

**CLIENT ALERT: U.S. ISSUES DETAILED GUIDANCE TO MARITIME INDUSTRY
TO ADDRESS ILLICIT SHIPPING & SANCTIONS EVASION PRACTICES**

May 15, 2020

INTRODUCTION

On May 15, 2020, the U.S. Department of State, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) **and** the U.S. Coast Guard issued an advisory to provide those involved in the maritime industry and energy and metals sectors with guidance to counter current and emerging trends related to illicit shipping and sanctions evasion. The advisory is detailed and should be reviewed in its entirety as it suggests specific measures to be adopted or considered by maritime insurance companies; flag registry managers; port state control authorities; shipping industry associations; financial institutions; ship owners, operators, and charterers; classification societies; vessel captains; crewing companies; and regional and global commodity trading, supplier, and brokering companies. A copy of the advisory is available [here](#).

The advisory emphasizes that private sector entities should appropriately assess their sanctions risks, and as necessary, implement compliance controls to address gaps in their compliance programs. The guidance mainly relates to Iran, North Korea, and Syria with a particular focus on entities and individuals involved in the supply chains of trade in the energy and metals sectors, including trade in crude oil, refined petroleum, petrochemicals, steel, iron, aluminum, copper, sand and coal. Those involved in these trades are warned to be vigilant against several tactics utilized to facilitate sanctionable or illicit maritime trade linked to these countries and cargoes. The advisory goes on to specify practices to protect against such activities including a list of measures for each role in the private sector. Finally, the advisory summarizes some of the key sanction provisions targeting Iran, North Korea, and Syria.

The advisory is not intended to be a comprehensive summary of applicable sanction provisions or as imposing requirements under U.S. law. The advisory nevertheless should be reviewed very carefully as it provides specific recommendations and insight into the current thinking and trends of sanctions enforcement in the United States for those in the maritime industry. This alert highlights some of the relevant parts of the advisory.

SANCTIONS EVASION TACTICS

The evasive tactics identified in the advisory include the following:

- 1) **Disabling or Manipulating AIS on Vessels:** The disabling or manipulation of AIS is a common theme throughout the advisory. The U.S. authorities are clearly troubled by such conduct. Industry actors are cautioned to be vigilant about engaging with parties or vessels with a history of disabling or manipulating AIS.
- 2) **Physically Altering Vessel Identification:** The advisory warns that vessels involved in illicit activities often paint over vessel names and IMO numbers to obscure their identities and pass themselves off as different vessels.
- 3) **Falsifying Cargo and Vessel Documents:** The advisory notes that authorities have found that sanction evaders have falsified shipping documentation pertaining to petrochemicals, petroleum, petroleum products, or metals (steel, iron) or sand to disguise their origin. Those conducting transportation or trade involving the maritime sector are advised to conduct due diligence on cargo origin and shipping documents.
- 4) **STS Transfers:** The advisory cautions that STS transfers “especially at night or in areas determined to be high-risk for sanctions evasion or other illicit activity” are often used to disguise cargo origin or evade sanctions.
- 5) **Voyage Irregularities:** The advisory recognizes that transit and transshipment are common in the global movement of goods, but encourages those operating in the industry to “scrutinize routes and destinations that deviate from normal business practices.”
- 6) **False Flag and Flag Hopping:** Because false flag representations or flag hopping can mask illicit trade, the advisory recommends that the private sector be aware of and report to competent authorities instances of such behavior.
- 7) **Complex Ownership or Management:** Because complex ownership and management structures may hide ultimate beneficial owners of cargo and commodities, those in the industry are warned to be vigilant. “If private sector entities are unable to reasonably identify the real parties in interest in a transaction, they may wish to consider performing additional due diligence to ensure it is not sanctionable or illicit.”

Specific Measures

Concrete recommendations are made throughout the advisory of specific measures and practices to be adopted or considered by those in the industry to ensure sanctions compliance and avoid being engaged unknowingly in sanctionable or illicit conduct. Annex A, in particular, contains separate sections for each of various roles in the industry, e.g., insurance companies, flag states, etc., highlighting the recommended measures and practices for that role.

Some of the measures and practices recommended in the advisory include the following:

- Institutionalize sanctions compliance and due diligence programs, provide training to personnel, and consider having the programs routinely audited by qualified third parties as a means of continuous improvement.
- Communicate to contracting counterparties your expectation that they have controls in place and conduct their activities in a manner consistent with U.S. and U.N. sanctions.
- Incorporate best practices in contracts related to commercial trade, financial, or other business relationships in the maritime industry.
- In connection with Know Your Customer protocols, consider maintaining the names, passport ID numbers, address(es), phone number(s), email address(es), and copies of photo identification of each beneficial owner(s).
- Depending on the risk assessment, research a ship's history including for STS operations to identify previous AIS manipulation.
- Monitor AIS manipulation and disablement when cargo is in transit and consider supplementing AIS with Long Range Identification and Tracking (LRIT) and receiving periodic LRIT signals on a frequency informed by the entity's risk assessment (e.g., every 3 hours).
- Include contractual provisions which make the disablement or manipulation of AIS grounds for termination of the contract or refusal to perform or transfer cargo.
- Have vessel captains verify the vessel name, IMO number, and flag before engaging in STS and ensure there is a legitimate business purpose for the STS transfer.

- To verify cargo origin, consider requesting copies of export licenses (where applicable) and complete, accurate shipping documentation, including bills of lading that identify the origin or destination of cargo.
- Keep photographs of delivery and recipient vessels and/or recipients located at ports, when possible, to enhance end-use verification.
- Circulate information about the awards offered from the Rewards for Justice (RFJ) program that offers rewards for information leading to the disruption of the financial mechanisms of certain activities and actors involving North Korea and Iran.
- Share relevant information broadly with partners, other members of the community and colleagues. The advisory provides the following example:

For example, when a protection and indemnity (P&I) club insurance company becomes aware of illicit or sanctionable activity or new tactics in sanctions evasion, it may wish to consider notifying other P&I clubs, as appropriate, redacting personally identifiable information that cannot be shared with third parties where necessary. Similarly, vessel owners and clubs are encouraged to share information with the financial industry, potentially working through competent authorities where required, and flag administrations should routinely pass information to the IMO and parties to the Registry Information Sharing Compact.

Potential Implications

Yesterday's advisory has potential implications for everyone involved in the international trade and movement of cargo, in particular crude oil, refined petroleum, petrochemicals, steel, iron, aluminum, copper, sand, and coal. This includes both U.S. and non-U.S. persons and the entire spectrum of maritime actors including insurers, owners, operators, charterers, flag administrations, classification societies, etc. The advisory also emphasizes measures to be considered by financial institutions, and thus, those in the industry may see funds transfers come under increased scrutiny as banks endeavor to adopt the recommended measures.

The advisory is not binding and does not set forth requirements of U.S. law. The advisory is what it purports to be – guidance with recommendations to consider. The advisory nevertheless underscores that the U.S. government is keenly focused on international shipping and considers shipping as a means to implement and enforce sanctions policy. It remains important for those in the industry to make sanctions compliance a high priority. The ideas set forth in the advisory should be considered and incorporated where appropriate.

We continue to monitor developments in this area and are available to assist clients in understanding and examining how these developments may affect their business opportunities. If you have any questions about the contents of this alert or would like further information regarding U.S. sanctions or the development of sanctions protocols, please feel free to contact us.

This Client Alert is only a general summary for informational purposes. It and its content are not intended to be and should not be used or construed as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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