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Member Circular No. 14/2018 **November 2018**

Iranian trade after 4th November 2018

Dear Sirs,

Circular 6/2018 issued on 29th May 2018 outlined the potential repercussions for shipowners and insurers arising from the U.S. Administration's decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA) Agreement signed by China, France, Germany, Russia, the United Kingdom, the United States, the European Union (EU) and Iran.

The U.S. has now re-imposed sanctions on Iran that had been lifted or waived under the JCPOA with the second and final wind down period coming to an end on 4th November 2018. The U.S. has made it clear that it expects all non-U.S. persons to comply with the secondary sanctions that have been re-imposed. The U.S. and the EU now take divergent approaches with the EU seeking to maintain the sanctions relief provided for by the JCPOA by, amongst other things, amending the annex to Council Regulation (EC) No 2271/96, otherwise known as the Blocking Regulation (see further Circular 9/2018).

There are reports that eight countries - China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey - have or will be granted waivers from the U.S. so that they may continue to be permitted to import limited amounts of Iranian crude oil. The waivers do not extend to any other commodities. Limited guidance in relation to these waivers, or Significant Reduction Exemptions ("SREs"), is provided by OFAC FAQ 642. It is further understood that countries holding SREs are being advised by the U.S. Administration to import Iranian crude only on NITC or IRISL vessels, or on vessels registered in the country holding the SRE and only where those vessels are insured under a sovereign guarantee issued by the Government holding the SRE.

Following the end of the wind down period there may still be some limited trade with Iran that is possible for non-U.S. persons to undertake without a significant risk of violating U.S. secondary sanctions (for example, the carriage of certain agricultural commodities, consumer goods and foodstuffs, see OFAC FAQ 637). Members should be aware, however, that even if the trade does not appear to violate U.S. sanctions, practical difficulties mean that it is extremely unlikely that International Group Clubs will be in a position to make or receive payments, provide security or respond to any claims in the usual manner.

In circumstances where a Club does cover a claim with an Iranian nexus, there is the potential for there to be significant reinsurance shortfalls. For the 2018/19 policy year, individual International Group (IG) Clubs retain the first US$10 million of liabilities arising from an incident. Between US$10 million and US$100 million, liabilities are shared between all 13 International Group Clubs (the Pool). If any of the 13 International Group 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.

Liabilities above US$100 million fall within the International Group Excess Loss Reinsurance (GXL) programme. In respect of a claim which engages the GXL programme, any sanctions related shortfall which arises in relation to a liability for which the Club is not directly liable under an approved certificate or guarantee (so-called non-certificated liabilities), is not automatically re-pooled by the International Group Clubs and will be borne by the Member under the applicable Club's rules. It is material in this regard to note that as a consequence of the withdrawal of General License H (which

applied to non-US domiciled affiliates and subsidiaries of U.S. domiciled insurers and reinsurers), a significant number of reinsurers will no longer be able to rely on that License to contribute to claims with an Iranian nexus.

Members are also reminded that most International Group Clubs have provisions in their rules excluding from cover any claims that arise from unlawful, improper or imprudent trading[1]. In light of all the factors set out above, there may be circumstances where the relevant Club considers a particular trade to be imprudent or improper even if it does not risk the imposition of sanctions.

If a Member does conduct Iranian trade, they are consequently advised to do so with great caution, carry out appropriate due diligence before entering into contracts and be aware of the challenges faced by insurers in providing cover and supporting their Members in these trades. The practical difficulties encountered by insurers are also likely to be faced by Members when it comes to, for example, making or receiving payments in relation to Iranian trade in view of the inability or unwillingness of banks to handle monetary transactions with even a remote nexus with Iran.

All clubs in the International Group have issued a similarly worded circular.

Any questions with regard to the above may be addressed to Lars Lislegard-Bækken, Tore Svinøy or Ingvild Høgenes Nilsen, Gard, Arendal.

Yours faithfully,
GARD AS

Rolf Thore Roppestad
Chief Executive Officer

[1] Gard Rule 74 reads as follows:
Unlawful trades etc.
The Association shall not cover liabilities, losses, costs or expenses arising out of or consequent upon the Ship carrying contraband, blockade running or being employed in or on an unlawful, unsafe or unduly hazardous trade or voyage.