

E.U. COUNCIL DECISION 2012/35/CFSP – 23 JANUARY 2012
FURTHER SANCTIONS IN RESPECT OF IRAN

The purpose of this circular is to set out the position of The Japan Ship Owners' Mutual Protection & Indemnity Association (the "Japan Club") in the light of the above-referenced Decision.

Background

On 23 January 2012 the Council of the European Union agreed to introduce further measures impacting on trade which could contribute to the development of Iran's nuclear-related activities. Specifically, the Decision introduces new measures to prohibit the trade and transportation of crude oil, petroleum products and petrochemical products. These measures are set out in Council Decision 2012/35/CFSP and it is anticipated they will be incorporated in a Council Regulation.

The Application of the EU Sanctions

Whilst EU Decisions bind only Member States, Regulations apply to those who fall within one of the categories on the following list:

- To everyone within the territory of the EU,
- On board any aircraft / vessel under the jurisdiction of the EU,
- Any EU national wherever located in the world,
- To any legal person, entity or body which is incorporated or constituted under the law of a Member State,
- To any legal person, entity or body in respect of any business done in whole or in part within the EU.

The Japan Club is not subject to the jurisdiction of the EU and thus not directly affected by the sanctions set out in EU Council Decision 2012/35/CFSP of 23 January 2012.

As the law stands, the Japan Club may continue to insure non-EU based members who transport Iranian crude oil and other products so long as the ships involved are not registered within the EU, the voyage is outside the jurisdiction of the EU and no EU nationals are involved in the operation or decision making process.

Reinsurance

However, the Club benefits from the reinsurance programme of the International Group of P&I Clubs ("IG Clubs") by which all IG Clubs reinsure each other for claims in excess of USD 8 million. In common with all other IG Clubs, the Japan Club also arranges its own reinsurance for claims within the Club retention. All of the retention reinsurance is placed in London and thus within the jurisdiction of the EU and the sanctions set out in the Decision. Articles 3a 2 and 3b 2 of the 23 January Decision prohibit the provision of reinsurance related to the transport of

Iranian crude oil and petroleum products. Reinsurers including other IG member Clubs subject to the EU legislation will not be able to pay out if the claim involves a sanctioned cargo.

This will impact the Member's ability to make a recovery from Japan P&I as the Club is not able to pay out on claims in relation to which it can make no recovery from reinsurers. This could leave the Member with a significant shortfall.

Club Rules

Members and others seeking cover should be aware of two particular sections of the Club's 2012 Rules relating to sanctions.

First, under the "Cessation of Insurance Contract" provisions of Rule 11 (3), the Club may cancel the contract of insurance if the Member has exposed or exposes the Club to a material risk of being subject to sanctions.

Secondly, Rule 36 (9) of the 2012 Rules excludes any recovery or indemnity where the liabilities, costs or expenses are not recoverable from the Club's reinsurers due to sanctions.

Conclusion

The Japan Club continues to provide P&I liability insurance to oil tankers and all other ships in accordance with its Rules and so long as there are no legal impediments to this. However, cover may be limited for Members who carry Iranian crude oil, petroleum products or petrochemical products under contracts signed after 23 January 2012. The Decision contains grace periods for contracts concluded before 23 January 2012, or ancillary contracts necessary for the execution of such contracts. This means that Iranian crude oil/petroleum products and petrochemical products can be dealt with until 1 July 2012 or 1 May 2012 respectively. In relation to contracts concluded after 23 January 2012, or which extend beyond the relevant grace period, Members could suffer a significant shortfall in any claims made.

It should be noted that there remains scope for the prohibitions sets out in the Decision to be varied when they are implemented in a Regulation. The Club's position, therefore, may change once further legislation is published by the EU.

We hope this circular has advised Members of the possible consequences of a decision to carry Iranian crude oil and petroleum and petrochemical products under (i) contracts concluded before 23 January 2012, or ancillary contracts necessary for the execution of such contracts, which continue beyond the grace periods referred to above, or (ii) contracts concluded after 23 January 2012. Nonetheless, the Club is ready to answer any questions Members may have.
