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US issues Global Maritime Advisory on sanctions



On 14 May 2020 the US State Department, the US Department of the Treasury's Office of Foreign Assets Control (OFAC), and the US Coast Guard issued an Advisory which provides detailed guidance to the maritime industry, and energy and metals sectors regarding emerging trends related to deceptive shipping practices and sanctions evasion. The guidance sets out specific preventative measures which should be adopted or considered by the maritime industry which includes ship owners, managers, operators, charterers, brokers, flag registries, classification societies and insurance companies. It applies specifically to the sanctions regimes of Iran, Syria and North Korea and includes information relevant to both US and non-US companies.

The guidance is not intended to provide a comprehensive summary of US sanctions but it should be reviewed carefully as it provides specific recommendations and an insight into the current trends of sanctions enforcement in the US. The main sanctions evasion tactics which are relevant to port calls and/or ship-to-ship (STS) operations in high risk areas that are highlighted in the guidance which members should be aware of, are as follows:

- Disabling or manipulating the automatic identification system (AIS) on vessels
- Physically altering vessel identification
- Falsifying cargo and vessel documents
- STS transfers which conceal the origin or destination of the cargo
- Voyage irregularities
- False flags and flag hopping
- Complex ownership or management structures

The guidance recommends that persons conducting trade in the maritime sector remain vigilant

against the above tactics to limit the risk of involvement with sanctionable or illicit activity. It also recommends that parties exercise heightened due diligence in relation to shipments in high risk areas. The guidance suggests some specific due diligence practises that ship owners, operators and charterers may wish to consider which includes:

- monitoring ships' AIS data to ensure that AIS is continuously operated consistent with The International Convention for Safety of Life at Sea (SOLAS) and not manipulated
- emphasizing to new and existing clients that all ships will be monitored for AIS manipulation and instances of AIS disablement inconsistent with SOLAS will be investigated and reported. Club guidance: Members may find it challenging to comply with this recommendation since AIS transmissions can be lost in high density areas and it may be difficult to assess the AIS history of vessels operated by counterparties. We also advise members to seek legal advice before disclosing information about suspected unlawful activity to third parties unless they are directed to do so by the relevant state regulatory body where their business is based.
- adopting contractual language with clients which make AIS disablement and manipulation grounds for termination of the contract. Club guidance: we would advise members to seek independent legal advice when drafting such clauses and before terminating existing contracts.
- keeping and analysing detailed records (such as photographs of delivery and recipient vessels and/or recipients located at ports) to enhance end-use verification
- create an expectation for counterparties to have adequate and appropriate compliance policies which includes having controls in place to screen and assess onboarding or offloading cargo in areas they determine to present a high risk
- ensuring employees who reveal sanctionable behaviour are protected from retaliation and ensure there is a confidential mechanism to report suspected or actual sanctionable conduct.
- communicating relevant restrictions under US and UN sanctions regimes to counterparties. Club guidance: We advise members to consider incorporating all relevant sanctions which apply to their business (eg EU as well as US and UN sanctions) in their compliance procedures
- incorporating data such as ship location, ship registry and flagging information, as well as information from OFAC, the UN and the US Coast Guard into due diligence practices
- circulating information about the 'Rewards for Justice (RFJ) Program' that offers rewards for information leading to the disruption of the financial mechanisms of certain activities involving North Korea and Iran.

More generally, the guidance emphasises that companies are expected to implement sanctions compliance and due diligence programmes which includes having proper 'Know Your Customer' protocols. US law firm, Freehill Hogan & Mahar LLP comment in their client alert (which can be found in the attachment box) that while the advisory is not binding, it demonstrates the US government's keen focus on shipping as a means to implement and enforce sanctions policy. It also sets out what the US authorities consider to be good compliance practice.