



# Sanctions

A Guide for Owners  
and Charterers



NorthStandard

**Sanctions are an ever more popular tool used by the United Nations, the United States, the European Union, the United Kingdom, and individual states as a means of achieving foreign and economic policy goals.**

It is not just the number of different sanctions programmes that creates challenges. The pace of change, with amendments to sanctions programmes on an almost daily basis, means that knowledge needs to be constantly refreshed. The Russian invasion of Ukraine has increased the challenge of ensuring compliance as we try to navigate through perhaps the most complex sanctions ever introduced.

Sanctions, and the enforcement of sanctions, are also increasingly targeting the maritime and insurance industries.

This focus on the maritime and insurance industries means that sanctions will inevitably affect your day-to-day business. The consequences of non-compliance can be severe. It is essential that you understand the risks and put in place measures to reduce and manage those risks.

This guide is split into three sections.

**Firstly**, we have put together an **introduction to sanctions** and how we suggest you approach sanctions issues and questions.

**Secondly**, we have set out some thoughts on **due diligence** and steps that you should consider taking to try to prevent any inadvertent breaches of sanctions.

**Thirdly**, we have included **quick reference guides** to the sanctions imposed by the EU and U.S. against the following countries:

- Iran
- North Korea
- Cuba
- Russia
- Syria
- Venezuela

There are also other countries subject to UN, EU, UK and/or U.S. sanctions, and we suggest you refer to our **[Sanctions Regimes](#)** document for further information.

01

# An Introduction to Sanctions



## An Introduction to Sanctions

In evaluating the risk of sanctions there will be a number of questions to ask. These will include you considering:

- (1) Which sanctions (e.g., U.S. and/or EU and/or UK) have jurisdiction over me and my company?
- (2) Will other sanctions apply to my trading partners, banks, insurers or reinsurers?
- (3) Who are we trading with? Are there any “party” related sanctions which impact on the ability to complete the contemplated trade?
- (4) What are we trading? Are there any “activity” related sanctions which impact on the ability to complete the contemplated trade?
- (5) Are there any practical issues which may affect the trade?
- (6) Will the trade impact on my insurance cover?

These questions are considered in turn below.

## Which sanctions have jurisdiction over me and my company? Will other sanctions apply to my trading partners, banks, insurers or reinsurers?

This guide focuses on the application and scope of the U.S., EU and UK sanctions, but you should bear in mind that individual states also apply their own sanctions which may well apply to you.

The **EU sanctions** generally apply:

- within the territory of the EU, including its airspace;
- on board any aircraft or any vessel under the jurisdiction of a Member State;
- to any person inside or outside the territory of the EU who is a national of a Member State;
- to any legal person, entity or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of a Member State;
- to any legal person, entity or body in respect of any business done in whole or in part within the EU.

Even if you do not believe that you will fall within the scope of sanctions imposed by the EU, the sanctions may still be relevant because they may well impact on other parties such as your brokers or insurers.

If there are express restrictions on the ability to provide insurance in respect of the trade, then usually that restriction on insurance will apply whether or not you fall within the jurisdiction of the EU sanctions. Therefore, it is perfectly possible that the trade may not pose a direct sanctions risk for you, but if you were to complete that trade, insurance cover for example would not be available. There are many cargoes to or from Russia, for example, in respect of which an EU or UK insurer is unable to provide cover wherever the shipowner may be based.

EU sanctions are enforced by the competent authorities of the individual Member States based on their national laws. There are differences in how they are enforced i.e., in some Member States a sanctions violation constitutes a criminal offence whereas in other Member States it can constitute a criminal or administrative offence. Penalties range from fines to imprisonment. The **U.S. sanctions** generally apply to U.S. persons ("**primary sanctions**"), which usually encompass:

- U.S. entities organized under U.S. laws and their non-U.S. branches;
- Individuals and entities in the United States;

- U.S. citizens and permanent resident aliens wherever located or employed.

With respect to some U.S. sanctions (such as against Iran and Cuba), non-U.S. entities owned or controlled by U.S. persons (i.e., foreign subsidiaries of U.S. companies) are treated like U.S. persons for the purpose of these sanctions.

In addition, there are further U.S. sanctions with extra-territorial effect which apply to non-U.S. persons (so called "**secondary sanctions**").

To make matters more complicated, on occasion it may be unclear to what extent sanctions are intended to be "secondary sanctions" or it may be that the particular sanctions extend the definition of U.S. persons. It is also possible for non-U.S. persons to be subject to U.S. jurisdiction if they cause a U.S. person to engage in a prohibited transaction.

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is responsible for the civil enforcement of U.S. sanctions and has the authority to impose significant monetary fines. Strict liability applies, meaning OFAC does not need to prove fault or intent before imposing a penalty. OFAC is also authorized to place persons/entities (including non-U.S. persons) on the Specially Designated Nationals (SDN) list if they engage in sanctionable activities. The U.S. Department of Justice is responsible for prosecuting criminal violations of U.S. sanctions. Criminal penalties may include fines of up to several million and/or imprisonment for 20 or more years.

The **UK sanctions** generally apply to all persons within the territory and territorial sea of the UK and to all UK persons, wherever they are in the world. This means that:

- All individuals and legal entities who are within or undertake activities within the UK's territory must comply with UK financial sanctions that are in force.
- All UK nationals and legal entities established under UK law, including their branches, must also comply with UK financial sanctions that are in force, irrespective of where their activities take place.

There are civil and criminal enforcement options for breaches of UK sanctions. Criminal penalties include unlimited fines or imprisonment for up to 7 years. The UK HM Treasury's Office of Financial Sanctions Implementation (OFSI) is responsible for the civil enforcement of sanctions. It is on a strict liability basis, meaning liability may be determined even where there was no knowledge or reasonable suspicion of the breach. The maximum civil monetary penalty that may be imposed by OFSI is a fine for £1 million or 50% of the estimated value of the breach, whichever is higher.

## PARTY

## Who are we trading with? Are there any “party” related sanctions which impact on the ability to complete the contemplated trade?

By party related sanctions, we are referring to the sanctions against entities, vessels, bodies and individuals targeted by sanctions. The lists of EU, UK and U.S. sanctions targets are publicly available and easily searchable:

**The consolidated list of EU targets can be searched via the [EU website](#).**

**The consolidated list of UK designated persons can be searched [here](#).**

**The U.S. list of sanctions targets and Specially Designated Nationals (“SDNs”) can be accessed [here](#).**

In respect of which parties to check, you will obviously wish to check that any charterers (and owners if you are chartering the vessel) are not targeted by sanctions. It may also be that another party involved in the trade, whether that be for example the supplier, shippers, receivers, end user, port authorities or agents, may be sanctioned. Therefore, the more parties that can be checked the better, and indeed the U.S. has advised those operating in the petroleum trade that it is good practice to complete due diligence not only in respect of direct counterparties but also into any parties and vessels connected to the trade.

If the entity appears on the **EU list of targets** (“designated persons”) then their assets are frozen. This means that, if you fall within the jurisdiction of the EU sanctions, it is an offence to make funds (or other assets that can be converted into funds) available, directly or indirectly, to or for the benefit of these sanctioned parties. Exclusions to these prohibitions are extremely limited.

Even if a search of the list reveals no “hits” that may not be the end of the matter. Where a party is majority owned or controlled by a designated party it may fall within the prohibitions.

The EU FAQs on the Russian sanctions provide (emphasis added) that:

*“Strictly speaking, only the persons and entities who/which appear under the column ‘Name’ in Annex I to Council Regulation (EU) 269/2014 are directly subject to an asset freeze and a prohibition to make funds and economic resources available to them or for their benefit. However, these restrictions can affect transactions with natural or legal persons, entities or bodies associated with them, some of which happen to be mentioned in the ‘Identifying information’ and/or ‘Reasons’ columns of Annex I to Council Regulation (EU) 269/2014. **Operators need to exert the highest caution when dealing with associated persons or entities. If non listed entities are deemed to be owned or controlled by listed persons or entities, their assets must be frozen as well, and no funds or economic***

*resources can be made available to them. This presumption can be rebutted on a case-by-case basis by the entity concerned, if it can be demonstrated that some or all of its assets are outside the control of the listed person, and/or that funds or economic resources made available to it would in fact not reach or benefit the listed person”.*

The **U.S. list** provides helpful information on the programme (e.g., Iran) under which a particular entity is sanctioned and contains additional sanctions information such as “subject to secondary sanctions” if non-U.S. persons are also subject to sanctions if they deal with the entity.

The U.S. applies a ‘50 Percent Rule’ to the SDN and other sanctions lists such that an entity owned in the aggregate, directly or indirectly, 50% or more by one or more blocked persons is itself considered a blocked person regardless of whether that entity itself is listed.

If a person or entity appears on the **UK consolidated list** of designated persons then they will be subject to an asset freeze. The consolidated list includes all asset freeze targets listed under UK autonomous financial sanctions legislation and UN sanctions. It is generally prohibited to:

- deal with the frozen funds or economic resources, belonging to or owned, held or controlled by a designated person;
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person;
- engage in actions that, directly or indirectly, circumvent the financial sanctions prohibitions.

An asset freeze will also apply to entities that are owned or controlled, directly or indirectly, by a designated person. Those entities may not be designated in their own right, so their names may not appear when the consolidated list is searched, however, those entities are similarly considered to be designated.

PARTY

**Party related sanctions in the individual country guides are highlighted with this key and a pink line to the right-hand side.**



ACTIVITY

## What are we trading? Are there any “activity” related sanctions which impact on the ability to complete the contemplated trade?

Even if you are comfortable that the parties involved are not targeted by sanctions, it may be that the underlying activity, for example the carriage of a particular cargo, is sanctionable.

It is possible for none of the parties to be subject to sanctions but for you to commit an offence or breach sanctions because the activity is sanctionable or vice versa.

You should therefore consider both whether there are any restrictions on the trade and activity under consideration, as well as the identity of the parties involved.

ACTIVITY

**Activity related sanctions in the individual country guides are highlighted with this key and a green line to the right-hand side.**

## **Are there any practical issues which may affect the trade?**

One of the issues which frequently arises in the sanctions field is that there is often a difference between what is legally possible and what is practically possible.

For example, a bank or other party's compliance policy may go further than the legal position and include blanket prohibitions on transactions linked to a particular sanctioned country. It may be that a party trades as if it was a U.S. person and subject to U.S. primary sanctions even if legally it does not fall within the definition of a U.S. person. Many companies will simply refuse to complete any business with a U.S. SDN whether or not legally they would be prohibited from doing so.

It is often therefore dangerous to assume that simply because a trade is lawful that it can be performed without difficulty. In particular, the blocking and returning of hire or freight payments is frequently an issue for parties, where no party is sanctioned but the relevant bank is unable to process the payment as to do so would violate its internal policies and procedures. There may also be a debate about the legality of a proposed transaction where much of the sanctions legislation is broadly but imprecisely drafted.

For insurers there will be occasions where there are practical, as well as legal, limits on the assistance that may be provided.

## Will the trade impact on my insurance cover?

This question does not of course only encompass considering the availability of P&I insurance. From a P&I perspective, however, there are a number of considerations.

Firstly, we are not able to confirm that cover will definitely remain in place for any contemplated voyage, not least because the sanctions position may change or further details of the voyage may emerge.

Secondly, there may be occasions where practical issues mean that whilst P&I Club cover would remain in place (subject as ever to the Rules), there may be difficulties in actually obtaining the benefits of Club cover, whether that be the provision of a Club letter of undertaking, settling a claim or the appointment of a surveyor. If, for example, the lawful assistance of a third party in a high risk country is required but there are difficulties in establishing a payment route to make payment to that third party, the services required may not be capable of being provided. Further, where the provision of security is requested, the insurer may well wish to be comfortable not only that legally they are able to provide such security, but that practically they will be able to make a payment to the beneficiary when the security is triggered.

Our P&I Club rules provide for a cesser of a vessel's entry if that vessel is employed in a carriage, trade, voyage<sup>1</sup> which, or the provision of insurance for which, will thereby in any way howsoever expose the Club to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation. There might be no risk of sanctions against you as the Member, but the cesser rule would still apply automatically if the Club was in any way exposed.

In addition:

- there shall be no recovery where the provision of cover, the payment of any claim or the provision of any benefit in respect of those liabilities, costs and expenses would expose the Club to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation.
- no claim shall be covered by the Club if it arises out of or is consequent upon an entered vessel carrying contraband, blockade running or being employed in an unlawful<sup>2</sup> trade.

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<sup>1</sup> "or operation" (under rule 17.2(5)) if the vessel is entered in the Standard Club as part of NorthStandard for the 2023-2024 policy year

<sup>2</sup> "prohibited or sanctionable carriage, trade, voyage or operation or the provision of insurance is or becomes unlawful, prohibited or sanctionable" (under rule 4.8) if the vessel is entered in the Standard Club as part of NorthStandard for the 2023-2024 policy year

- the Club is not liable to a Member for that part of any claim it cannot recover from Reinsurers (which would include other pool clubs and the collective and captive reinsurances) by reason of any sanction, prohibition or adverse action by any state or international organisation or risk thereof.

02

**Due Diligence**



One of the questions we get asked most frequently by Members is the extent of the due diligence that it is prudent to undertake.

Answering that question is not straightforward for several reasons.

The first issue is that the test may be different depending upon which sanctions you are subject to (e.g., U.S., EU, UK, or individual state sanctions) and precisely what the activity and offence is that you are concerned about.

A second complication is that much of the sanctions legislation is purposively vague and open to interpretation. It is sometimes not clear what standard will be applied to a party's behaviour, particularly in the current climate where sanctions are being aggressively enforced by the U.S. in an unprecedented manner.

Thirdly, the reality is that even where there is an inadvertent breach the consequences can be serious. There have been occasions where parties have indicated that the first they knew of a potential sanctions issue was when action was taken against them.

Our thoughts set out in this guide should be seen with these complications in mind and with recognition that the level of appropriate checks to be conducted will very much be dependent on your particular business.

The importance of completing proper due diligence is reinforced by the fact that if you don't properly investigate the trade, regulators and other agencies who are, for example, monitoring vessel movements may be more aware of the details of the trade than you are.

Drawing on the advice from regulators and our own experience we suggest that there are a number of steps that can be taken to reduce the risks of an inadvertent sanctions breach, including:

- (1) Implementing a compliance programme and sanctions procedures;
- (2) Evaluating counterparty risk;
- (3) Evaluating cargo and activity risk;
- (4) Seeking advice; and
- (5) Ensuring that contracts deal effectively with sanctions risks.

These steps are considered in turn, however it is important to emphasise again that the steps undertaken must be appropriate for your specific company.

## 1) Implementing a compliance programme and procedures

There is an expectation that companies will have in place a robust and detailed sanctions compliance programme, in writing, and which can be made available for production. There should also be documented evidence of adherence to that policy.

A sanctions compliance programme should at the very least:

- (a) Identify the regimes which are applicable to you e.g. EU, UN, UK, U.S. (primary or secondary sanctions, and/or state sanctions);
- (b) Indicate any countries with which you prohibit trading;
- (c) Clarify which senior person in your organisation has ultimate responsibility for adherence to the sanctions regimes;
- (d) Confirm the steps taken to isolate employees subject to specific sanctions which the company is not subject to (e.g., U.S. citizens who may be subject to U.S. primary sanctions);
- (e) Indicate the level of knowledge expected of your employees and highlight the training provided;
- (f) Highlight how sanctions compliance is monitored and the impact of breaching the sanctions policy;
- (g) Refer to the sanctions procedures that you have implemented. These sanctions procedures should set out for example:
  - a. How detailed do the sanctions checks on the parties related to each voyage need to be?
  - b. Is the level of investigation to be greater when the trade involves a specific country?
  - c. Do you require sanctions clauses to be inserted into every contract? If so, do you have specific clauses that must be used?
  - d. What are the consequences of not complying with the sanctions procedures?

On 2 May 2019 OFAC published a framework for **OFAC Compliance Commitments** which highlighted that compliance programmes should incorporate at least five essential components, namely (1) management commitment; (2) risk assessment; (3) internal controls; (4) testing and auditing; and (5) training. OFAC indicate that they will consider favourably companies who had effective sanctions compliance programmes at the time of an apparent violation.

OFAC indicate that a critical factor in a successful sanctions compliance programme is senior management commitment, for example in appointing a dedicated OFAC sanctions compliance officer and in promoting a culture of compliance throughout the organisation.

The OFAC framework also provides a useful analysis of common root causes for apparent sanctions violations. These include a lack of a formal sanctions compliance programme, misinterpreting or failing to understand the applicability of sanctions, improper due diligence, utilising the U.S. financial system or processing payments to or through U.S. financial institutions and issues with sanctions screening software.

## 2) Evaluating counterparty risk

You can check the EU, U.S. and UK sanctions lists online (as set out in part 1 of this guide). As these lists are easily searchable and free of charge it would be very difficult to justify not checking these lists. The EU has also highlighted the value of conducting media searches. Dedicated sanctions screening software will assist in searching the lists and can be used to highlight links to other sanctioned individuals or entities.

Sanctions lists do frequently change and there is a need to monitor and track changes to the sanctions lists.

Parties subject to sanctions can change their name or hide their ownership in an attempt to circumvent sanctions and to hide their true identity. In respect of the UK, OFSI's blog "*Am I dealing with a sanctioned entity?*", provides some guidance [here](#). It recommends searching the [UK sanctions list](#) and how to check the ownership (consider shareholdings and shell companies), and control of a company. In addition, in July 2020 OFSI published a [Maritime Guidance](#), which was updated in December 2020 and which highlights known illicit and suspicious shipping practices, with a particular focus on guidance for North Korean, Iranian, Libyan and Syrian sanctions. This Maritime Guidance also summaries what is "ownership" and "control" of an entity such that it will also be considered a sanctioned entity.

Further [guidance published](#) by OFSI in March 2023 focussing on the enforcement of sanctions, highlighted that OFSI does not prescribe the level or type of due diligence to be undertaken to ensure compliance with financial sanctions, but that OFSI will consider appropriate due diligence conducted on the ownership and control of an entity to be a mitigating factor where the ownership and control determination reached was made in good faith and was a reasonable conclusion to draw from such due diligence. OFSI further advise that they:



- may also consider a failure to carry out appropriate due diligence on the ownership and control of an entity, or the carrying out of any such due diligence in bad faith, as an aggravating factor.
- will consider whether the level of due diligence conducted was appropriate to the degree of sanctions risk and nature of the transaction. The nature of a person's contractual or commercial relationship with the entity will also be relevant to OFSI's consideration of the appropriateness of measures undertaken.
- would expect to see evidence of a decision making process that took account of the sanctions risk and considered what would be an appropriate level of due diligence in light of that risk.
- would usually expect these decisions to be made by reference to an internal framework or policy, but recognises that there is no one-size fits all approach. OFSI expects careful scrutiny of information obtained as part of any ownership and control assessments, particularly where efforts appear to have been made by designated persons to avoid relevant thresholds.

In their FAQs on the Russian sanctions, the EU highlight that

***"In our Q&A on due diligence for business with Iran, we have recommended a risk-based approach that consists of risk assessment, multi-level due diligence and ongoing monitoring. Due diligence may in particular consist in screening of beneficiaries of funds or economic resources against sanctions lists & adverse media investigations. Adverse media investigations refer to searches on the internet and news (media investigations) to find evidence that a contractual counterpart, even if not designated (so it passes the screening against the sanctions list), is actually controlled by a designated persons (e.g. news on local press that a company is controlled by a Syrian businessperson) (adverse)".***

OFAC in the U.S. has advised that if you are involved in the maritime petroleum shipping community you should complete due diligence not only on the companies and individuals directly involved, but also vessels, vessel owners and operators involved in any contracts, shipments or related commerce. OFAC advise using IMO numbers to research past trading patterns of vessels and any links to illicit activities, actors or regimes in order to better understand the sanctions risks. Adherence to the guidance in the U.S. [Advisory of 14 May 2020](#) should be followed to avoid the risk of being designated by the U.S. Guidance is given in relation to knowing your customer (KYC) and what is expected by way of best practice.

### 3) Evaluating cargo and activity risk

Unfortunately there is no straightforward search that can be completed in order to check whether a particular cargo is sanctioned. The [EU Sanctions Map](#) is however a valuable resource and we have put together a summary of the [EU and UK Russian cargo restrictions](#) to assist Members navigate the Russian sanctions.

It is not just important to establish whether there are any restrictions or prohibitions related to a particular cargo or activity, but also whether the information you have been given about the cargo is accurate and whether there are any suspicious circumstances. The U.S. has highlighted:

- (a) The need to consider shipping documentation provided to ensure it accurately records the underlying voyage and relevant vessel(s), flagging, cargo origin and destination. There have been occasions where fraudulent Certificates of Origin have been provided to hide for example the fact that the true origin of the cargo is Syria or Iran.
- (b) The importance of monitoring counterparty vessel movements for AIS manipulation, disabling and investigating vessel movements. AIS manipulation and disabling is of particular concern to regulators and the UN.
- (c) That ship-to-ship (STS) transfers can be used to transfer cargo from one vessel to another to conceal the actual origin or destination of the cargo and so extra caution is advised.
- (d) The need for clear communication with international partners and ensuring that your trading partners are aware of their sanctions obligations.

There are specific due diligence considerations in respect of the carriage of Russian oil and petroleum products following the introduction of the price caps in December 2022 and February 2023.

In respect of the focus on AIS manipulation, where a vessel involved in a trade has recently ceased to transmit its AIS, this should be seen as a red flag and could be potential evasion activity. It is a requirement of flag and class that the Safety of Life at Sea Convention ("SOLAS") be complied with and SOLAS provides that "Ships fitted with AIS shall maintain AIS in operation at all times except where international agreements, rules or standards provide for the protection of navigational information". Turning off the AIS in the absence of any threat to the safety of the ship may constitute a breach of SOLAS and a contravention of our P&I Club Rules, as well as increasing the risk of collision, damage to other ships, pollution damage and loss of seafarers' lives at sea. The U.S. Advisory of 14 May 2020 and the OFSI Maritime Guidance describe the deceptive practices of manipulation and disruption of AIS transmission.

#### 4) Seeking advice

Our dedicated sanctions advice team spread across our global offices are experts in this field and it may be that we have already answered your query previously; in any event we are here to help.

Any sanctions related enquiries should be sent to [NSSanctionsAdvice@north-standard.com](mailto:NSSanctionsAdvice@north-standard.com)

Most major law maritime firms also have sanctions specialists who will also be able to provide guidance as part of your due diligence process.

#### 5) Ensuring that contracts deal effectively with sanctions risks.

One of the most important ways of minimising risk is by including sanctions clauses in all your contracts.

These clauses can never provide complete protection because any warranty, for example, relies on the other party being able and willing to honour it. Further, if, for example, you are added as a sanctions target and other parties are unable to therefore trade with you, the fact that you obtained a contractual warranty is unlikely to be of much assistance. Nevertheless, sanctions clauses are an obvious and essential means of providing protection.

#### Sanctions clauses

There are a number of standard sanctions clauses that can be used depending on the context, including those developed by BIMCO.

BIMCO has recently published:

- Sanctions Clause for Time Charter Parties 2020
- Sanctions Clause for Voyage Charter Parties 2020
- Sanctions Clause for Contracts of Affreightment (GENCOA) 2022
- Sanctions Clause for Container Vessel Time Charter Parties 2021
- AIS Switch Off Clause 2021
- Russian Oil Price Cap Scheme Clause 2023

As the sanctions environment has changed so dramatically, sanctions clauses should be reviewed as they may require significant updating. Except for the GENCOA clause, Mark Church of NorthStandard was on the drafting committee of all the above BIMCO clauses.

If drafting a bespoke clause, you should consider the risks you wish to be dealt with in the sanctions clause; often this will include considering both “party” and “activity” related sanctions. If the vessel may carry Russian oil or petroleum products a further clause should be considered to ensure compliance with the price cap measures.

In respect of a generic charterparty clause, in relation to “party” related risks you will wish to consider:

- (1) Is my counterpart warranting that they and associated companies are not sanctioned? How is “sanctioned” defined?
- (2) Am I providing a similar warranty?
- (3) In respect of any Charterers, is it appropriate that they also provide a warranty on behalf of cargo interests and any sub-charterers?
- (4) Is it sufficient for these warranties to be at the date of the charter or continuing?

In respect of the “activity” related risks you will wish to consider:

- (5) Are Charterers to warrant that the trade is not sanctioned?
- (6) Are Charterers to ensure any cargo does not originate from specific countries?

You will also wish to consider more generally:

- (7) What are the consequences of breaching the sanctions clause? Is there a right to terminate?
- (8) What is the position should sanctions be introduced during performance of the charter which impact on the ability to perform?

### **STS clauses**

As set out above, STS transfers can be used to conceal the true origin or destination of the cargo. If STS is permitted under the charterparty, the charterparty will need to set out the circumstances in which the Owners are entitled to refuse to complete the STS.

There are several reasons why Owners may wish to have the right to refuse to conduct an STS, including:

- (1) The mother vessel has not been transmitting AIS;
- (2) There are concerns regarding the accuracy of the declared cargo origin;

- (3) The mother vessel does not have IG P&I cover;
- (4) The mother vessel (or previous STS vessel) is Russian flagged, or was Russian flagged on 24 February 2022

In respect of (4), the EU FAQs in relation to Russian sanctions answers the question as to whether it is prohibited to conduct ship-to-ship operations with Russian flagged vessels:

*“Ship-to-ship operations can occur in different cases, namely a ship-to-ship operation between a Russian flagged vessel and a third country flagged vessel in international waters, a ship-to-ship operation between Russian and EU-flagged vessels, and a Russian flagged vessel and a third country flagged vessel in territorial waters of a Member State. By virtue of the non-circumvention clause (laid down in Article 12), it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in Council Regulation 833/2014, including by acting as a substitute for natural or legal persons, entities or bodies targeted by the Regulation. **Accordingly, if a ship-to-ship operation takes places with the objective or effect of circumventing the prohibition of Article 3ae of Regulation (EU) No 833/2014, such an operation would be caught by this provision. The determining element is that such a ship-to-ship operation is orchestrated in order for a vessel that is not subject to the port access ban to call in an EU port, where otherwise a Russian flagged vessel could not call in.** Per Article 13, the Regulation applies to all vessels that fall under the jurisdiction of Member States and vessels that are present in the territory of the Union”.*

Obviously, much will depend on the circumstances and the contractual context, but Owners may wish to include wording such as the example draft set out below:

*“STS sanctions clause*

*Without prejudice to Owners other rights under the Charterparty, Owners have the right to reject any proposed STS operation where (a) either the proposed STS vessel(s) or its owners (including beneficial owners) are subject to sanctions or restrictions imposed by any State, Supranational or International Governmental Organisation or (b) the STS vessel(s) has failed to transmit its AIS for a period of [insert details]; or (c) Owners have concerns regarding the accuracy of the declared cargo origin or end destination of the cargo; or (d) the STS vessel (or any vessel on which the cargo has previously been transported or stored) is either (i) owned, controlled, chartered or operated by persons connected with Russia, (ii) registered in Russia, or (iii) Russian flagged or was Russian flagged as at 24 February 2022”.*

You may wish to consider the clause also expressly setting out the consequences of the Owners refusing to proceed with the STS.

The BIMCO AIS Switch Off Clause published in 2021 provides Owners with a right to refuse to conduct an STS with a vessel whose AIS has not operated in accordance with SOLAS.

# 03

## **Sanctioned Countries - Quick Reference Guide**



# Sanctions against Iran

## Introduction

- The Joint Comprehensive Plan of Action (“JCPOA”) Agreement was an agreement reached between Iran and the E3/EU+3 (China, France, Russia, the UK, the U.S., Germany, with the High Representative of the EU for Foreign Affairs and Security Policy) which led to sanctions against Iran being relaxed.
- The U.S. withdrew from the JCPOA in 2018 and fully reimposed sanctions on Iran and also continues to introduce further sanctions. On 4 September 2019 OFAC issued an “Advisory to the Maritime Petroleum Shipping Community” ([here](#)). This Advisory aims to warn those engaged in shipping petroleum and petroleum products from Iran of the “significant” sanctions risk and notes that the U.S. is committed to “aggressively enforcing” sanctions against Iran.
- Following the withdrawal of the U.S. from the JCPOA there is now a significant divergence between the U.S. and the EU which may well complicate matters for you.

## The EU and UK position and the blocking regulation

- The EU Blocking Regulation provides that if you are subject to the EU’s jurisdiction, you shall not comply with any requirement or prohibition in the reimposed U.S. secondary sanctions (unless authorisation is obtained).
- The UK (now no longer part of the EU) has also published legislation (“The Protection from Trading Interests legislation (retained Blocking Regulation”) which has a similar effect to the EU Blocking Regulation, but applicable to UK persons.
- The Blocking Regulation and UK legislation may therefore leave you in a difficult position if you fall within the jurisdiction of the EU sanctions or UK sanctions.
- You may be left with the risk of violating U.S. sanctions or of committing an offence under the EU Blocking Regulation or UK legislation.
- However, if you have a contractual right to refuse to perform an obligation then it may be possible to argue that should you, for example, refuse to trade to Iran, that you are simply exercising a contractual right and refusing to perform because you are contractually entitled to do so, rather than for the purpose of complying with U.S. sanctions. If that analysis is correct then you may not be violating the EU Blocking Regulation or the



UK legislation. This argument is given some support by the obiter remarks of Teare J in *Mamancochet Mining Ltd v Aegis Managing Agency Ltd* [2018] EWHC 2643 (Comm) and again in the Court of Appeal decision of *Lamesa Investments Limited v Cynergy Bank Limited* [\[2020\] EWCA Civ 821](#).

## Trading to Iran

- In light of the current situation with Iranian sanctions, if you are considering any Iranian trade, an abundance of caution is advised.
- Our ability to assist you is severely compromised by the sanctions. Making any payments to or from Iran is extremely difficult and Members should not expect the Club to be able to provide its usual level of support. It is difficult to foresee circumstances in which the Club would be able to provide security. There may therefore be a difference between the Club legally being able to provide cover and you as the Members practically obtaining the benefits of that cover.
- The reimposition of U.S. sanctions also impacts on the ability of U.S.-owned or -controlled foreign reinsurers who participate on the International Group (IG) Excess Loss Reinsurance (GXL) programme to pay Iran related claims and means that there is a risk of a reinsurance shortfall. If there is such a shortfall then our Rules provide that we are not liable to you for any part of the claim we cannot recover.

## PARTY

### Party Related Sanctions

#### EU Sanctions

- There remains a number of entities, bodies and individuals (the “designated persons”) whose assets are frozen.

#### UK Sanctions

- There remains a number of entities, bodies and individuals (the “designated persons”) whose assets are frozen due to human rights violations and violations in relation to nuclear weapons.

#### U.S. Sanctions

- U.S. persons (as defined) and foreign entities owned or controlled by them (e.g., foreign subsidiaries of U.S. companies) are generally prohibited from dealing with Specially Designated National’s (“SDN’s”).
- Secondary sanctions also continue to apply to non-U.S. persons who knowingly facilitate significant financial transactions with or provide

material or certain other support to those Iranian or Iran-related persons that remain or are placed on the SDN list. These SDN's, which non-U.S. persons can be sanctioned for dealing with, are shown as being "subject to secondary sanctions" in the "Additional Sanctions Information" field when doing an SDN search. Sanctions will apply to subsidiaries or joint ventures of this company where they are owned 50% or more in the aggregate by the designated entity.

ACTIVITY

## Activity Related Sanctions

### EU Sanctions

- Most activity and trade related sanctions have now been lifted. Some sanctions related to human rights, proliferation and Iran's support for terrorism do however remain in place. These sanctions focus on military or nuclear related goods, goods that could be used for internal repression, and goods that could be used for monitoring or interception of communications.

### UK Sanctions

- Most activity and trade related sanctions have now been lifted. Some sanctions related to human rights, nuclear proliferation and Iran's support for terrorism do however remain in place. These sanctions focus on military or nuclear related goods and technology, goods that could be used for internal repression, goods that could be used for monitoring or interception of communications, graphite and relevant metals and commercial arrangements relating to uranium mining and certain associated goods and technology.

### U.S. Primary Sanctions

- The U.S. domestic trade embargo remains in place. U.S. companies, banks, insurers and reinsurers continue to be broadly prohibited from engaging in transactions or dealings with Iran or its government.

### U.S. Secondary Sanctions

There are restrictions on the carriage of:

- Gold and precious metals;
- Graphite, raw or semi-finished metals such as aluminium, steel;
- Coal;
- Software for integrated software purposes:

- Goods for Iran's automotive sector.
- Refined petroleum products;
- Crude oil;
- Petroleum or petroleum products (it is noted that in August 2020 the US confiscated Iranian petrol from four tankers destined for Venezuela);
- Goods or services in connection with the energy, shipping or shipbuilding sectors of Iran;
- Petrochemical products;
- Goods or services that could facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products or petrochemical products or its ability to develop petroleum resources;
- the sale, supply, or transfer to or from Iran of raw and semi-finished metals, graphite, coal, and software for integrating industrial purposes will be sanctionable if those materials are to be used in connection with the Iranian construction sector;
- the sale, supply, or transfer to or from Iran of stainless steel 304L tubes; MN40 manganese brazing foil; MN70 manganese brazing foil; and stainless steel CrNi60WTi ESR + VAR (chromium, nickel, 60 percent tungsten, titanium, electro-slag remelting, vacuum arc remelting) will be sanctionable (regardless of end-use or end-user);

On 8 May 2019 the U.S. announced further sanctions under the Executive Order "Imposing Sanctions with Respect to the Iron, Steel, Aluminium, and Copper Sectors of Iran." Sanctions can be imposed on companies and vessels operating in the iron, steel, aluminium or copper sector in Iran. If vessels "transfer", to or from Iran, significant goods or services used in connection with the iron, steel, aluminium, or copper sectors of Iran they can be sanctioned. On 25 June 2020 German, UAE and Iranian companies were sanctioned pursuant to E.O. 13871 for trade in the iron, steel, aluminium and copper sectors in Iran. On 16 December 2019 the U.S. Department of State issued an advisory to alert persons globally to the U.S. sanctions risks for parties involved in transfers or exports to Iran of graphite electrodes and needle coke, which are essential materials for Iran's steel industry. The advisory can be read [here](#).

On 5 September 2019 OFAC updated its FAQs [here](#), which provide a warning to bunker suppliers and providers not to provide fuel to blacklisted Iranian vessels or to vessels engaged in sanctionable activity. The FAQ also provides guidance that should be followed as regards bunkering where there is no sanctionable trade, to ensure no involvement of U.S. persons or persons or entities on the SDN list.

On 10 January 2020, and in response to the recent developments involving the U.S. and Iran, a new Executive Order ([here](#)) was issued imposing sanctions on persons (including non-U.S. persons) operating and knowingly engaging in the construction, mining, manufacturing, and textiles sectors in Iran. In June 2020 the U.S. Treasury issued [FAQS 831](#) , [832](#) and [833](#) which defines the sectors of the economy referred to in E.O. 13902. It was also clarified in June 2020 that the manufacture of medicines / PPE for use in Iran is not caught by E.O. 13902.

There are also nuclear, military and human rights related restrictions. On 27 May 2020 the waiver associated with the Arak Reactor modernisation redesign, the transfer into Iran of enriched uranium for the Tehran Research Reactor and the transfer out of Iran of certain nuclear fuel scrap and of spent research reactor fuel expired. Further, on 21 September 2020 the President issued a new [Executive Order](#) and designated a number of individuals under it in relation to conventional arms activities for Iran.

Sanctions were also reimposed:

- in relation to the provision of underwriting services, insurance, or reinsurance;
- transactions by foreign financial institutions with the Central Bank of Iran and other designated foreign financial institutions;
- on Iran's port operators; and
- on the provision of specialized financial messaging services to the Central Bank of Iran and other Iranian financial institutions.

Sale (and hence the transport) of the following to Iran is not generally sanctionable by the U.S. unless there is another sanctions issue because of, for example, the parties involved.

- agricultural commodities;
- food;
- medicine;
- medical devices.

However, following the designation by the U.S. to the SDN list of the Central Bank of Iran ("CBI") there was concern that this may make it more difficult for U.S. and non-U.S. persons to participate in the trade of these items given the multiple roles played by the CBI in such trades. To address this concern the [General Licence 8A](#) was issued to authorise certain humanitarian trade transactions involving the CBI, as well as the National Iranian Oil Company. OFAC has issued [FAQs 821 - 823](#) in this regard.

On 8 October 2020 while the U.S. identified a number of Iranian financial institutions subject to E.O. 13902, they also clarified that these designations do not affect existing authorisations and exceptions for humanitarian exports to Iran, which continue in their force and effect. OFAC has, therefore, published [FAQs 842 - 847](#).

For other goods which do not appear to expressly fall within or outside of the sanctions, guidance from OFAC is that non-U.S. persons should ensure that for export of consumer goods not explicitly within an exception that there are no sanctioned parties involved.

Also, because the carriage of these cargoes by U.S. persons is prohibited, transactions must not involve U.S. persons or transit the U.S. financial system including foreign branches or subsidiaries of U.S. banks.

# Sanctions against North Korea

## Introduction

- The sanctions against North Korea are extremely wide-ranging. We have included North Korea in this sanctions guide to highlight the comprehensive nature of the sanctions, not because we are expecting Members to be considering any trade with a North Korean nexus.
- The U.S. Department of Treasury released a sanctions advisory on 23 February 2018 “to alert persons globally to deceptive shipping practices used by North Korea to evade sanctions. These practices may create significant sanctions risk for parties involved in the shipping industry...”. This advisory was updated on 21 March 2019.
- The U.S. Advisory of 14 May 2020 has particular focus on North Korea, as well as on Iran and Syria.
- On 1 September 2020 the U.S. issued the [North Korea Ballistic Missile Procurement Advisory](#) regarding the procurement of ballistic missile-related components, for which North Korea relies on a foreign network.

### PARTY

## Party Related Sanctions

- The U.S., EU and UK sanctions lists set out details of the entities and vessels targeted (see further part 1 of this guide).

### ACTIVITY

## Activity Related Sanctions

### United Nations Sanctions

The UN sanctions against North Korea include a ban on:

- Export from North Korea of coal, iron and iron ore, lead and lead ore, gold, titanium ore, vanadium ore, rare earth minerals, copper, nickel, silver, zinc, seafood, food and agricultural products, machinery, electrical equipment, earth and stone including magnesite and magnesia, wood and vessels, textiles and statues.
- The supply, sale or transfer of all industrial machinery, transportation vehicles, iron, steel and other metals (with the exception of spare parts required to maintain North Korea’s commercial civilian passenger aircraft currently in use).

- The supply, sale, import, purchase or transfer of luxury goods, helicopters and vessels to North Korea.
- The supply of aviation, jet or rocket fuel and condensates and natural gas liquids to North Korea.
- Providing insurance or reinsurance services to vessels where Member States have reasonable grounds to believe they were involved in activities or the transport of items prohibited by the sanctions.
- The owning, leasing, operating, chartering or providing vessel classification, certification, registration or associated service and insurance or reinsurance, to any North Korean flagged, owned, controlled or operated vessel shall be prohibited.
- Member States are to seize, inspect and freeze any vessel in their waters where there has been prohibited activity by the vessel.
- Port entry of vessels if an inspection in accordance with the UN resolutions has been refused.
- Providing bunkering or servicing of North Korean vessels suspected of carrying prohibited items.
- STS transfers to or from North Korean-flagged vessels of any goods or items that are supplied, sold or transferred to or from North Korea.
- New joint ventures with North Korean entities or individuals.
- The direct or indirect supply, sale, transfer or export to North Korea of:
  - arms and military vehicles;
  - all items materials, equipment, goods and technology which could contribute to North Korea's ballistic-missile-related or other weapons of mass destruction-related programs;
  - dual-use goods and technology;
- Restrictions on the supply, sale or transfer to North Korea of all refined petroleum products, including diesel and kerosene;
- Restriction on the supply, sale or transfer of crude oil to North Korea.

### EU and UK Sanctions

As well as the UN sanctions, the EU and UK has reinforced the UN's sanctions regime by implementing

- A total ban on EU investment in North Korea in all sectors.

- A total ban on the supply, sale or transfer to North Korea of refined petroleum products and crude oil.
- Prohibition on the import of petroleum products and luxury goods from North Korea.
- Prohibition on any vessel owned, operated or crewed by North Korea from entering EU ports.
- Ban on trade in gold and precious metals, as well as diamonds to, from or for the North Korean government, its public bodies, corporations and agencies or the Central Bank of DPRK.

### **U.S. Sanctions**

In addition to the UN sanctions the U.S. prohibits:

- Any transactions or dealings involving the property or interests in property of the Government of North Korea or the Workers' Party of Korea;
- Direct or indirect exports and imports to or from North Korea of nearly all goods, services, and technology;
- Vessels that have called at a port in North Korea in the previous 180 days, and vessels that have engaged in a STS transfer with such a vessel in the previous 180 days, from calling at a port in the U.S.; and
- Registering a vessel in North Korea, obtaining authorization for a vessel to fly the North Korea flag, and owning, leasing, operating, and insuring any vessel flagged by North Korea.



# Sanctions against Russia

## Introduction

- The Russian sanctions are complex, frequently changing and include both party and activity related sanctions.
- The EU has frequently issued new packages of sanctions against Russia (11 as of 5<sup>th</sup> July 2023) and the EU Regulation [833/2014](#), which details the key activity related restrictions, is now over 250 pages in length. EU Regulation [269/2014](#) focusses on the party related sanctions. EU sanctions are supplemented by a series of [FAQs](#) to aid the interpretation of the measures. These FAQs are frequently updated and are an invaluable resource.
- The UK sanctions against Russia are in many respects similar to the EU sanctions but there are differences. The U.S. has also introduced significant sanctions against Russia.
- In addition to the party and activity related sanctions highlighted below, there are also port bans restricting the access of Russian vessels. Of particular relevance is the EU ban (Article 3ea of EU Reg 833/2014) which provides that:
  - “It shall be prohibited to provide access, after 16 April 2022, to ports and, after 29 July 2022, to locks in the territory of the Union, to any vessel registered under the flag of Russia...”
  - The prohibition “shall apply to vessels that have changed their Russian flag or their registration, to the flag or register of any other State after 24 February 2022”.
- As of 24 July 2023, it shall be prohibited to provide access to EU ports and locks for vessels that engage in ship-to-ship (STS) transfers if the competent authority of the EU Member State has reasonable cause to suspect that the vessel is either in breach of the ban on importing seaborne Russian crude oil and petroleum products into the EU, or is transporting Russian crude oil or petroleum products in breach of the relevant price cap. Vessels will be prohibited from accessing ports and locks in the EU if they do not notify the competent authority of the EU Member State where the vessel is seeking access to the port/lock at least 48 hours in advance about a STS transfer occurring within the Exclusive Economic Zone of an EU Member State or within 12 nautical miles from the baseline of that EU Member State’s coast.

- Similar prohibitions apply to vessels suspected of transporting Russian crude oil and petroleum products that illegally interfere, switch off or disable their shipborne automatic identification system (AIS), in breach of SOLAS Regulation V/19, point 2.4. Exemptions are provided for to allow such vessels access to ports and locks in the territory of the EU for maritime safety, including environmental concerns, for saving life at sea and for humanitarian purposes.
- Article 12 of the EU FAQs deal with the question as to whether it is prohibited to conduct STS operations with Russian flagged vessels:
- The EU FAQs make it clear that: *"if a ship-to-ship operation takes places with the objective or effect of circumventing the prohibition of Article 3ae of Regulation (EU) No 833/2014, such an operation would be caught by this [the anti-circumvention] provision. The determining element is that such a ship-to-ship operation is orchestrated in order for a vessel that is not subject to the port access ban to call in an EU port, where otherwise a Russian flagged vessel could not call in"*.
- There are also specific reporting requirements for Members calling at a Russian port, transiting Russian waters and when lawfully carrying Russian origin oil or petroleum products:
- From 17 March 2022 it has been necessary for the owners of vessels that have called in a Russian port or transited Russian territorial waters to notify their club of that call and provide the details set out in our circular: **[Circular: General Trade Licence dated 17 March 2022 – Reporting of vessel calls to Russia and transiting Russian territorial waters. \(nepia.com\)](#)**
- The EU, G7 and Australia (the "Price Cap Coalition") has introduced legislation and guidance effective 5 December 2022 intended to maintain the supply of Russian oil to world markets whilst at the same time reducing Russia's earnings from its oil exports (the "Price Cap Scheme").
- Under the Price Cap Scheme, IG P&I Clubs may provide P&I cover for Russian crude oil shipments to third countries which are not part of the Price Cap Coalition provided that the price of the Russian crude oil cargo from the time it is loaded until it has cleared customs at the port of destination is at or below the price cap. A separate price cap was introduced on 5 February 2023 for Russian petroleum products.
- Members are required to provide attestations to the Club if carrying Russian oil or petroleum products (whether or not loaded in Russia). Attestations can be provided on an annual basis or pre-voyage; details are

set out in our Circular: [Circular: The Price Cap on Russian Oil \(nepia.com\)](#).

- Our understanding is that the purchase of Russian bunkers is prohibited under the EU sanctions, unless the purchase is required to meet the essential needs of the purchaser (see FAQ18a and Article 3m 9 of Reg 833/2014).

PARTY

## Party Related Sanctions

- The U.S., EU and UK sanctions lists should be checked for details of the entities targeted (see further part 1 of this guide).
- The EU and UK have frequently targeted Russian individuals and then in the reasons given named companies with which those individuals are associated, without expressly sanctioning those companies. EU guidance, set out on page 6 of this guide, highlights that ***“the highest caution” should be exercised when dealing with associated persons or entities who are not expressly listed. This is because if non listed entities are deemed to be owned or controlled by listed persons or entities, their assets must be frozen as well, and no funds or economic resources can be made available to them.***

### EU Sanctions

- In addition to those individuals and entities on the EU designated list there are restrictions against certain state-owned Russian companies listed in Annex XIX of Regulation 833/2014 (including Rosneft, Transneft and Gaprom Neft). It is prohibited to directly or indirectly engage in any transaction with these companies or any legal person, entity or body established outside the EU whose proprietary rights are directly or indirectly owned for more than 50% by an entity listed in Annex XIX. There are some exemptions to the prohibition in engaging with these entities, such as where “strictly necessary” for the transport of oil, including refined petroleum products from or through Russia (assuming that transport is not otherwise prohibited).

### UK Sanctions

- The UK has also introduced other financial and investment restrictions in addition to maintaining its designated list. The UK [Russia sanctions:](#)

[guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk) provides details of these additional restrictions.

### U.S. Sanctions

- OFAC has identified numerous sectors of the Russian Federation economy, allowing sanctions to be imposed on any individual or entity determined to operate or have operated in those sectors. These sectors are: quantum computing, accounting, trust and corporate formation, management consulting, aerospace, marine, electronics, financial services, technology, defense and related materiel, metals and mining.
- It does not mean that all persons who operate or have operated in these sectors will be sanctioned, but that OFAC has the authority to impose sanctions on persons and entities operating or who have operated in these sectors.

### ACTIVITY

### Activity Related Sanctions

- The number of trades now targeted by sanctions means that all Russian trade should be approached with caution. [Our summary of EU and UK Russian sanctions and cargo restrictions](#) highlights the sectors and cargoes targeted by the EU and UK.
- The U.S. had imposed sanctions against Russia prior to 2022 in response to its 2014 annexation of Crimea. Those sanctions were more limited in scope than those that followed the 2022 invasion of Ukraine. Those sanctions included restrictions on activities associated with Russia's construction of the Nord Stream 2 pipeline amongst other sanctions and restrictions.
- Since 2022, the U.S. has imposed additional sanctions targeting Russia's international trade and economic sectors. These include, among others, export controls and other restrictions against Russia's defence, aerospace, and maritime sectors and energy production; and restrictions on transactions with Russia's central bank.
- The U.S. has also instituted the following bans (amongst others) with respect to Russia:
  - Russian vessels entering U.S. ports.
  - Import into the U.S. of Russian oil and other energy products.
  - Import into the U.S. of gold, diamonds, seafood, and alcohol.
  - Export of U.S. luxury goods and dollar-denominated banknotes.

- U.S. trade or investment in Russia-occupied regions of eastern Ukraine.



# Sanctions against Cuba

## Introduction

- This part of our guide highlights the sanctions imposed by the U.S. against Cuba. There are currently no sanctions imposed on Cuba by the EU.
- There are still sanctions and a trade embargo in place between the U.S. and Cuba and, therefore, Members should exercise caution when considering trade with Cuba.
- Most transactions between the U.S., or persons subject to U.S. jurisdiction, and Cuba continue to be prohibited.
- The Cuban Asset Control Regulations apply generally to persons subject to the jurisdiction of the U.S. and that term is defined to include any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by a U.S. citizen or resident of the U.S., by any person within the U.S., or by any corporation, partnership, association, or other organization organized under the laws of the U.S. or of any State in the U.S. This is wider than the definition of U.S. persons under most sanctions regimes. For example, it means that foreign subsidiaries of U.S. companies (i.e., non-US entities which are owned or controlled by U.S. persons) are treated as U.S. persons for the purpose of these sanctions.
- On 21 October 2019 the Bureau of Industry & Security (“BIS”) of the U.S. Department of Commerce updated the FAQs relating to Cuba [here](#).
- On 9 November 2017 OFAC amended the Cuban Assets Control Regulations to restrict U.S. persons from engaging in direct financial transactions with particular entities that are “under the control of, or act for or on behalf of, the Cuban military, intelligence, or security service or personnel”.
- These entities are listed on the Cuba Restricted List. Any entity owned or controlled by an entity on the Cuba Restricted List will not be treated as restricted unless they are specifically named on the Cuba Restricted List.
- It seems that a number of the entities on the Cuba Restricted List do not appear on the U.S. SDN list and, therefore, it will be necessary to check parties against both the SDN list and the Cuba Restricted List.

PARTY

- The U.S. has now designated Cuba as a State Sponsor of International Terrorism, however, it is understood that this is unlikely to impact upon ship owners from a sanctions perspective.

ACTIVITY

## The 180 day rule

- The U.S. sanctions also impact on all companies who are trading to Cuba and the U.S. due to the “180 day rule”.
- The “180 day rule” is a U.S. statutory restriction, which affects all ship owners globally (i.e., not just U.S. ship owners) prohibiting any vessel that enters Cuba to engage in the trade of goods or the purchase or provision of services there, from entering any U.S. port for the purpose of loading or unloading freight for 180 days after leaving Cuba, unless authorised by OFAC.
- The U.S. has amended the Cuban Asset Controls Regulations and Export Administration Regulations (“EAR”) and provided limited exemptions from the “180 day rule”. Whether or not the voyage is exempt may not be straightforward to establish.
- A vessel is exempt if it carries to Cuba, from a third country, only items that, were they subject to the EAR, would be classified as EAR99 or would be controlled on the U.S. Commerce Control List (“CCL”) only for anti-terrorism reasons.
- The exemption does not apply to vessels loading at Cuba.
- This extends the previous amendment which provided a waiver of the 180 day rule for vessels carrying foreign agricultural commodities, medicine, or medical devices to Cuba.
- EAR99 items are those that are subject to the EAR but are not elsewhere specified in any category in the CCL, i.e., are not listed on the CCL with an assigned Export Control Classification Number (“ECCN”). Part 732 of Title 15 of the Code of Federal Regulations details the steps for determining the classification of goods under the EAR.
- While for some cargoes the classification is clear, it is not so for others. If the classification of the cargo is unclear, then the only way to obtain a definitive classification is to submit a Commodity Classification Request to the BIS.
- Note that the exemption to the 180 day rule can be waived if a vessel, while in Cuba, engages in the purchase of goods or services that are not “associated with normal shipping transactions.”

- So, while a vessel can engage a ship's agent and stevedores, it might waive the 180 day rule exemption if, for example, it undertook deferred and non-emergency repairs while in Cuba. The exemption can also be lost if a vessel loads any cargo in Cuba, unless the transactions involving those goods are authorized by OFAC or exempt from the prohibitions of the Cuban Asset Control regulations.
- The "180 day rule" is separate from a second statutory restriction -the goods/passengers on board rule which prohibits any vessel carrying goods or passengers to or from Cuba, or carrying goods in which Cuba or a Cuban national has an interest, from entering a U.S. port with such goods or passengers on board, unless authorised or exempt.

### The 10% *de minimus* rule

- The US has made Cuba subject to the general 10% de minimus rule which restricts the exports and re-exports of goods containing more than 10% of U.S.-origin content. Therefore, a licence would be required for the re-export to Cuba of foreign-made items that contain greater than 10% U.S.-origin content.

### U-Turn Transaction

- Since 9 October 2019 the ability to process "U-turn" transactions has been revoked. Prior to that date the ability to process such "U-turn" transactions has meant that transactions relating to a third country commerce involving Cuba or Cuban nationals could be processed in U.S. dollars through the U.S. financial system. The authorisation for transactions has now been changed so that U.S. financial institutions must reject, rather than block, Cuba-related transactions. Any such Cuba-related transactions that originates or terminates in the U.S., or where the sender or beneficiary are U.S. persons, must be blocked.
- In light of the above, anyone intending to continue trade with Cuba that will involve such transactions should make sure they are not processed in U.S. dollars.



# Sanctions against Syria

## PARTY

### Party Related Sanctions

During 2015 OFAC designated a number of Syrian entities involved in maritime commerce and U.S. persons are consequently prohibited from undertaking trade with these entities. These were:

- General Directorate of Syrian Ports
- Lattakia Port General Company
- Tartous Port General Company
- Syrian General Authority for Maritime Transport
- Syrian General Shipping Agencies Company (“Shipco”)
- Syrian Chamber of Commerce.

In addition OFAC designated eight other (non-U.S.) entities and seven vessels because they had been determined to be materially assisting the Syrian Government by the delivery to them of LPG and gas oil cargoes. These were delivered via the port of Baniyas, which OFAC described as a “government-controlled port”.

In light of these designations it is clear that LPG and gas oil cargoes being carried to Syria will be subject to close scrutiny by the sanctions regulators because of their concerns that these cargoes often end up with the Syrian Government. In its Shipping Advisory of November 2018, the U.S indicated that:

*“The U.S. government will aggressively target for designation any person who provides support to the regime, for example by facilitating exports to or imports from the Government of Syria, including government-owned entities, unless such exportation or importation is otherwise exempt or authorized”.*

The U.S. also provided a non-exhaustive list of vessels that delivered oil to Syria in 2016-2018. In an updated March 2019 advisory the U.S. included a non-exhaustive list of vessels that engaged in STS transfers of petroleum destined for Syria from 2016 – 2019, as well as a non-exhaustive list of vessels which shipped petroleum from Syria from 2016 – 2019. These lists are not sanction lists but underscore the U.S. focus not only on vessels which have directly delivered petroleum products to Syria, but also on STS operations. There have been more recent designations by the U.S. relating to the petroleum industry.

It should also be noted that the Syrian Company for Oil Transport (“SCOT”) is the main operator of the pipeline networks which serve ships discharging at Baniyas. SCOT is a designated entity under both EU, UK and U.S. sanctions and any payments to SCOT would potentially be a breach of those sanctions. Members are advised to ensure when using Baniyas that no payments to SCOT are made by them, either by way of a specific charge or inclusion in general port dues.

The 14 May 2020 U.S. Advisory includes reference to the deceptive shipping practices in relation to Syrian trade.

In December 2020 following designation of the Central Bank of Syria, OFAC issued new FAQs which can be found [here](#). Further, since the U.S. pledge to provide additional humanitarian assistance to the Syrian people, FAQs [884](#) and [885](#) have been published.

Finally, Members are reminded that U.S. banks and U.S. dollars cannot be used to process any payments relating to Syria.

As ever, the U.S. and EU sanctions lists of sanctioned parties should be checked.

ACTIVITY

## Activity Related Sanctions

### EU and UK Sanctions

The provisions most relevant to the shipping and marine insurance industries are:

- prohibitions on the sale, supply, transfer or export of listed luxury goods and certain dual-use items, chemicals and oil and petroleum products, including a ban against providing, directly or indirectly, financial assistance, insurance or reinsurance related to such activities. The Grace 1 (now named Adrian Darya 1) was held in Gibraltar for over six weeks in July/August 2019 based on information it was being used in breach of EU sanctions to carry oil to Syria.
- a prohibition on the transport of crude oil and petroleum products of Syrian origin,
- a prohibition on the provision of key equipment and technology for use in the oil and gas industry in Syria, or to be used in the construction or installation in Syria of new power plants for electricity production,
- a prohibition on the provision of insurance and reinsurance to the state of Syria or those acting on its behalf,
- a prohibition on the sale, supply, transfer or export of arms and related material of all types, and of equipment that could be used for internal repression,

- asset freezes on a number of individuals and entities and prohibitions on making funds or economic resources available (including the supply of goods) to designated persons held responsible for the violent repression of civilians,
- prohibitions on the sale, supply, transfer or export of jet fuel and fuel additives to any Syrian entity or for use in Syria and the insurance and re-insurance of those activities,
- prohibitions on the import, export or transfer of certain cultural property and precious metals or diamonds.

### U.S. Sanctions

The U.S. has also continued to apply trade and related sanctions against Syria and on Syrian persons and entities, in particular under Executive Order 13582 ("E.O. 13582"). Prohibited activities include:

- making new investments in Syria,
- exporting, re-exporting, selling or supplying directly or indirectly, of any services to Syria,
- importing or dealing in Syrian-origin petroleum or petroleum products.

Although the U.S. sanctions against Syria are not generally designed to have extraterritorial effect on non-U.S. persons to same extent as other programmes, E.O.13582 provides for the blocking of property located in the U.S. of any person (including non-U.S. persons) who is determined to:

*"...have materially assisted, sponsored, or provided financial, material or technological support for, or goods and services in support of, any person whose property and interests in property are blocked pursuant to this order."*

In both 2015 and 2018, the U.S. designated non-U.S. entities to the SDN List under this language for their roles in supplying petroleum products to Syria.

Sanctions can also be imposed against persons who knowingly transfer significant financial, material or technology support that contributes materially to the Syrian governments acquisition or development of certain weapons.

The U.S. prohibits virtually all trade and other transactions directly or indirectly by U.S. persons with the Government of Syria. In 2020 the U.S. designated more persons under the Caesar Syria Civilian Protection Act (the Caesar Act) and in June 2020 Secretary Michael Pompeo issued a statement that *"we anticipate many more sanctions and we will not stop until Assad and his regime stop their needless, brutal war against the Syrian people and the Syrian government agrees to a political solution to the conflict as called for by UNSCR 2254. We will undertake our*

*campaign of economic and political pressure in full cooperation with other like-minded nations, especially our European partners, who only three weeks ago renewed their own sanctions against the Assad regime for precisely the same reasons".*

# Sanctions against Venezuela

## Introduction

- The U.S. policy towards Venezuela is fast moving and subject to change. There is a significant risk that new sanctions may be introduced with little or no warning by the U.S. administration. The U.S. have made it clear via various media - both through tweets from senior White House advisors, as well as through State Department and U.S. Treasury announcements – that its sanctions regime on Venezuela will expand. However, the Biden administration have stated that they intend to review the Venezuelan sanctions regime due to a concern that the current sanctions have not succeeded in achieving an electoral outcome for the country.

### PARTY

## Party Related Sanctions

- The U.S., EU and UK sanctions lists should be checked for designated persons and entities.

## U.S. Sanctions- PdVSA and the Government of Venezuela

- On 28 January 2019 PdVSA was designated by the U.S. pursuant to [Executive Order 13850 \(“E.O. 13850”\)](#). On 5 August 2019 President Trump issued [Executive Order 13884](#) which blocks the assets of the Government of Venezuela.
- All property and interests in property of PdVSA and the Government of Venezuela that are subject to U.S. jurisdiction are blocked and U.S. persons are now generally prohibited from engaging in transactions with PdVSA or the Government of Venezuela (including any political subdivision, agency or instrumentality thereof and persons owned or controlled directly or indirectly, or and any person that has acted or purported to act directly or indirectly for or on behalf of any of the foregoing).
- Pursuant to the terms of these Executive Orders, all property in the U.S. of “*any person*” (i.e., potentially U.S. or not) can be blocked who is determined to have:  
“...materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of... [PdVSA or the Government of Venezuela]

An example of a company so designated is Rosneft Trading S.A.. Details of this designation can be found in our [Industry News Update](#).

- E.O. 13850 also provides for the blocking or property of persons (U.S. or not) determined to be operating in the gold, financial, defence and security and oil sectors of the Venezuelan economy. This Executive Order has already been used to sanction non-U.S. persons that are alleged to operate in the oil sector of the Venezuelan economy. In 2020 vessels and vessel owners have been added to the SDN list under E.O. 13850 for carrying oil from Venezuela.
- A number of General Licenses were issued (and updated) in relation to both Executive Orders, providing for wind-down periods and exceptions, which can be accessed [here](#). General Licence 30 was published to authorise all transactions and activities involving the Government of Venezuela that are ordinarily incident to operations or use of ports or airports in Venezuela, save where related to (a) the exportation or re-exportation of diluents, directly or indirectly to Venezuela or (b) where otherwise prohibited. This General Licence has been superseded and replaced in its entirety by [General Licence 30A](#) due to the designation of Instituto Nacional de los Espacios Acuáticos (INEA) to clarify that vessels can engage with INEA in relation to operations "...ordinarily incident and necessary to operations or use of ports in Venezuela..." and therefore would not be in breach of sanctions. The Club Circular can be read [here](#).

**In November 2022, OFAC issued General License (GL) 41 which authorizes certain transactions related to Chevron Corporation's JV in Venezuela. GL 41 authorizes U.S. persons to provide goods and services "ordinarily incident and necessary" to certain activities specified in GL 41. FAQ 1098 further elaborates that the authorized activities include, among others, the sale of petroleum or petroleum products to the U.S. produced by the Chevron JV, provided those products are first sold to Chevron. In accordance with OFAC's long-standing policy, OFAC confirmed that non-U.S. persons do not risk exposure to secondary sanctions if they engage in activity that would not require a specific license if engaged in by a U.S. person (e.g., activity covered by GL 41).**

## EU Sanctions

The EU has made designations to their sanctions list under EU Council Regulation 2017/2063 as amended against persons and entities for serious human rights violations/abuses and actions, policies and activities that undermine democracy or

the rule of law in Venezuela.

### UK Sanctions

The UK has made designations to their sanctions list under The Venezuela (Sanctions) (EU Exit) Regulations 2019. These sanctions are to encourage the government of Venezuela to respect democratic principles, to comply with international human rights law and to respect human rights.

#### ACTIVITY

### Activity Related Sanctions

#### U.S. Sanctions

- There are also further restrictions which impact upon U.S. persons. As an example, on 19 March 2018, Executive Order 13827 was issued prohibiting any U.S. persons (including U.S. shipowners and U.S. banks) from engaging in any transactions relating to the Venezuelan cryptocurrency the "Petro". Pursuant to an earlier E.O. 13808 issued in August 2017, U.S. persons are prohibited from extending new debt to the Government of Venezuela with a maturity date of more than 30 days, or to PdVSA with a maturity date of more than 90 days. However, as set out above, as of 28 January 2019, U.S. persons are now generally prohibited from any engagement with PdVSA and the Government of Venezuela.
- All trade with Venezuela in the petroleum sector now poses a risk of sanctions, as set out above.

#### EU and UK Sanctions

- The EU and UK sanctions against Venezuela are fairly limited. There is an embargo on military goods and equipment that might be used for internal repression and equipment, technology or software intended primarily for use in telecommunications monitoring or interception.



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