

## Sanctions and Iran: President Trump's 8 May 2018 announcement and what this means for non-US shipping

### At a Glance...

On 8 May 2018, President Trump announced his decision to withdraw the United States from the Joint Comprehensive Plan of Action (JCPOA) and to reimpose on Iran a multitude of sanctions that were lifted in January 2016 under the JCPOA.

This means a significant change to non-U.S. companies' ability to trade Iran, and has particular relevance to the shipping industry. We summarise below the potential implications of President Trump's announcement on chartering business, but readers should be aware that the impact on individual spot fixtures and longer-term charterparties, as well as other forms of shipping-related contracts, including ship sale and purchase, contracts of affreightment and brokerage agreements, should be considered on a case-by-case basis.

Ultimately, when looking at your Iran-related trading it will be important to consider your business' exposure to potential enforcement by the Office of Foreign Assets Control (OFAC) as well as your contractual position vis-à-vis any counterparties.

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### Summary of impact on chartering business

- As of 5 November 2018, the United States will reimpose secondary sanctions on the shipping sector. To avoid incurring negative attention from OFAC, from this date vessels **should not call Iran** for any business, whatever date the charterparty was entered into. Similarly, **no services should be provided** in support of Iran-related shipping business from 5 November 2018.
- Where charters post-date 8 May 2018, it is highly likely that calls to Iran **should be avoided**.
- Where charters pre-date 8 May 2018, vessels **may be permitted** to call Iran up to and including 4 November 2018, subject to consideration of certain factors, including the nature of the contract and in particular whether it is a spot fixture or a longer-term time charter, the date when instructions were received, and whether the call would otherwise be compliant with the pre-8 May 2018 U.S. sanctions position. Similar analysis would apply to other shipping-related business, such as the delivery of ships pursuant to a sale contract or the provision of services pursuant to a brokerage agreement.
- In all cases, extremely careful consideration should be given to your position under your contracts, as well as to your potential exposure to enforcement action by OFAC. Remember that getting it wrong can result in serious reputational and regulatory risk, as well as the risk of the United States imposing secondary sanctions on your business, including fines.
- All that said, this is a situation in flux, and it remains to be seen whether the reaction of other signatories to the JCPOA will complicate matters. You should remain vigilant of developments.

### The easing of sanctions under the JCPOA

The JCPOA was signed by the United States, the United Kingdom, Russia, Germany, France, China, the EU and Iran on 20 July 2015. In the agreement, Iran promised to limit its nuclear programme in exchange for broad sanctions relief from the United States, the EU, and the UN. The agreement took effect on 16 January 2016.

The most consequential change by the United States was the easing of secondary sanctions, being sanctions that apply to non-U.S. persons even when there is no U.S. nexus. Specifically, the United States ceased its "nuclear-related" secondary sanctions programmes pertaining to Iran and lifted sanctions against non-U.S. persons for engaging in activities relating to,

among others, shipping and shipbuilding, as well as energy and petrochemicals, the effect of which was to allow EU companies to trade with Iran without fear of U.S. censure.

The U.S. sanctions eased under the JCPOA are now set to be reimposed.

## What does the 8 May 2018 announcement mean for Iranian-connected shipping?

To implement President Trump's withdrawal from the JCPOA, the U.S. government has implemented two wind-down periods during which non-U.S., non-Iranian persons are advised to wind down their activities with Iran.

The 180-day wind-down period is most relevant to the shipping industry. After this period, which ends on 4 November 2018, the United States will reimpose, among other things, the following secondary sanctions:

- i. Sanctions on Iran's port operators and shipping sectors
- ii. Sanctions on petroleum-related transactions, including petroleum products from Iran. Note also that certain entities will be redesignated, including NIOC and IRISL
- iii. Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and other designated Iranian financial institutions
- iv. Sanctions on Iran's energy sector

While it is clear that in order to avoid negative attention from the U.S. authorities persons engaging in activity consistent with the JCPOA must take all necessary steps to terminate those operations by the end of the wind-down period, OFAC has not been forthcoming in its explanation of what activities are permitted during the wind-down periods. However, OFAC has stated that when it considers a potential enforcement or sanctions action with regard to activities that occurred after the end of the wind-down period, it will evaluate the efforts taken during the wind-down period. Moreover, transactions that appear to be "new business" will increase businesses' culpability.

## What does this all mean for my chartering business? Can I continue to call Iran?

First, the easy bit: from 5 November 2018, in order to avoid falling foul of the U.S. authorities, vessels should not call Iran, whatever the date of your contract and whatever the nature of your business. This would be in contravention of the U.S. secondary sanctions as outlined above, and invites serious reputational risk and exposure to enforcement actions and censure by the U.S. government (including the risk of fines). Similarly, no support services should be offered in relation to Iran-related business from 5 November 2018 – this would, naturally, include brokerage services.

The more challenging question is: what about before 5 November 2018? Can I continue to trade Iran?

During the 180-day wind-down period, shipping companies are expected to take the steps necessary to terminate Iran-related transactions. In order to understand the impact of this on your business, consideration needs to be given to the date of your contract, and a distinction needs to be drawn between time and voyage charterparties.

### *Voyage charterparties*

With regards to voyage charterparties entered into prior to 8 May 2018, calls to Iran should be permissible up until and including 4 November 2018, provided such calls are in compliance with the pre-8 May 2018 U.S. sanctions position. Such business is unlikely to be considered "new business", even where the instructions to call an Iranian port, which has been chosen from a range of contractually permissible options, come after 8 May 2018.

With regards to spot fixtures agreed post 8 May 2018, these are at high risk of being considered "new business", carrying with them all the risks as outlined above. Advice should be immediately sought as to whether the fixture can be safely carried out, and indeed where that leaves you with regards to your contractual counterparty.

### *Time charterparties*

The position relating to time charters is potentially more complicated. The date of the contract is only part of the puzzle. You should also take into account the date when instructions are received and your historical trading pattern. Whether, pursuant to a time charter dated prior to 8 May 2018, a vessel may continue to call Iran must be considered on a case-by-case basis. There is, clearly, a risk that such business would be considered "new business", and leave you exposed to reputational risk

and enforcement action by OFAC. And, as with voyage charters, where a time charter is dated after 8 May 2018, calls to Iran pursuant to such a contract are at significant risk of negative attention from OFAC.

Advice should be sought promptly before any calls to Iran are undertaken in these circumstances, to understand both your exposure to secondary sanctions and what this means for your rights and obligations under your contract – and how to manage any resulting risks.

## Other issues

- As of 5 November 2018, persons and entities previously listed as specially designated nations (SDNs) subject to secondary sanctions and subsequently removed in January 2016 pursuant to the JCPOA are highly likely to be relisted as SDNs. Most will also be subject to secondary sanctions.
- There may also be an impact on the prompt, uninterrupted receipt of Iran-related payments; President Trump's announcement, together with comments from OFAC, heralds restrictions on such payments, which may also need to be considered, depending on the nature of your business. Similarly, there will be an impact on the Iranian banking system.
- Note that the other JCPOA signatories have indicated their continuing commitment to the deal. For now, Iran appears ready to maintain restrictions on its nuclear weapons programme, and the EU signatories have signalled that they will explore options to support EU companies in their Iranian business, all with a view to limiting the impact of President Trump's announcement. It will be crucial to maintain a careful watch on all actors as the situation develops to be sure you are limiting risk and maximising available opportunities.

## How Reed Smith can help

Reed Smith's Sanctions team and Shipping Group are uniquely well placed to advise on the impact of President Trump's announcement, with highly experienced trade and sanctions lawyers from both the United States and the EU available to you, 24/7. Contact one of the team listed at the end of this alert, or your usual Reed Smith lawyer, and we will be more than happy to help you navigate the implications of these significant events for your business.

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*If you have questions or would like additional information on the material covered in this Alert, please contact one of the authors – listed below – or the Reed Smith lawyer with whom you regularly work.*



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