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ADVISORY

UK Office of Financial Sanctions Implementation Issues Maritime Advisory

The UK Office of Financial Sanctions Implementation (OFSI) has issued a Maritime Advisory to supplement its general guidance document that was updated in July, 2020, outlining companies' obligations under the UK's sanctions regime, as well as OFSI's approach to licensing and compliance issues. OFSI's Maritime Advisory in many ways mirrors guidance issued by US Treasury and State Departments in conjunction with the Coast Guard in May and includes a list of tactics used by illicit actors to evade sanctions. Although the strategies listed in OFSI's Maritime Advisory pertain specifically to North Korea, OFSI highlights these methodologies as common among other countries and entities eager to evade sanctions.

- OFSI highlights ship-to-ship (STS) transfers as a commonly used sanctions evasion technique. Although STS transfers allow flexibility for ship owners to more efficiently move cargo, the very nature of the transfers allows the origin and nature of the ship's cargo to be obscured, allowing illicit transfers of coal, crude oil and petroleum products on behalf of sanctioned countries.
- Automatic identification systems (AIS) are used to track and monitor vessel movement, supplementing radar and helping vessels avoid collision. A ship may turn off its AIS to avoid piracy in high-risk waters, and weather can also impact AIS connectivity, causing a vessel to "go dark." However, intentionally disabling AIS is a common sanctions evasion practice that allows ships carrying illicit cargo to evade detection and obscure their entry into high-risk territory.
- Illicit actors also falsify maritime transaction documents, including bills of lading, invoices, and insurance paperwork, to evade sanctions. Fraudulent documents help obscure the shipment's origin, destination, and nature, as well as the legitimacy of the vessel itself.

OFSI stresses that the use of some of these tactics, such as STS transfers and AIS deactivation does not necessarily mean that a violation of sanctions is occurring. However, certain jurisdictions, such as North Korea, Iran, Libya, and Syria, represent a higher risk of sanctions evasion, and any shipping company whose vessels pass through or near the waters of these jurisdictions should exercise enhanced due diligence and track these red flags.

In its advisory OFSI highlights comprehensive sanctions that have been leveled against these countries and provides background on each, advising that any potential shipping activities near North Korea, Iran, Libya, and Syria should be carefully researched, given the complexities and risks involved.

- Although the International Atomic Energy Agency verified in 2016 that Iran had lived up to its obligations under the Joint Comprehensive Plan of Action (JCPOA), and a number of sanctions, including measures related to banking, shipping, energy, and some nuclear designations, had been lifted as a result, a number of Iranian individuals and entities remain sanctioned by the EU and UN (as well as by the United States after it pulled out of the JCPOA) for proliferation and human rights violations, as well as terrorism concerns. OFSI recommends comprehensive research into relevant prohibitions and warns of Iran's frequent use of shell and front companies to evade sanctions.
- Sanctions against Libya impose restrictive measures (including asset freezes) on individuals and entities designated by the UN Security Council, the Libya Sanctions Committee, or the EU Council in an effort to ensure

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that misappropriated assets embezzled during the regime of Muammar Qadhafi are not used to destabilize Libya. The Libya sanctions regime prohibits financial transactions relating to illicitly exported Libyan petroleum aboard vessels designated by the UN. Illicit actors may use the evasion tactics highlighted by both the United States and the UK to engage in these transactions.
- The EU has also imposed restrictive measures, including asset freezes, against leading businesses and their owners operating in Syria, members of the Assad regime, members of the Syrian armed forces and security and intelligence services, and members of regime-affiliated militias. The restrictions include prohibitions on import and/or export of certain goods from and to Syria, such as jet fuel, luxury goods, key equipment for the oil and gas industry, and telecommunications, all of which can be transported using illicit shipping practices.

In its advisory OFSI provides examples of due diligence pertinent to the entities involved in the maritime industry, such as insurance companies, charterers, unions, petroleum companies, flag registries and other entities. Although illicit activity could occur in multiple sectors, the maritime industry is particularly vulnerable to abuse, owing to the global nature and reach of the sector, especially in the UK, where it facilitates 95 percent of the country's trade. OFSI provides guidance on certain due diligence measures, much like the recent US advisory, but it stresses that the onus is on each organization to assess risks and ensure it does not violate financial sanctions.

- Shipping companies conducting business in or near high-risk jurisdictions should research pertinent restrictions in that area.
- Industry may also want to consider including AIS switch-off clauses in its contracts and contact vessels that have "gone dark" to ensure no illicit shipping practices occur and better understand why AIS has been disconnected.
- Like the recent US advisory, OFSI also recommends that companies check ownership structures, vessel flag information, and foreign port visitation records. It also recommends checking letters of credit, bills of lading, loans and other financial instruments for fraud and reporting suspicious activities.

Compliance with UK sanctions laws is further complicated by Crown Dependencies and British Overseas Territories, whose powers to implement sanctions are provided through local legislation. And because OFSI does not perform the competent authority functions for the Crown Dependencies, it provides a list of helpful links to research financial sanctions in those jurisdictions. OFSI also does not perform competent authority functions for Bermuda and Gibraltar that are not generally covered by Overseas Territories sanctions Orders and recommends contacting individual authorities for sanctions information about specific overseas territories and provides links to facilitate those contacts.

The message for US firms is in line with the guidance US authorities provided in May: entities in the maritime sector must improve their due diligence and compliance programs and check for shipping-specific red flags to avoid violating sanctions. As financial crime and evasion methodologies evolve, the maritime industry must join the fight against illicit financial activity. OFAC's advisory in May signaled an expected shift for the maritime sector to create and maintain ongoing due diligence programs, and OFSI's guidance mirrors these expectations.

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