



Libya Sanctions – The Sanctions Legislation

4 December 2013

In this Member Alert, the Club considers the sanctions currently in place against Libya, and the effects that these sanctions may have on both the shipping industry in general, and on Members in particular. Members should note that whilst the relevant sanctions regimes have been amended, and several key entities removed from the various asset freeze lists, the regimes are still in place. Sanctions will apply in respect of dealings with those persons/entities who remain on the asset freeze lists.

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1. THE SANCTIONS LEGISLATION

1.1 The United Nations

1.1.1 The Resolutions

Resolution 1970 (2011) was adopted on 26 February 2011 by the United Nations Security Council. Resolution 1973 (2011) was adopted on 17 March 2011. A further Resolution, number 2009 (2011) was adopted on 16 September 2011.

1.1.2 To whom do the Resolutions apply?

The UN Resolutions applies to all UN Member States. However, they are not directly effective, and so must be implemented by national legislation in the individual states.

1.1.3 What measures are put in place?

Since the coming to power of the Transitional National Council, the measures put in place by the UN have been relaxed somewhat and certain parties have been removed from the asset freeze list. However, the sanctions remain in place against those parties still on the list. The table below summarises the main UN Resolutions and their key provisions.

Resolution	Date	Key Provisions
Resolution 1970 (2011)	26.02.11	Imposed an arms embargo and an international travel ban on certain named individuals. UN Member States were required to freeze all funds, other financial assets and economic resources within their territories which were owned/controlled by certain parties listed in Annex II to the Resolution. They were also required to ensure that no funds, financial assets or economic resources were made available by their nationals, or by any individuals or entities within their territories, to or for the benefit of those listed parties.
Resolution 1973 (2011)	17.03.11	Introduced a no-fly zone, and provisions to assist with the enforcement of the arms embargo put in place by Resolution 1970 (2011). States that the asset freeze imposed by Resolution 1970 (2011) will apply to all funds/assets/resources owned/controlled by the Libyan authorities, or by any entity or individual acting on their behalf or owned/controlled by them.
Resolution 2009 (2011)	16.09.11	This Resolution was published following the coming to power of the Transitional National Council. It went some way to relaxing the measures previously in place. The Libyan National Oil Corporation and Zuetina Oil Company are no longer subject to the asset freeze and related measures.

		<p>The measures imposed on the Central Bank of Libya, the Libyan Arab Foreign Bank, the Libyan Investment Authority and the Libyan African Investment Portfolio are modified. Whilst funds, assets and resources which were already frozen remain so, States are no longer required to ensure that funds, assets or resources are prevented from being made available to these entities.</p>
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In addition, on 16 December 2011 the UN decided to remove entirely the Central Bank of Libya and the Libyan Foreign Bank from its asset freeze list.

Given the changing nature of the situation in Libya, the UN has stated that it will keep the provisions of its Resolutions under constant review in order to ensure that assets are made available to and for the benefit of the people of Libya. As such, there are likely to be further amendments to the sanctions provisions in due course.

1.1.4 Enforcement and Penalties

Each Member State must make provisions for the penalties which are to apply to citizens and companies incorporated within its jurisdiction. In the UK, for example, UN Resolutions are brought into law by way of Government Orders. These generally specify that a breach of UN sanctions legislation by any UK national, or by any company incorporated in the UK, is punishable by imprisonment, a fine, or both.

1.2 **The United States**

1.2.1 The sanctions legislation

Executive Order 13566 (the “Executive Order”) was issued on 25 February 2011. This set out a unilateral package of trade sanctions against Libya, which took effect immediately.

On 26 April 2011, the US Treasury Office of Foreign Assets Control (“OFAC”) broadened and clarified its policies for licensing petroleum transactions involving the Transitional National Council of Libya (“TNC”).

Several General Licenses have been issued pursuant to the Executive Order. These largely deal with exceptions to the general sanctions regime.

1.2.2 To whom does the legislation apply?

The sanctions legislation applies to all “US persons”, wherever located. This includes US citizens and resident aliens, entities organised under the laws of the US or any jurisdiction within the US (e.g. companies, non-profit groups, government agencies and foreign branches of such entities, wherever located) and any person within the US.

1.2.3 What measures are put in place?

The Executive Order blocked all assets, property and interests in property, and barred all dealings with:

- a) the Government of Libya, its agencies, instrumentalities and controlled entities;

- b) the Central Bank of Libya; and
- c) certain persons determined to be responsible for human rights abuses in Libya.

The Qadhafi family was placed on the OFAC Specially Designated Nationals and Blocked Persons (“SDN”) List. As a result, all of the family’s far-ranging assets were blocked.

Following the coming to power of the Transitional National Council, various General Licenses have been issued which provide for exceptions to the wide ranging sanctions provisions in the Executive Order. Some of the key exceptions are as follows:

General License	Date	Key Provisions
5	26.04.11	US persons are authorised to engage in transactions involving Qatar Petroleum or the Vitol Group (subject to certain restrictions and reporting requirements).
6	19.04.11	All transactions involving the Transitional National Council are authorised, subject to certain limitations.
7A	19.09.11	All transactions involving the Libyan National Oil Corporation and its subsidiaries are authorised. All property and interests in property owned/controlled by such entities are unblocked.
8A	23.09.11	All transactions involving the Government of Libya and the Central Bank of Libya are authorised, subject to certain limitations.
9	18.11.11	All funds of the General National Maritime Transport Company are unblocked.
10	01.12.11	All property and interests in property of the Arab Turkish Bank and North African International Bank are unblocked.
11	16.12.11	All property and interests in property of the Government of Libya and the Central Bank of Libya are unblocked. The funds of the Libyan Investment Authority and related entities, however, remain blocked.

The key point to note is that transactions will still be prohibited if they involve a person or entity who remains on the SDN List. Caution must therefore still be exercised when entering into transactions with Libyan entities.

1.2.4 Enforcement and Penalties

Breach of sanctions legislation carries both civil and criminal penalties. As regards the former, a party who violates a provision may be fined the greater of US\$250,000 or an amount which is twice the amount of the transaction that forms the basis of the violation.

As regards criminal penalties, a person who “wilfully commits, wilfully attempts to commit, or aids or abets in the commission of” a violation may be convicted of a criminal offence and, on conviction, be fined not more than US\$1,000,000. In addition, if the violation is committed by a natural person, that person may be subject to both a fine and/or imprisonment of up to 20 years.

Further, if property or assets belonging to blocked persons come into US jurisdiction, they may be frozen. Such measures could cause the effective forfeiture of cargo, freight or even vessels.

1.3 The European Union

1.3.1 The sanctions legislation

Council Regulation (EU) No. 204/2011 was adopted on 2 March 2011. It implements UN Resolution 1970 (2011) into the European Union. Council Regulation (EU) No. 296/2011 was adopted on 25 March 2011. On 7 June 2011, the Council of the European Union agreed Council Decision 2011/332/CFSP (the “Council Decision”).

Several further Regulations have been adopted following the coming to power of the Transitional National Council. These are listed at section 1.3.3, below. These further Regulations go some way to lifting the sanctions imposed. However it is important to note that the sanctions have not been lifted wholesale. They have only been lifted in respect of specified persons/entities.

1.3.2 To whom does the legislation apply?

The Regulations are directly effective in EU Member States, in that they do not need to be implemented by way of national legislation. They apply to any legal person, entity or body in respect of any business done in whole or in part within the EU, as well as to EU nationals and EU companies.

1.3.3 What measures are put in place?

The earlier EU Regulations prohibited the sale, supply, transfer, export, purchase, import or transport of listed equipment, including arms and ammunition, which might be used for internal repression. They imposed prohibitions on making funds, financial assets and economic resources available to listed persons and entities. At no point, however, did the EU impose an overall ban on trading with Libya or with Libyan people or entities, over and above those specifically named. The list of named individuals and entities is at Annex II to Regulation 204/2011.

The more recent Regulations have amended the EU’s sanctions provisions, in light of the coming to power of the Transitional National Council. The main provisions of the EU Regulations are set out in the table below, in chronological order.

Regulation	Date	Key Provisions
Council Regulation (EU) 204/2011	02.03.11	Prohibited the sale, transfer and export of certain listed goods, together with the providing of any services related to those goods. Provided that all funds and resources belonging to parties listed in the Annex to the Regulation be frozen, and that no funds or resources be made available to those parties (with certain permitted derogations).
Council Implementing Regulation (EU) 233/2011	10.03.11	Added further persons and entities to the asset freeze list.
Council Implementing Regulation (EU) 272/2011	21.03.11	Added further persons and entities to the asset freeze list.

Council Implementing Regulation (EU) 208/2011	23.03.11	Amended the existing asset freeze list.
Council Regulation (EU) 296/2011	25.03.11	Prohibited the provision of technical and financial assistance relating to certain goods and technology and imposed a no-fly zone.
Council Implementing Regulation (EU) 360/2011	12.04.11	Amended the existing asset freeze list.
Council Implementing Regulation (EU) 502/2011	23.05.11	Added further persons and entities to the asset freeze list.
Council Regulation (EU) 572/2011	16.05.11	Amended the provisions by which Member States were allowed to authorise derogations from the asset freeze requirements.
Council Implementing Regulation (EU) 573/2011	16.06.11	Removed one individual from the asset freeze list.
Council Implementing Regulation (EU) 804/2011	10.08.11	Added further entities to the asset freeze list.
Council Implementing Regulation (EU) 872/2011	01.09.11	Removed a large number of entities from the asset freeze list, including several banks, oil companies and the port authorities of Tripoli, Al Khoms, Brega, Ras Lanuf, Zawia and Zuwara.
Council Implementing Regulation (EU) 925/2011	15.09.11	Removed one entity from the asset freeze list.
	22.09.11	Removed the Libyan National Oil Corporation and Zuietina Oil Company from the asset freeze list.
Council Regulation (EU) 965/2011	28.09.11	Removed the Central Bank of Libya, the Libyan Investment Authority, the Libyan Arab Foreign Bank and the Libyan Africa Investment Portfolio from the asset freeze list. However, all funds and economic resources held by these entities as at 16 September 2011, and located outside Libya, remain frozen.
Council Regulation (EU) 1360/2011	20.12.11	Removes entirely all provisions against the Central Bank of Libya and the Libyan Arab Foreign Bank.
Council Implementing Regulation (EU) 50/2013	22.01.13	Update of persons and entities on the asset freeze list.
Council Implementing Regulation (EU) 364/2013	22.04.13	Update of persons and entities on the asset freeze list.

The measures in place are likely to be subject to further change in the near future. In addition, even though some of the restrictions have been eased or lifted altogether, the Club still recommends that Members conduct careful investigations before entering into any transaction involving a Libyan entity.

1.3.4 Enforcement and Penalties

Although the EU Regulations are directly effective, each Member State must lay down rules on penalties which apply to infringement of the Regulations.

In the UK, for example, the relevant statutory instruments provide for criminal penalties, including up to two years' imprisonment and/or unlimited fines. The UK implementing legislation also specifically states that where a corporate entity commits an offence, culpable individuals (for example, directors) can be punished.

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