

MEMBER ALERT



Shipowners Claims Bureau, Inc., Manager
One Battery Park Plaza 31st Fl., New York, NY 10004 USA
Tel: +1 212 847 4500
Fax: +1 212 847 4599

www.american-club.com

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ECONOMIC SANCTIONS UPDATE: LIBYA

As Members will already be aware through extensive press reports on the subject, the recent events in Libya have prompted the United Nations, the United States, and the European Union to impose targeted economic sanctions against the Qadhafi regime and the Government of Libya. The sanctions are not sanctions against Libya as a whole and they do not ban all trade with Libya.

The following is a brief summary of relevant sanctions currently in place.

The United States

Freezing the property and assets of Libyan Sanctions Targets

By an Executive Order issued by President Obama, effective February 25, 2011, the United States blocked (froze) the property and property interests (including funds and other assets) of Muammar Qadhafi, certain members of his family and his inner circle, and of the Libyan Government, including Libya's central bank (collectively, "Libyan Sanctions Targets").

A non-exhaustive list of Libyan Sanctions Targets appears on OFAC's List of SDNs and Blocked Persons, which is available on OFAC's website. The universe of Libyan Sanctions Targets on OFAC's List of SDNs and Blocked Persons is not exhaustive because there are many entities that fall within the definition of the "Government of Libya" that cannot be individually listed. Under the Executive Order, a person controlled (in fact) by, or acting for or on behalf of, a Libyan Sanctions Target is a Libyan Sanctions Target. What constitutes "control" in any given case is a fact-sensitive inquiry and depends on the facts and circumstances of each case. Ownership of 50% of an entity or more constitutes control.

Prohibited transactions with Libyan Sanctions Targets

In addition to requiring the blocking of, and prohibiting financial resources from flowing to Libyan Sanctions Targets, the Executive Order also prohibits United States persons from performing contracts and engaging in other transactions with or involving persons Libyan Sanctions Targets. The Executive Order does not prohibit trade with Libya as long as such trade does not involve any Libyan Sanctions Targets. However, permissible trade is nevertheless likely to be impacted by prohibitions that apply to Libyan Government banks.

The U.S. Treasury's Office of Foreign Assets Control (OFAC) may authorize transactions that are otherwise prohibited by the Executive Order. On February 25, 2011, OFAC issued General License No. 1 to authorize all transactions with financial institutions owned

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or controlled by the Government of Libya that are organized under the laws of a country other than Libya.

The purpose of the Executive Order is to deprive the Qadhafi regime of funds and other assets and also to protect Libyan state assets from being dissipated or misappropriated by Qadhafi and his associates. The Executive Order prevents Qadhafi from taking assets and preserves assets until such time when Qadhafi is no longer in power. The blocking measures under the Executive Order are punitive (depriving Qadhafi of assets) as well as protective (preserving assets) for the benefit of the Libyan people.

The United Nations

On February 26, 2011, the UN Security Council adopted resolution UNSCR 1970, a comprehensive resolution to respond to the situation in Libya. UNSCR 1970 imposes immediate measures to stop the violence, ensure accountability, and facilitate humanitarian aid.

The resolution (UNSCR 1970/2011) provides materially as follows:

- 1) It refers the situation in Libya to the International Criminal Court (ICC).
- 2) It imposes an arms embargo and other arms restrictions on Libya by requiring states to prohibit the provision of arms to Libya; the transit to Libya of mercenaries; and the exportation of arms from Libya. UNSCR 1970 also calls upon states to inspect suspicious cargo that may contain arms. When such arms are found, states are required to seize and dispose of them.
- 3) It calls upon states to strongly discourage their nationals from traveling to Libya to contribute to human rights violations.
- 4) It imposes targeted sanctions on key regime figures by imposing an international travel ban on 17 Qadhafi loyalists, and freezes the assets six of these individuals, including Qadhafi himself and his immediate family members. In doing so, the Security Council commits to ensure that any frozen assets will be made available to benefit the people of Libya at a later time. The list of persons whose assets are frozen appears in Annex II to UNSCR 1970/2011.
- 5) It establishes a Sanctions Committee to impose targeted sanctions on additional individuals and entities who commit serious human rights abuses, including ordering attacks and aerial bombardments on civilian populations or facilities.
- 6) It provides for humanitarian assistance to Libya.

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The European Union

On February 28, 2010, the Council of the European Union adopted a decision implementing UNSCR 1970/2011 and imposing additional restrictive measures against those responsible for the violent crackdown on the civilian population in Libya.

The Council has banned the supply to Libya of arms, ammunition and related material. In addition to the UN measures, the Council also prohibited trade with Libya in equipment which might be used for internal repression.

The Council enacted the following UN measures:

- 1) a visa ban on 16 persons, including Muammar Qadhafi, parts of his family closely associated with the regime and other persons responsible for the violent crackdown on the civilian population since 15 February; and
- 2) a freeze of the assets of Muammar Qadhafi and five members of his family.

The Council also adopted as autonomous measures a visa ban on an additional ten individuals and an asset freeze on a further 20 persons responsible for the internal repression.

On February 27, 2011, the United Kingdom issued a Notice and an Order implementing the provisions and requirements of UNSCR 1970/2011. The UK Order freezes: (1) the funds of parties listed in Annex II of UNSCR 1970 or designated by the United Nations Sanctions Committee, and (2) funds, financial assets, and economic assets owned or controlled by those persons.

Compliance & further guidance

Compliance with the current sanctions with respect to Libya can be achieved by:

- freezing relevant assets and other property (including stopping performance under contracts);
- refraining from engaging in transactions with or involving Libyan Sanctions Targets;
- refraining from transporting arms to or from Libya; and
- applying for or invoking the benefits of relevant licenses/exceptions where trade with Libya is not prohibited but impacted by the sanctions simply because of, for example, a payment to or from a Libyan government bank or some other Libyan government entity.

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The OFAC List of SDNs and Blocked Persons is the best source for a comprehensive list of designated or named Libyan Sanctions Targets.

As a general matter, Members should exercise best efforts to ascertain and confirm the precise nature of any cargo they are being asked to transport to a Libyan port, the identity of their shipper, and the beneficial ownership of the consignee, to the degree reasonably possible.

This is not intended to be, nor is it to be taken as, a formal legal opinion. Your Managers strongly encourage any Member with any questions as to the propriety of any particular transaction to seek legal assistance. Your Managers stand ready to refer Members to appropriate counsel.

To ensure complete compliance, all dealings and transactions with or involving Libya or Libyan entities should be screened and carefully scrutinized.

For further information, please contact:

Charles J. Cuccia
Corporate Compliance Officer
Shipowners Claims Bureau, Inc., Managers
American Steamship Owners Mutual Protection & Indemnity Association, Inc.
One Battery Park Plaza, 31st Floor
New York, NY USA 10004
ph: +1 212 847 4539
mob: +1 917 215 2883
fax: +1 212 847 4598
email: charles.cuccia@american-club.com