

Locke Lord QuickStudy: OFAC Issues Warning to Financial Institutions & Insurers That Provide Maritime Services in the Mediterranean, Red Sea and Middle East

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Iran and Syria Sanctions and Embargos

On September 11, 2024, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued updated guidance to remind maritime support service providers that the governments of Syria and Iran remain embargoed, and that serious U.S. sanctions can be enforced against U.S. and non-U.S. persons involved in petroleum and other cargo shipments to or from the governments of Syria or Iran. The guidance is directed towards entities and individuals in the shipping industry, including shipping companies, vessel owners, managers, operators, insurers, and financial institutions.

U.S. law provides that any person, regardless of nationality, who facilitate the financial transfers, logistics, or insurance associated with non-exempt shipments to or from Syria or Iran are at risk of being targeted by the U.S. for sanctions. A further caution for vendors operating in this region is to remain diligent that some market participants may request assurances that violate U.S. anti-boycott laws to refrain from any trade with Israel. Please see our related QuickStudy U.S. Anti-Boycott Pitfalls.

Syria

Primary Sanctions. OFAC continues to pursue sanctions against U.S. persons who provide significant financial, material, or technological support to the Assad regime in Syria. The U.S. also prohibits, among other things, transactions subject to U.S. jurisdiction that, directly or indirectly, involve the Government of Syria, or entities sanctioned under the Syrian Sanctions Regulations, 31 C.F.R. part 542 ("SySR").

Secondary Sanctions. The Caesar Syria Civilian Protection Act of 2019 ("Caesar Act") mandates the imposition of U.S. sanctions on any foreign person who knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with, the Government of Syria, among others.

Iran

OFAC administers and enforces a comprehensive trade embargo against Iran as set forth in the U.S. Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 ("ITSR") and Executive Orders issued under the

authority of the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., and other statutes. The ITSR prohibits most direct and indirect transactions with Iran by U.S. persons or within the U.S., unless authorized by OFAC or exempted by statute. The ITSR targets both U.S. and non-U.S. persons involved in sanctionable activities. For example, non-U.S. persons, including foreign financial institutions and insurers may be subject to U.S. sanctions for knowingly conducting significant transactions for, or knowingly providing significant support or services (e.g., insurance) to, certain Iran-related persons on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List"), including the National Iranian Oil Company, the National Iranian Tanker Company, and the Islamic Republic of Iran Shipping Lines, unless an exception applies.

Red Flags – Deceptive Shipping Practices. Persons in the shipping industry who transit the Mediterranean, the Red Sea, and Middle East waters may deploy deceptive practices to obfuscate the name of a vessel, its cargo origin or destination and/or shipper or recipient of cargo. Those tactics may include (i) falsifying cargo and vessel documents, (ii) conducting ship to ship transfers of cargo to obfuscate the cargo origin or destination, (iii) manipulating automatic identification system ("AIS") to conceal a vessel's position and movements, and (iv) changing the vessel name.

Risk Mitigation Measures. Prior to providing services to maritime vessels, particularly those transporting energy products in the Mediterranean, Red Sea, and Middle East, vendors are encouraged to conduct due diligence to detect the above Red Flags. Due diligence may include:

1. AML/CTF/KYC. Build and maintain a robust anti-money laundering/countering terrorist financing/know your customer (AML/CTF/KYC) compliance program that leverages the Financial Action Task Force standards. Vendors involved in the maritime shipping, including vessel owners and operators, are advised to conduct Know Your Customer ("KYC") due diligence. KYC helps vendors to anticipate the risks inherent in transactions in which they engage in, as well as better understand the parties, geographies, and country-of-origin and destination of the goods involved in any underlying shipments. This includes not only researching companies and individuals, but also the vessels, vessel owners, and operators involved in any contracts, shipments, or related maritime commerce. Best practices for conducting KYC on a vessel includes researching its International Maritime Organization ("IMO") number, which may provide a more comprehensive picture of the vessel's history, travel patterns, ties to illicit activities, actors, or regimes, and potential sanctions risks associated with the vessel or its owners or operators.
2. Monitor for AIS Manipulation. There can be legitimate reasons for AIS to be turned off or "go dark" (e.g., passage through waters at high-risk of piracy or due to other security considerations). However, ship registries, insurers, charterers, vessel owners, or port operators should consider investigating vessels that appear to have turned off their AIS transponders for extended periods or unknown reasons.
3. Review All Applicable Shipping Documentation. Vendors providing services to vessels transiting the Mediterranean, Red Sea, or Middle East that could potentially be carriage cargo (oil) to Syria or Iran should ensure that they request and review complete and accurate shipping documentation. Such shipping documentation should reflect the details of the underlying voyage and reflect the relevant vessel(s), flagging, cargo, origin, and destination. Any indication that shipping documentation has been manipulated should be considered a red flag for potential illicit activity and should be investigated fully prior to providing services. In addition, vendors should confirm that the cargo was indeed delivered to the port listed on the shipping documentation.
4. Communication with International Partners. Parties to a shipping transaction may be subject to different sanctions regimes depending on the parties and jurisdictions involved, so clear communication is a critical step for international transactions. Discussing applicable sanctions frameworks with parties to a transaction can ensure more effective compliance.
5. Available Resources. There are several organizations that provide commercial shipping data, such as ship location, ship registry information, IMO, and ship flagging information. Vendors are encouraged to leverage this data to validate transactions with maritime customers.

We also note that the Risk Mitigation Measures described herein will serve vendors well when complying with the Russian Oil Price Cap detailed in our prior QuickStudies, listed at the end of this paper.

Consequences of Violating U.S. Sanctions or Engaging in Sanctionable Conduct

Individuals and entities engaged in shipping-related transactions or transfers destined for the Government of Syria or its controlled entities or instrumentalities, or certain transactions involving petroleum or petroleum products from Iran or certain Iran-related persons on the SDN List are subject to themselves being designated a specially designated national and/or other U.S. sanctions.

Violation of the ITSR or SySR could result in civil enforcement actions or criminal penalties for persons or transactions subject to U.S. jurisdiction. Additionally, non-U.S. persons may be subject to U.S. jurisdiction in certain situations. For example, non-U.S. persons are prohibited from causing or conspiring to cause U.S. persons to violate U.S. sanctions, as well as engaging in conduct that evades U.S. sanctions. Non-U.S. persons, including non-U.S. financial institutions and insurance companies, may face secondary sanctions risk for engaging in activities that are in violation of the Caesar Act or the ITSR or for providing material support to persons engaged in such activities. OFAC may impose such civil penalties for sanctions violations based on strict liability, meaning that a person subject to U.S. jurisdiction may be held civilly liable even if such person did not know or have reason to know that it was engaging in a transaction that was prohibited under sanctions laws and regulations administered by OFAC.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

Prior QuickStudies Detailing the Russian Oil Price Cap:

- OFAC Oil Price Cap Alert, OPC Violations, and Russian Diamond Ban, February 2024
- OFAC Targets Maritime Companies & Vessels for Violating Russian Oil Price Cap & Issues Related General Licenses, January 2024
- OFAC Sanctions Additional Maritime Companies & Vessels for Violating Russian Oil Price Cap & Issues Related General License, December 2023
- Oil Price Cap Violations & New OFAC GL for Crew Health and Safety and Safety of Blocked Vessels, November 2023
- Russian Oil Price Cap Advisory and Violation & Issuance of Russia-Related General License, October 2023
- OFAC Russia Related Sanctions Update: April 20, 2023 Russian Tactics to Evade the Oil Price Cap
- OFAC Russia Related Sanctions Update: December 7, 2022 Relating to the Russian Oil Price Cap
- OFAC Russia Related Sanctions Update: November 29, 2022 Relating to the Extension of GL 13 and the Russian Oil Price Cap
- G7 Coordinated Effort to Implement a Price Cap on Russian Oil and Petroleum Products: September 27, 2022

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