



The American Club

ECONOMIC SANCTIONS - COMPLIANCE GUIDANCE



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Introduction

Over the years, economic sanctions laws and regulations have become increasingly more complex, numerous, and have had a significant effect upon the shipping industry. Sanctions have also had a major impact not only on shipping operations, but also on financial institutions and insurance companies, including on P&I clubs worldwide, serving the shipping industry. Very recently, the U.S. Department of Treasury, Department of State and the U.S. Coast Guard jointly issued a Sanctions Advisory for the Maritime Industry and the Energy and Metals sectors. The focus of the Advisory was to highlight tools for these industries to counter current and emerging trends related to illicit shipping and sanctions evasion. The Advisory evidences the U.S. Government's commitment to prevent sanctions evasion, smuggling, criminal activity, and facilitation of terrorist activities with a focus on Iran, North Korea and Syria. Ultimately, the U.S. Government emphasizes the need for the maritime community to assess their sanctions risk, and as necessary, to implement compliance controls to address any identified gaps in their compliance programs.

This Economic Sanctions - Compliance Guidance document provides guidance on certain sanctions related resources which can be utilized by the American Club's Membership to not only foster and encourage general awareness of related issues, but also to enable Members to develop their own internal compliance policies and procedures and to appreciate the interplay between such sanctions laws and their potential effect on a Member's P&I and/or FD&D coverage.

The American Club has issued and disseminated considerable information in the form of Circulars, Alerts and seminars on sanctions related issues and the Membership is encouraged to not only consult these existing resources and to seek legal advice from counsel, but also to reach out to the Managers of the American Club ("the Managers") to obtain general information on the existing sanctions regimes and guidance on the availability of cover for particular voyages. When used in conjunction with a Member's internal compliance program, as discussed below, this guidance should assist Members with minimizing their own risks and exposures to potential sanctions violations which may carry serious civil or criminal penalties, entail loss of business privileges, inclusion on US government and other blacklists, and cause reputational harm.

With respect to their own activity, Members are urged to know how to recognize sanctions issues and consult legal counsel when their compliance program and due diligence investigation into a particular transaction or contemplated voyage raises any related concerns. Upon completion of due diligence, with respect to whether cover is available from the American Club for the transaction or voyage in question, Members should contact the Managers prior to the voyage to confirm whether the performance of the contemplated transaction or voyage may or may not prejudice their P&I cover.

Internal compliance and due diligence investigation, when combined with consulting legal counsel and maintaining close communication with the American Club to address any issues regarding cover, will assist the Membership to better navigate complex sanctions issues and reduce overall exposure to related problems and risks.



I. Compliance by American Club Members

The American Club, as well as its Members, must comply with all applicable laws and regulations including those governing economic sanctions.

The American Club is a US person and as such, is subject to US laws and regulations. Many Members of the American Club are not US persons and are thus, subject to US law based on a specific US nexus or they are impacted by laws (secondary sanctions) which apply even without a traditional US nexus.

The American Club and its Members must comply with all laws applicable to them at any given time. Economic sanctions programs administered by states are different and no two sanctions programs are alike; different states (countries) have different sanctions programs. For example, US sanctions may prohibit the American Club from providing cover even though the trade or voyage by the Member is not prohibited by sanctions laws applicable to that Member. The various laws apply differently to various persons, activities, and transactions.

The P&I and FD&D insurances provided by the American Club exclude coverage for unlawful trade. Additionally, under the Club's rules, whenever coverage under an American Club policy would be in violation of any US economic or trade sanctions including, but not limited to, those sanctions administered and enforced by the US Department of the Treasury, Office of Foreign Assets Control ("OFAC"), such coverage shall be null, void and of no effect. In sum, there is no coverage where coverage would be prohibited. Consequently, although, in certain cases, economic sanctions may not prohibit a Member from engaging in the activity of transportation in question (for example the Member is not a US person), US sanctions may nevertheless impact and affect the scope and/or extent of insurance coverage afforded to the Member (by the American Club, a US person) for such transportation.

Members must comply with the various sanctions laws applicable which, if violated, may subject them to both criminal and/or civil penalties and other adverse action such as blacklisting by the US government which usually means that US persons are prohibited from engaging in transactions with the blacklisted person (individual or entity), the blacklisted person is precluded from all business with the United States, and their assets in the United States are blocked (frozen).

Generally, both the sanctions laws of the US and EU (or other countries), to one degree or another, prohibit:

- trade and transactions with or involving certain countries or designated persons (i.e., blacklisted individuals and entities);
- the supply, exportation of certain goods, services and technology to certain countries or



persons;

- certain imports or imports from certain countries or persons;
- investment/financing in a country subject to sanctions;
- dealings with designated persons (individuals and entities) on relevant blacklists; and/or
- support for certain activity in the country or for the person that is a target of economic sanctions.

II. Sanctions Indicators/Information Elements

Sanctions prohibitions may be implicated based on the main elements of information related to maritime transportation and a particular cargo shipment transaction. The elements which should be scrutinized include the following:

- Name of vessel, IMO no., flag
- The country(ies) involved in the trade of vessels/origin and destination of cargo;
- The nature of or type of cargo being transported;
- The identity and domicile of the cargo shippers and receivers (end-user);
- The business activity of the shippers and receivers;
- The identity and domicile of the charterer and/or any subcharterers;
- The identity and domicile of other parties involved in the transportation;
- The load port(s) and/or the discharge port(s), involved, including the identities of terminal operators there;
- The identity and domicile of any banks involved in connection with any relevant bank guaranties, letters of credit for the cargo in question, etc.; and
- The purpose for which the cargo will be used once delivered.

As part of their internal sanctions compliance program, Members should investigate all of the above elements when considering a proposed transaction or voyage to better assess any potential sanctions issues.

III. Awareness of Applicable Prohibitions and Screening Information

Sanctions laws apply to the transportation activities of Members, as well as, but separately and in different ways to, the insurance activities of the American Club. First, Members should be aware of the sanctions laws and regulations that are generally applicable to them such as EU sanctions

laws or the laws of the state in which they are domiciled, and what these laws prohibit (prohibited countries, prohibited persons, prohibited exports or supply, prohibited support), screen the above-mentioned information elements of their voyages and other transactions against what is prohibited to ensure that they do not engage in sanctions violations. *See Section IX below for relevant links to EU, UK and IG resources.*

Second, Members also need to be aware of the US sanctions laws applicable to the American Club and to other US persons. The United States currently maintains economic sanctions against the countries or territories and the governments of Iran, Syria, Cuba, Venezuela (to a certain extent), the Crimea region of Ukraine, and North Korea. *See Section VIII and IX below.*

The United States also maintains sanctions against certain persons or entities whose names appear on OFAC’s list of Blocked Persons and Specially Designated Nationals (“SDNs”), including but not limited to, SDNs in Cuba, Iran, Syria, North Korea and other countries (such as the Russian Federation), certain designated vessels, certain persons designated as terrorists or drug traffickers, and, as it relates to the Russian Federation only certain designated Russian entities.

<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

SDNs are based in/on or connected to the following sanctions programs:

- Balkans-Related Sanctions
- Belarus Sanctions
- Burundi Sanctions
- Countering America’s Adversaries Through Sanctions Act of 2017 (CAATSA)
- Central African Republic Sanctions
- Counter Narcotics Trafficking Sanctions
- Counter Terrorism Sanctions
- Cuba Sanctions
- Cyber-Related Sanctions
- Democratic Republic of the Congo-Related Sanctions
- Foreign Interference in a United States Election Sanctions
- Global Magnitsky Sanctions
- Iran Sanctions
- Iraq-Related Sanctions
- Lebanon-Related Sanctions
- Libya Sanctions
- Magnitsky Sanctions
- Mali-Related Sanctions
- Nicaragua-Related Sanctions



Non-Proliferation Sanctions
North Korea Sanctions
Rough Diamond Trade Controls
Somalia Sanctions
Sudan and Darfur Sanctions
South Sudan-Related Sanctions
Syria Sanctions
Syria-Related Sanctions
Transnational Criminal Organizations
Ukraine-/Russia-Related Sanctions
Venezuela-Related Sanctions
Yemen-Related Sanctions
Zimbabwe Sanctions

The American Club and all other US persons, and transactions with a US nexus under primary sanctions (such as payments through the US banking system) must comply with the prohibitions of US sanctions. US secondary sanctions, which target certain specified activity, may be implicated even without a US nexus to the same.

Economic sanctions programs administered by states are different and no two sanctions programs are alike. For example, US sanctions may prohibit the American Club from providing cover even though the trade or voyage by the Member is not prohibited by sanctions laws applicable to that Member.

IV. Screening by Members – Two, Three or Sometimes Four Step Due Diligence

In light of the fact that Members and the American Club may be simultaneously subject to the sanctions laws of different states, Members need to conduct a two-pronged and sometimes three or even four-pronged due diligence inquiry/test to ensure that they do not engage in sanctions violations, and that they have permissible American Club coverage for their vessels.

First, if, for example, a Member is generally or primarily subject to EU sanctions laws, the Member must determine whether EU sanctions laws prohibit the transportation or trade in question. Members should screen the information elements listed above against the list of countries and subjects against which the EU maintains sanctions, the list of EU-prohibited activities and persons (see Section IX below), and the array of EU-prohibited cargoes, trade and activities. Most potential sanctions violations can be detected and prevented by country or transaction party screening. A comprehensive transaction party screening should be performed against the EU sanctioned parties listing (see Section IX).



Second, if, for example, EU laws do not prohibit the transportation or trade in question but the trade has elements which may implicate US sanctions prohibitions applicable to the American Club, the Member will need to know whether cover for the voyage in question is available from the American Club. The Member should disclose the above sanctions indicators/information elements to the American Club and seek confirmation, on a case-by-case basis, as to whether coverage is available. See Section V below.

Third, if, for example, EU laws do not prohibit the transportation in question but the trade has elements or related transactions which may implicate US prohibitions applicable to US persons other than the American Club such as, in the payment context, US banks, the Member must ensure that the payments through the US financial system do not implicate US prohibitions or that they do not cause violations.

Fourth, as was in the case of the past US nuclear-related sanctions against Iran (which were reimposed on May 8, 2018 in light of the US withdrawal from the Iran nuclear agreement), US as well as, for example, EU laws could have impacted the underlying transportation in question, in which case, Members should have conducted and in similar cases should conduct screening of information under EU as well as US law (US sanctions) applicable to them. If neither US nor EU law prohibits the Member's underlying trade, to confirm the availability of cover from the American Club for example, for Iran voyages, the Member should disclose the above sanctions indicators/information elements to the American Club and seek confirmation, on a case-by-case basis, as to whether coverage is available under US law applicable to the American Club because sanctions do not apply, or if they apply, a lawful exception is available may be made.

Again, the American Club is prohibited and precluded from providing insurance for any underlying voyage that is prohibited by laws applicable to itself and/or the Member or to its entered vessel.

V. Consult Legal Counsel

In concert with an internal sanctions compliance program, Members are encouraged to consult legal counsel whenever a potential transaction indicates elements that might implicate sanctions related concerns or issues. Should Members need any references to legal counsel to assist with questions regarding US, EU or other sanctions, they should contact the American Club's Compliance Center.

VI. Contact the American Club's Compliance Center

After conducting the due diligence screening described in Section IV, the Member should contact the American Club's Compliance Center (scbcompliance@american-club.com) to address any



sanctions related insurance coverage issues or questions.

When making such an inquiry to the Compliance Center, the Member should provide the following required information as far in advance as possible of the relevant voyage to allow for sufficient time for consideration of and response to the inquiry:

- List the contract parties: charterer(s), sub-charterer(s), shipper, receiver(s), and end-user(s);
- Whether any parties are SDNs;
- Identify the specific type(s) of cargo (es) and describe their end-use;
- Identify the port(s) of loading and discharge;
- Identify the types of B/Ls and/or C/Ps to be used, provide copies if possible;
- Identify the terminal operator(s) (such as Tidewater in Iran);
- Vessel names, flag state, and IMO nos.; and
- Vessel type and operation (FSO, STS, etc.)

The American Club's managers will assess the inquiry and may consult with its OFAC/EU legal counsel for advice and guidance. The American Club will endeavor to respond as promptly as possible under the circumstances and its response will be limited to the specific question of whether coverage is available and the interplay between the American Club's Rules and the contemplated transaction/voyage. The American Club's reply does not constitute and should not be construed as legal advice with respect to the Member's contemplated activity. It will be limited as to the judgment of the permissibility and availability of cover from the American Club. The Compliance Center's response should not be used, viewed or otherwise considered as a substitute for the Member's own due diligence investigation and competent legal advice.

References:

- Economic Sanctions - Compliance Guidance: March 08, 2016: Club Circular No. 12/16
- Economic Sanctions - Compliance Guidance document

VII. Recap

In summary, Members should:

- Know what sanctions laws apply. Have awareness of sanctions programs and the authorities and laws that govern them;
- Know what the sanctions laws and regulations that govern applicable sanctions provide;



- Screen and conduct an appropriate due diligence investigation of the proposed transaction/voyage and its participants. Members' screening of transportation and transaction information (Section II. above) should be made against the relevant applicable sanctions laws and the array of or lists of:
 - Prohibited countries/areas;
 - Prohibited shippers, receivers, charterers, and other parties/persons (transaction counterparties);
 - Prohibited ports;
 - Prohibited purposes for which the cargo will be used;
 - Prohibited imports, exports and cargoes; and
 - Prohibited activities.

Consult legal counsel.

Seek confirmation from the American Club as to whether coverage is available for the proposed transaction or voyage in question.

For a list of the sanctions programs of the United States, please visit:

<https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

For basic information on OFAC and sanctions, please visit:

https://www.treasury.gov/resource-center/faqs/Sanctions/Documents/faq_all.html

VIII. Country specific links to relevant American Club Circulars, and related documents

Circulars and Member Alerts are published by the American Club as a service to Members. While the information is believed to be correct, it is not complete and the American Club does not assume responsibility for completeness or accuracy. These can be viewed here:

<https://www.american-club.com/page/sanctions>



IX. Useful Sanctions Related Web Links

United States (US)

The United States Office of Foreign Assets Control (OFAC):

<https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

US government search engine in respect of certain (but not all) entities subject to or that are targets of sanctions:

<https://sdnsearch.ofac.treas.gov/>

Office of Foreign Assets Control / US Department of the Treasury (Information on US sanctions):

<https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>

Overview of US sanctions:

<https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

OFAC Specially Designated Nationals and Blocked Persons List Search:

<https://sdnsearch.ofac.treas.gov/Default.aspx>

European Union (EU)

UK government website dealing with EU and UK sanctions in respect of Iran:

<https://www.gov.uk/government/publications/financial-sanctions-iran-nuclear-proliferation>

List of sanctioned targets held by the UK and includes individuals and entities listed as targets by the European Union:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

UK Department for Business, Innovation and Skills (Information on UK, EU and UN sanctions):

<https://www.gov.uk/sanctions-embargoes-and-restrictions/>

EU / Restrictive measures (sanctions):

http://eeas.europa.eu/cfsp/sanctions/index_en.htm

http://eeas.europa.eu/cfsp/sanctions/docs/ectl-fsd_howto-vo4_en.pdf

http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

International Group

The International Group's webpage [IGP&I News](#) provides access to various useful links including to the European Union Foreign Affairs Council regulations on US sanctions.

Disclaimer

This brief economic sanctions compliance guidance has been prepared by the American Club to assist Members in complying with sanctions laws applicable to them and to the American Club. This guidance does not constitute and should not be construed as legal advice or a determination by the American Club as to the availability of cover for any specific case. The American Club urges Members to obtain independent legal advice regarding the applicability of sanctions laws to them and with respect to their compliance obligations under such laws.



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