INTERTANKO

TWENTY 25

Guidance on Russian Sanctions and General Due Diligence

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On 2 September 2022 the Group of Seven (G7) finance ministers released a statement confirming their intention to implement a comprehensive prohibition of services which enable maritime transportation of Russian-origin crude oil and petroleum products globally. The United States of America (US), European Union (EU) and United Kingdom (UK) subsequently introduced various legislation to prohibit the transportation of Russian-origin crude oil and petroleum products, unless the products are purchased at or below certain prices.

The oil price cap (OPC), introduced by the "Price Cap Coalition" (or "G7+ Coalition", comprising the G7, the EU, and Australia) has three main purposes:

- To maintain the supply of Russian oil to world markets;
- To reduce the upward pressure on world oil prices; and
- To reduce Russia's earnings.

Alongside the legislation, the Price Cap Coalition, the US Department of the Treasury's Office of Foreign Assets Controls (OFAC), the EU Commission, and the UK Office of Financial Sanctions Implementation (OFSI) and Departments for Business & Trade (DBT) and Energy Security & Net Zero (DESNZ) have released guidance and FAQs to help interpretation of the legislation.

The US, EU and UK have published guidance on the due diligence that is required from industry participants when providing maritime transport services for Russian-origin crude oil and petroleum products. Following the issuance of the Coalition Statement (**https://tinyurl.com/4pjhrd2b**) on Price Cap Rule Updates on 20 December 2023 by the Price Cap Coalition, new rules took effect on 19 February 2024 under UK and US regulations and for cargo loaded as of 20 February 2024 under EU regulations. Two significant requirements are that attestations are now provided on a per voyage basis, rather than annually, and that itemised price information for ancillary costs is provided upon request.

There are three tiers of 'Actors', which require different degrees of recordkeeping and/or attestation to demonstrate that the crude oil or petroleum products were purchased at or below the OPC:

- Tier 1 – commodities brokers, traders, importers/refiners
  Required to retain and share documents including itemised ancillary cost information that show that seaborne Russian-origin crude oil or petroleum products were purchased at or below the OPC.
- Tier 2 – financial institutions, trade finance, charterer, custom brokers
  Required to request, retain, and share documents including itemised ancillary cost information that show that seaborne Russian-origin crude oil or petroleum products were purchased at or below the OPC.
- Tier 3 – insurers, P&I Clubs, shipowners, flag registries and reinsurers
  Required to obtain and retain attestations prior to each loading and lifting of Russian-origin crude oil or petroleum products from customers in which the customer commits not to purchase seaborne Russian-origin crude oil or petroleum products above the OPC. The UK further divides Tier 3 into Tier 3A consisting of insurers, ship owners and ship management companies, and Tier 3B, consisting of reinsurers and financial institutions. The requirements regarding per-voyage attestations do not apply to Tier 3B providers.

Whilst the regulators have not provided a definitive list of ancillary costs information, the EU has provided guidance that this should include at least those negotiated at the start of the trade transactions, lists costs for CIF and FOB contracts and provides a non-binding model form of itemised cost information.

Tier 3 actors should be mindful of their reporting obligations to P&I Clubs with the provision of attestations within 30 days. Failure to do so may result in cover issues as well as trigger P&I Club reporting obligations to the regulators.

The requirement for due diligence to avoid breach of the sanctions' requirements is inescapable, even if Members actively avoid the transportation of Russian-origin crude oil and petroleum products. Even if a vessel is nowhere near Russia, Owners will need to consider due diligence in relation to their counterparts particularly in ship-to-ship (STS) transfers or loading off a floating storage unit in any region, including what their previous activities have been, where they have loaded oil from or any indications of flag hopping or possible manipulation of AIS data.

The Price Cap Coalition has provided an advisory containing an overview of key OPC evasion methods and recommendations for identifying such methods and mitigating their risks and negative impacts. Evasion methods identified include falsified documentation and attestations, opaque shipping and ancillary costs, third-country supply chain intermediaries and complex and irregular corporate structures, flagging, the "shadow" fleet and voyage irregularities. Recommendations actions include requiring appropriately capitalised P&I insurance, receiving classification from an International Association of Classification Societies member, monitoring high-risk STS and requesting associated shipping and ancillary costs. More recently this advisory has been updated with further recommended actions including ensuring vessels meet international maritime safety and environmental obligations and monitoring tanker sales. The UK has provided an advisory with a checklist of what to look for when assessing the validity of certificates of origin (COO) which may help UK entities protect themselves from the evasion method of falsified COOs.

Even where crude oil and petroleum products are not subject to the OPC but are loaded in Russia, such as Kazakh-origin oil through the CPC pipeline, Owners will need to consider due diligence with their counterparties.

When it comes to the sale of tankers to third countries, the EU now has a notification obligation for the sale of tankers to any third country and a derogation from the prohibition on the sale of tankers to Russian persons and entities, or for use in Russia. This obligation applies to the owner of a tanker who is a national of a Member State, to a natural person residing in a Member State, and to a legal person, entity or body which is established in the Union. The notification to the competent authority shall contain at least the following information: the full identities of the owner, the seller (if different from the owner) and the purchaser. It should also include, where applicable, the incorporation documents of the seller and the purchaser including information details on the shareholding and management, the identification documents of the vessel including the IMO ship identification number of the tanker and the Call Sign of the tanker. It is also recommended to include other relevant documents, such as the sale and purchase agreement or information regarding or produced by the ship broker and escrow agent.

Stakeholders such as financial institutions may have their own requirements, so when it comes to refinancing ships or ship sale and purchase, Members will need to be aware of requirements from banks that go beyond what is required by sanctions regulations, such as covenants in loan agreements, which require certain levels of insurance cover. In addition, due diligence checks will also have to be performed on potential buyers and sellers of vessels. Insurers (P&I and H&M) also have to do their own sanctions vetting and may reach a different conclusion from Owners in relation to the sanction risk on the insurers. It is therefore important to engage with them as soon as possible if there is any sanctions risk in relation to the trade or transaction. It should be borne in mind that flag States and oil majors may also have sanctions requirements that will have to be taken into account.

As Ukrainian and Russian waters in the Black Sea and the Sea of Asov are now listed as a JWC Hull War, Piracy, Terrorism and Related Perils Listed Area, Owners will need to consider what cover they have under their insurance policies and whether this meets any obligations under any covenants with their financial institutions. Again, it is important to engage with insurers to check whether cover will remain in place after paying additional premium and declaring the voyage to the underwriters and what other sanctions requirements they may have.

The concerns of breaching sanctions are a constant but the actual repercussions are also an unknown. Although OFAC has a history with sanctions and enforcement, the UK and the EU, which is leaving enforcement down to its Members States, do not and so this is untested.

The situation is ever evolving, and these are just a few of the many issues that Owners currently have to consider. INTERTANKO continues to closely monitor these developments and is acting on several levels to protect Members' interests, endeavouring to ensure that they do not inadvertently place themselves in breach of the sanctions' requirements.

This has brought about the requirement for basic best practice due diligence processes, sanctions model charterparty clauses, and standardised sanctions questionnaires, which we have duly delivered. These documents and best practices have been developed with a view to establishing basic norms for the quality tanker fleet.

- Two model sanctions charterparty clauses (time and voyage charter) tailored for the tanker sector
- Standardised due diligence questionnaires for use by Owners during cargo loading and STS operations were also circulated in January to assist Members in gathering all the necessary information from third parties during STS and cargo loading. It is anticipated that issuing and using a standard form, that becomes widely recognisable by all actors in the supply chain, will help Members to secure all relevant information from the likes of charterers and sub-charterers.
- A template due diligence procedure has also been circulated to Members providing recommendations for information and documents required for loading from a terminal and for loading via STS. INTERTANKO's Model Sanctions Clauses for Time and Voyage Charters have been provided to protect Members' interests in light of the increasing stringency and scope of sanctions and their application to energy cargoes.
- Although not a sanctions clause, the INTERTANKO STS/Lighterage Operations clause has been updated. It continues to address the original concerns over safety & suitability of both STS vessels, but now recognises the potential sanctions issue surrounding STS. Charterers now have to provide Owners with the IMO number & completed Q88 for each proposed STS vessel and any further info Owners may reasonably require, including matters referred to in the INTERTANKO Standard Sanctions Questionnaire for STS/Lighterage. Owners have the right to reject any STS which in their reasonable judgment may be subject to sanctions, where the proposed STS vessels have failed to transmit their AIS for any unexplained reason, where Owners have concerns relating to the accuracy of the declared cargo origin or destination or where due diligence info has not been provided.

The initial starting point for the two model sanctions clauses was Vitol's time charter clause which is considered acceptable to both Owners and Charterers and therefore a balanced basis for the INTERTANKO clause. First published in January 2023, the clauses have been drafted based on Members' experiences and to meet Members' needs in the current environment. This includes a paragraph on the Owner's right to refuse the charter or orders thereunder due to the sanctions risks if the Charterer fails to provide such information as may be reasonably required by Owners or their financiers, insurers or reinsurers to assess the sanctions risk. The provision is mutual. Updated in January 2024 in response to the rapidly changing sanctions landscape

including the new guidance from the US, EU and UK on pre-voyage attestations and ancillary costs, Owners or their financiers, insurers or reinsurers have all the required documents before the cargo is loaded on board the vessel.

INTERTANKO's Model Due Diligence Process, together with the questionnaires, facilitates a standard approach to the price cap due diligence process across the industry. These documents were updated in November 2024 and may also be used as a basis for explaining to regulatory authorities what qualifies as 'due diligence', especially in the absence of any clarification from the regulators on this definition or clear guidance on what this entails.

The Model Clauses and Due Diligence Tools mentioned in this document are also available on the INTERTANKO website: **https://rb.gy/50b1dw**

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