

Navigating the complex maze of sanctions



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Whether you are an owner, a charterer or involved in any kind of international business, there is no escaping the ever-present shadow of sanctions. With sanctions becoming increasingly complicated and changeable, and with sanctions regimes applying diverse or overlapping sanction regulations, companies and individuals face a real maze to navigate. This article seeks to provide some guidance for dealing with potential sanction issues.

There have been a number of high-profile cases in the press recently where severe penalties have been imposed on companies found to have breached sanctions. The consequences of breaching sanctions are significant and serious, including imprisonment, immense fines and loss of reputation. It is vitally important that companies take all steps necessary to abide by any applicable sanctions regimes.

Each company should have a sanctions compliance policy in place to enable it to comply with sanctions obligations in an effective and proportionate manner. These must be monitored to ensure they are up-to-date and that they support full compliance with sanctions requirements, and staff should be trained to recognise possible infringements of sanctions.

Due diligence

In order to satisfy themselves that they are not falling foul of any sanctions regimes, companies must carry out their own thorough due diligence. This should be both proactive and robust. When considering whether to engage in a particular trade, voyage or business opportunity, companies should ask various questions in order to reduce the risk of non-compliance with sanctions.

Some examples of due diligence questions:

- Which sanctions regimes apply?
- What is the nature of the business/transaction?
- What are the identities of all the parties involved?
- What is the corporate structure of the parties involved?
- What are the nationalities of the directors/place of incorporation of the parties involved?
- What jurisdictions are the parties subject to?
- What cargo is involved, what is its origin?
- Who is being paid?
- What currency is the payment being made in?
- Are there any restrictions under the charter/applicable contract?

By no means should companies attempt to circumvent the rules. Indeed, this is an express offence under many of the sanctions regulations. If there is any doubt, assistance should be sought immediately from specialist sanctions lawyers.

Key points to note:

- Ensure sanctions compliance procedures are up-to-date.
- Always carry out robust and proactive due diligence.
- If in doubt, seek the advice of specialist sanctions lawyers.
- Always comply with sanctions.

Charterparties

Difficulties can arise under charterparties and contracts as a result of any changes to the sanctions regimes. These can be reduced, to a certain extent, by the inclusion of a sanctions clause. There are a number of standard form clauses available, for example, the BIMCO Sanctions Clause for Time Charterparties, the BIMCO Designated Entities Clause and the Intertanko Sanctions Clause. Bespoke sanctions clauses can also be drafted by lawyers.

Insurers

Many insurers are also subject to the sanctions regulations and must abide by the sanctions rules. All International Group clubs have included, within their rules, express sanctions cover exclusions or termination provisions. The relevant Standard Club rules in respect of sanctions are:

- Sanctionable conduct exclusion – Rule 4.8
- Write-down – Rule 6.22
- Automatic cessation – Rule 17.2 (5)

The full rules are available on **The Standard Club's** website. Members should familiarise themselves with these rules. Breach of sanctions could result in a member's cover ceasing and its ship coming off risk if it is employed in a voyage which exposes the club to the risk of being or becoming subject to any sanction.

Conclusion

Sanctions are constantly being updated and expanded. To help navigate the maze of the sanctions regimes, we would urge contacting lawyers for advice and assistance in this complex and ever-changing area. If you have any specific queries, please also feel free to contact Roger Johnson, our representative on the IG sanctions sub-committee, on roger.johnson@ctplc.com or your usual P&I contacts.

