CIRCULAR

Britannia

The Britannia Steam Ship Insurance Association Limited

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Iran trading – P&I cover

Introduction

1. Members are referred to our circular dated 19 January 2016 concerning developments with regard to Iran sanctions. This circular is intended to assist Members when deciding whether to trade to/from Iran by explaining what P&I cover is available as well as identifying any possible shortfalls in cover. Some of the matters detailed below may also apply when Members' ships trade to/from other countries which are subject to US sanctions.

2. In recent years sanctions have been imposed on Iran, primarily by the UN, US and the EU, including in broad terms prohibitions on:

    a) US persons, including US financial institutions, from doing business in or relating to Iran;

    b) dealings with designated entities and individuals; and

    c) Iranian related trade, prohibiting the purchase/sale and/or transport of certain Iranian cargoes (primarily crude oil, petroleum or petrochemical products or gas) or the provision of insurance (including P&I insurance) in respect of the carriage of those cargoes.

3. In July 2015 the Joint Comprehensive Plan of Action (JCPOA) was agreed between the P5+1 countries and Iran. On 16 January 2016 (Implementation Day) the majority of the US and EU trade sanctions noted in (c) above were lifted. However, the sanctions noted in (a) and (b) above remain in place. It is also important to note that sanctions remain in place in respect of a number of other countries (e.g. Cuba, Russia/Crimea, North Korea, Sudan and Syria).

The interaction between sanctions and International Group (IG) club P&I cover

4. The rules of all of the IG Clubs:

    a) contain a cesser or non-insurance rule under which the Member has no P&I cover in respect of activities or liabilities which breach applicable sanctions; and

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b) prohibit or limit (reduce) a Member's right of recovery from its club if, because of the application of sanctions, there is a shortfall in the club's reinsurance (which includes any shortfall under the IG Pooling Agreement, General Excess of Loss programme or any other reinsurance arrangement).

Effect of sanctions on Pooling and the Group Excess of Loss programme (GXL programme)

5. For the 2016/17 policy year, individual International Group (IG) clubs will retain the first USD10 million of liabilities arising from an incident. Between USD10 million and USD80 million, liabilities are shared between all 13 IG clubs (the Pool). If any of the 13 IG clubs is prohibited (by sanctions applicable to that club) from contributing their share of any Pool claim, the individual Member will bear that shortfall in accordance with the applicable club's rules. The Managers understand that the only IG club domiciled in the US (the American Club) and therefore still subject to US Primary sanctions against Iran, now benefits from a licence which in most circumstances would enable it to contribute its full share of any pool claim notwithstanding the involvement of an Iranian entity or person (other than an Iranian SDN).

6. Liabilities above USD80 million fall within the GXL programme and, if sanctions apply, the same approach as with Pool claims (paragraph 5 above) is followed. However, if the liability arises under an approved certificate or guarantee e.g. a CLC, Bunker Convention or Wreck Removal Convention Blue Card, the STOPIA/TOPIA agreement (so-called 'certificated liabilities') then in the event of a reinsurance shortfall under the GXL programme, the 13 IG clubs have agreed to re-pool that shortfall, again subject to individual clubs being permitted by applicable sanctions to contribute. If an individual club cannot contribute, then that club's shortfall would be borne by the Member.

7. If the GXL programme shortfall arises in respect of a liability for which the club is not directly liable under an approved certificate or guarantee e.g. collision/FFO liabilities (so-called non-certificated liabilities) then the loss is not re-pooled by the 13 IG clubs and will be borne by the Member under the applicable club's rules.

8. The US domiciled reinsurer participation on the GXL remains directly affected by US primary sanctions. A significant further proportion of the programme has a US nexus, which may impact upon the ability of non-US domiciled but US affiliated or subsidiary reinsurers to pay a claim which their US domiciled parent or affiliate would be prevented from paying by virtue of the continuing US primary sanctions. This could result in a significant shortfall in recovery under the GXL programme and the exposure detailed in paragraphs 5-7 above. This shortfall could apply to liabilities incurred by vessels trading anywhere in the world (if for example a vessel was involved in a collision with an Iranian owned vessel) as well as vessels that trade to/from Iran and Iranian-owned vessels.

Finding a solution with OFAC

9. Given the potential extent of a reinsurance shortfall, both in scope and amount, the IG has engaged directly with the US authorities (State Department and OFAC). The aim is to achieve a long-term solution which would enable all participants in the GXL programme to honour their commitments.

10. Discussions with OFAC with regard to general or specific licensing possibilities are ongoing. In the meantime, in an effort to find an interim solution in respect of Iran, the Group has asked OFAC for confirmation that 'fall-back' insurance (i.e. insurance to bridge either fully or partially any GXL programme shortfalls) would be non-objectionable. If OFAC do not object to such insurance, this may provide a short term solution, but obtaining such cover is not a straightforward task and because of difficulties associated with market capacity and the likely available limit of such cover, it may be limited to certificated liabilities at this stage. Any solution, whether on an interim or permanent basis, may take some time to put in place. The IG will continue its active engagement with the State Department and OFAC in an effort to achieve interim and long-term solutions. Members will be kept informed of developments.

All clubs in the international Group have issued a similar circular.