is implied in "*The Helen Miller*" case.²²

A special clause of the charterparties

All the charterparties have a special clause which reads as follows:

"No voyage shall be undertaken, nor any goods or cargoes loaded, that would expose the vessel to capture or seizure by rulers or governments."

According to Article 47²³ of the Regulation, Member States are required to pass a specific law to impose penalties for the violation of the Regulation. If the penalties imposed by the competent authority of the related Member State include seizure of the vessel, this would be a ground for the owner to refuse the charterers orders to lift crude oil from Iran.

²⁰Joseph Chitty, *Chitty on Contracts*, 30th ed. Chapter 16: Illegality and Public Policy Paragraph 16-009 to 16-0011

²¹ Article 11.1 (d)

²² [1980] 2 Lloyd's Rep, at p 95

²³ "1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive."

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

As explained above, the owner companies and their European nationals would be in breach of the Regulation if, following the voyage, orders are made by the owners to lift Iranian crude oil after 1 July 2012. If this happened prior to 1 July 2012, it should be considered whether the exemptions of Article 12 would apply in order to determine whether there is an infringement to the Regulation.

The consequence of being in breach of the Regulation is the penalties passed by the relevant Member State, which in this case is Italy. Different penalties would apply depending on the activities in question and the entities involved.

Apart from the application of penalties for breach of the Regulation, there is another risk even if the Regulation does not apply. If the owners follow the charterers' orders to lift crude oil from Iran after 1 July 2012, the vessel will be uninsured. This would be a great risk for the owners, which also puts the owners in breach of the concerned charterparties under which they are obliged to provide insurance. The only exemption to this risk is the mandatory pollution cover under the CLC, which allows the vessel to continue the voyage during the validity of its blue card.

A hypothetical case in relation to the provision of insurance

The fact that the number of sanctions regulations against various countries, entities and individuals are numerous and occasionally have different objectives is persuasive enough to interpret each measure independently in order to identify the activities prohibited by the relative measure. However, among all measures taken against different targets, the recent sanctions regulations against Iran have had the most significant influence on the marine insurance industry in decades. Furthermore, there are some similarities among the provisions of the Iran sanctions and other instruments. Therefore, it is helpful to discuss ambiguities of the Iran sanctions that are related to insurance related prohibited activities. For this purpose, a hypothetical case which deals with prohibited activities of the EU sanctions Regulation against Iran has been posited.

This case is about a European insurance company which insured a jack up rig in 2012. As the rig has been operating in Persian Gulf since January 2013, a question arises as to whether the sanctions Regulation against Iran apply. After stating the facts of the case, the relevant provisions which might apply to this issue will be pointed out. Moreover, the ambiguities of the regulation will be discussed in parallel with answering the questions in respect of this issue.

Facts

- The claimant is an insurance company which is registered in and incorporated Norway.
- Some of the employees of the company have EU Member States nationality.
- 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.
- The designated surveyors, both of which are registered and incorporated in London, are called "Aqua Consultant" and "Richard Offshore Service".
- 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 provisions of the Norwegian Sanction Regulation against Iran are very similar to those of the measure adopted by the EU Council. Therefore, the prohibitions and restrictions relating to insurance services imposed by the Norwegian Sanction are almost identical to those imposed by the EU.
- The Sanction Limitation and Exclusion Clause (LMA 3100) had been inserted in the concerned insurance policy, and reads as follows:

"No Insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that insurer to any sanction, prohibition or

restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.”

- 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

The main question in this case is whether providing insurance or reinsurance to the rig whilst it is operating in Iranian waters is prohibited under the EU sanctions.

In order to answer this question, it should be clarified whether the provisions of the Regulation in respect of restrictions on providing “key equipment and technology to key sectors of oil and gas industry in Iran”²⁴ or “naval key equipment and technology to any Iranian person, entity or body or for use in Iran” apply to this case.²⁵

Key equipment and technology to key sectors of the oil and gas industry in Iran

As mentioned above, the sale, supply, or transfer of key equipment and technology for oil and gas industry in Iran is prohibited.²⁶ For this purpose, a list of key equipment and technology is provided in the annexes to the Regulation. According to the Annex VI, among all listed items, “drilling and production platforms for crude oil and natural gas” are considered to be key equipments which are prohibited under Article 8. Correspondingly, the supply of the rig for use in Iran would be included in this category of listed prohibited activities, and thus falls within the EU sanctions. In addition, providing “technical assistance”, brokering services, “financing or financial assistance” relating to key equipment and technology to Iranian persons, bodies, entities or for use in Iran is prohibited under the Regulation.²⁷ For the purpose of the Regulation, “technical assistance” is defined as follows:

“... any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including verbal forms of assistance...”²⁸

Therefore, surveying services might be interpreted as being included in “technical assistance”. However, the provision of (re)insurance is not to be construed to fall within the category of “technical assistance”.

Contrary to the term “technical assistance”, “financing or financial assistance” is not officially defined in the Regulation. There is some guidance as to what “financing or financial assistance” includes in some sections of the Regulation, where the term is used. However, there is no explicit definition or precise approach to this issue. Some examples in which the Regulation provides guidance to the definition of the term “financing or financial assistance” are as follows:

- In the Regulation where the restrictions in relation to goods and technology in the Common Military List and Annexes I and II are set out, “financing or financial assistance” explicitly includes “loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any Iranian person, entity or body or for use in Iran.”²⁹ Where the Regulation provides restrictions on the provision of financing or financial assistance to Iranian crude oil and petroleum products the meaning of “financing or financial assistance” includes “financial derivatives, as well as insurance and reinsurance” relating to the prohibited activities.³⁰
- In the section of the Regulation which deals with restrictions on the provision of financing and financial assistance in relation to natural gas, the words used to clarify “financing or financial assistance” are similar to those expressed in the section which concerns the prohibition on the provision of financing or financial

²⁴ Article 8

²⁵ Article 10(a),10(b),10(c)

²⁶ Article 8

²⁷ Article 9

²⁸ Article 1 (r)

²⁹ Article 5 (1)(c)

³⁰ Article 11(d)

assistance to Iranian crude oil and petroleum products. The difference is this section includes the provision of “brokering services” as well.³¹

However, there are some sections, including Article 9(b)³² in relation to prohibitions on provision of financial assistance for key equipment and technology, which do not provide any description or guidance as to what activities are included in the definition of “financing or financial assistance”. Such disparities resulted in contradictions in the interpretation of the terms “financing or financial assistance” in different contexts. The question is whether the phrase “financing or financial assistance” is intended to have the same meaning throughout the Regulation or whether it should be construed in different ways in each context. It could be said that all listed items in the sections explained above should be considered to have the same meaning whenever the term “financing or financial assistance” is used, even if the provision leaves it without further explanation.

Alternatively, it might be also said that including specific items in some sections is intended to separate those parts from the others to identify the difference of its meaning in different sections. Therefore, there are different approaches to interpreting the meaning of “financing or financial assistance” in Article 9(b). The first approach is to construe the Article without considering any guidance provided under the other provisions. In general, when the same words are used in different sections of a regulation, it is expected to have the same meaning.

Nevertheless, in some circumstances it may be intended not to have the same meaning in different contexts. In this example, this could be extracted from the fact that the term “financing or financial assistance” is not defined under the Regulation, and different types of wording have been used in order to guide what it does or does not include in various Articles. The validity of this approach is reinforced by the fact that although the clarification of the meaning of “financing or financial assistance” is introduced in other Articles,³³ the wording of the Article 9(b) has not been changed although it was amended in December 2012.

The second approach is to interpret the term “financing or financial assistance” in accordance with the guidance provided by other Articles. Hence, its meaning should include the items and financial derivatives listed in Article 5, which reads as follows: “grants, loans and export credit insurance, for any sale, supply, transfer or export of those items.”³⁴ If this approach is used, it is obvious that referring only to “export credit insurance” means that “financing or financial assistance” in respect of relevant prohibited activities would not include all types of insurance. If the intention of the regulator was to include all types of insurance for the activities listed in Article 5, it was not necessary to refer to insurance and reinsurance in Article 11(d) and 14a.

The third approach is to interpret the term “financing or financial assistance” on the basis of the meaning extracted from the other Articles of the Regulation, including Article 5, as well as 11(d) and 14a(1)(c). According to the guidance given in Article 5, financial derivatives and listed products are included. The difference between this approach and the previous one is that insurance and reinsurance services are included in the meaning of “financing or financial assistance” because of the guidance given in Articles 11(d) and 14a(1)(c). It could be argued that the use of the word “as well as” in these two Articles³⁵ includes insurance and reinsurance services in respect of the rigs in prohibited financial derivatives. However, this approach does not seem to be logical. Taking the intention of the regulators into consideration, the first approach appears to be more plausible, as discussed above.

In order to complete the discussion, it would not be irrelevant to hint that the Regulation provides some exceptions to the prohibited activities, under the Articles concerned.³⁶ Therefore, in order to clarify whether the operation of the rig in Iranian waters breaches the EU sanctions, the exemptions should be taken into consideration as well.

³¹ Article 14a (1)(c): “to provide, directly or indirectly, brokering services, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance and brokering services relating to insurance and reinsurance, in respect of the activities in points (a) or (b).”

³² “It shall be prohibited: .

(b) to provide, directly or indirectly, financing or financial assistance related to the key equipment and technology listed in Annex VI, to any Iranian person, entity or body or for use in Iran.”

³³ Such as 11(b) and 14a (1)(c) as mentioned earlier

³⁴ Article 5(b)

³⁵ “...as well as insurance and re-insurance and brokering services relating to insurance and reinsurance...”

³⁶ “Article 10

Naval key equipment and technology to any Iranian person, entity or body or for use in Iran

The prohibitions on “providing key naval equipment and technology to Iranian persons, entity or bodies” were introduced by the amendment to the Regulation in December 2012. According to the amended provisions, it is prohibited to “provide directly, or indirectly, financing or financial assistance related to the key equipment and technology listed in Annex VIB”.³⁷ The same argument in relation to the meaning of “financing or financial assistance” with regard to Article 9(b) as discussed above applies to the prohibitions on key naval equipment and technology. Therefore, it is needless to repeat that providing insurance and reinsurance services to the rig would not be prohibited under either Article 10 b 1(b) or 9(b). Consequently, the policy relating to this case would not breach the EU Regulations. Therefore, the Norwegian insurer would not be justified in cancelling the insurance contract on the basis of EU sanctions.

Is it prohibited under the EU sanctions to carry out warranty surveys in respect of the rig while it is operating in Iranian waters?

As mentioned, the provision of insurance services to key naval equipment or technology for use in Iran is not prohibited under the Regulation since it is not explicitly included in the related provisions. However, surveying services are included in the prohibited activities listed in Annex VIB of the Regulation³⁸ which reads as follows: “Surveying (including photogram metrical surveying), hydro graphic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders, solely for the maritime industry”.

Accordingly, if the surveyors are subject to EU sanctions by the virtue of one of the grounds listed in Article 49 (e.g. having the nationality of a Member State), their responsibility as to the carrying out of marine warranty surveys in relation to the rig whilst it is operating in Iranian waters would fall within the prohibited activities of the Regulation.

On the facts of this case, the surveyors are of European nationality. Furthermore, they stopped providing their surveying service after the inclusion of surveying services in list of prohibited activities by an amendment to the

“1. The prohibition in Articles 8 and 9 shall not apply to:
the execution, until 15 April 2013, of transactions required by a trade contract concerning key equipment or technology in the exploration of crude oil and natural gas, production of crude oil and natural gas, refining, liquefaction of natural gas as listed in Annex VI concluded before 27 October 2010, or ancillary contracts necessary for the execution of such contracts, or by a contract or agreement concluded before 26 July 2010 and relating to an investment in Iran made before 26 July 2010, nor shall they prevent the execution of an obligation arising therefrom;
(b) the execution, until 15 April 2013, of transactions required by a trade contract concerning key equipment or technology for the petrochemical industry as listed in Annex VI concluded before 24 March 2012, or of ancillary contracts necessary for the execution of such contracts, or by a contract or agreement concluded before 23 January 2012 and relating to an investment in Iran made before 23 January 2012, nor shall they prevent the execution of an obligation arising the reform
(c) the execution, until 15 April 2013, of transactions required by a trade contract concerning key equipment or technology in the exploration of crude oil and natural gas, production of crude oil and natural gas, refining, liquefaction of natural gas and for the petrochemical industry as listed in Annex VIA
concluded before 16 October 2012 and relating to an investment in Iran in the exploration of crude oil and natural gas, production of crude oil and natural gas, and the refining, liquefaction of natural gas made before 26 July 2010, or relating to an investment in Iran in the petrochemical industry made before 23 January 2012, nor shall they prevent the execution of an obligation arising therefrom; or
(d) the provision of technical assistance intended solely for the installation of equipment or technology delivered in accordance with points (a), (b) and (c) provided that the natural or legal person, entity or body seeking to engage in such transactions, or to provide assistance to such transactions, has notified, at least 20 working days in advance, the transaction or assistance to the competent authority of the Member State in which it is established.”

³⁷ Article 10b1(b)

³⁸ Article 10(a) of the Council Regulation No 1263/2012 refers to Annex VIB for the list of prohibited activities: “It shall be prohibited to sell, supply, transfer or export key naval equipment or technology listed in Annex VIB, directly or indirectly, to any Iranian person, entity or body, or for use in Iran.”

Regulation in December 2012. Hence, their refusal to carry out surveys in relation to the rig operating in Iranian waters is justified by the EU Regulation.

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?

Based on the facts of this case, it is warranted that any shift, transportation or towing of the rig shall be approved by the designated surveyors. Pursuant to the Council Regulation, the surveyors refused to carry out their survey when the rig was shifted to another place in March 2013.

The significant point in this issue is that the requirement of approval of any shift or change related to the rig by the surveyors is inserted in a clause as a form of warranty. The consequence a contractual term being expressed as a warranty is that the insurer could take advantage of a special rule under English marine insurance law.³⁹

According to the Marine Insurance Act, breach of the warranty by the assured discharges the insurer from liability under the insurance policy from the date of the breach.⁴⁰ This of course follows the decision of the courts as to warranty clauses.

Consequently, it appears to be logical in this case to say that the inability of the surveyors to carry out the survey on the rig gives a ground to the insurers to cancel the insurance policy.

Summary and Conclusion

Recent economic sanctions against some countries with a purpose of preventing the target from importing or exporting certain products such as refined petroleum has massively influenced shipping related industry players including shipowners, charterers, and insurers. As there is little guidance in relation to the application of sanctions, it is difficult to determine whether the related regulations apply. In cases where shipping activities are performed by various branches and affiliates in different countries, the business players who are involved in the trade should be more cautious in order to comply with sanctions. In some circumstances, the shipowners are entitled to refuse the charterers' orders to on a number of grounds. For example, in the first hypothetical scenario of this paper the following grounds are to be considered: (1) unlawful merchandise; (2) illegality under the governing law of the charterparties (3) the obligation of insurance under the charterparties on the owners; and (4) a special clause of the charterparties.

Another uncertainty in relation to recent sanctions against Iran is related to providing insurance to key equipment and technology to key sectors of the oil and gas industry in Iran. For example, as discussed in the second scenario of this paper, provision of rig while working in Iranian waters falls within the key equipment and technology to key sectors of the oil and gas industry in Iran and thus prohibited under Iran sanctions. However, provision of insurance to such equipment is not explicitly included in the prohibition.

In summary, the question of whether the sanctions regulation apply to a certain case depends on various circumstances including the country where the related entities are registered and perform business, the place of their affiliate and branches, the nationality of the involved persons and the term of contracts. In conclusion, each case should be interpreted separately in order to determine whether the concerning activities fall within the prohibition provided by sanctions regulations.

³⁹ John Dunt, *Marine Cargo Insurance*, 2013, p 96

⁴⁰ Section 33(3): "(3)A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date."