

## OFAC's New Sanctions Advisory Targets Maritime Industry



MAY 18, 2020

On May 14, 2020, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), together with the Department of State and the United States Coast Guard, published the long-awaited [Sanctions Advisory](#) regarding the maritime industry, energy and metals sectors, and related communities that was originally due in early April. The Advisory reflects the U.S. government's ongoing commitment to prevent sanctions evasion, smuggling, criminal activity, facilitation of terrorist activity, and proliferation of weapons of mass destruction (WMD) particularly related to Iran, North Korea, and Syria. It further expands on multiple previous shipping advisories issued in 2018 and 2019. The Advisory reflects OFAC's May 2, 2019 Framework for Compliance and calls for all parties addressed to develop risk-based compliance to engage in information sharing, to the extent permissible under local law. This risk-based approach is welcome news as [DAS Peyman's interview](#) indicated the Advisory could have been more prescriptive. The particular audience includes insurers; ship owners; charter parties; flag registry managers; port state control authorities; shipping industry associations; regional and global commodity trading, supplier, and brokering companies; financial institutions; classification societies; vessel captains; and crewing companies.

### KEY ASPECTS

- **Deceptive Practices:** The Advisory warns entities in the maritime industry to be vigilant of common deceptive practices and tactics used to facilitate sanctionable trade, including: (1) disabling or manipulating the Automatic Identification System (AIS) on vessels; (2) physically altering vessel identification; (3) falsifying cargo and vessel documents; (4) using ship-to-ship (STS) transfers to conceal origin or destination of certain cargo; (5) disguising the ultimate destination or origin of cargo or recipients by using indirect routing, unscheduled detours, or transit or transshipment of cargo through third countries, resulting in voyage irregularities; (6) falsifying the flag of vessels or registering with new flag states (flag hopping) to mask illicit trade; and (7) taking advantage of the complex global shipping structure by using shell companies or multiple levels of ownership and management to disguise beneficial ownership and cargo information.
- **General Practices for Identification of Sanctions Evasion:** The Advisory further recommends that private sector entities in the maritime industry implement due diligence and compliance programs based on internal risk assessments to curb such illicit behavior. These recommendations include best practices that can be adopted industry-wide: (1) implementing sanctions compliance and due diligence programs, and providing training and

resources to personnel in order to best execute those programs; (2) researching a ship's history to identify previous AIS manipulation and monitoring AIS manipulation and disablement when cargo is in transit; (3) continuously monitoring vessels throughout the entire transaction lifecycle; (4) conducting risk-based due diligence as appropriate which might include maintaining the names, passport ID numbers, address(es), phone number(s), email address(es), and copies of photo identification of each customer's beneficial owner(s), i.e., Know Your Customer (KYC) due diligence; (5) conducting appropriate supply chain due diligence; (6) incorporating these best practices in contracts related to commercial trade, financial, and other business relationships in the maritime industry; and (7) providing relevant information and sharing it broadly with partners, other members, and colleagues. The Advisory acknowledges that information sharing may require redactions of identifying information and must incorporate local law requirements.

- **Guidance Specific to Role in the Maritime Industry:** In Annex A to the Advisory, OFAC further recommends that both persons subject to U.S. jurisdiction and foreign persons employ a risk-based approach to sanctions compliance taking into account the five key factors that make an effective program as outlined in the Framework for OFAC Compliance Commitments, (1) management commitment; (2) risk assessment; (3) internal controls; (4) testing and auditing; and (5) training. Importantly, OFAC provides specific guidance depending on what role the private sector entity plays in the maritime industry, specifically maritime insurance companies; flag registry managers; port state control authorities; shipping industry associations; regional and global commodity trading, supplier, and brokering companies; financial institutions; ship owners, operators, and charterers; classification societies; vessel captains; and crewing companies. Although the guidance is tailored for each entity type, it provides a few common themes:
  - Monitoring AIS information;
  - Conducting KYC due diligence; and
  - Establish contract requirements to ensure compliance.

Importantly, OFAC emphasizes that each organization should independently assess its own risk and adopt the above practices as appropriate, not to be interpreted as strict legal requirements. However, like the OFAC Framework published last year, OFAC will likely view a company's adoption of some or all of these principles as factors to mitigate potential penalties should a violation occur.

- **Updates to Previous North-Korea-, Iran-, and Syria-related Sanctions Advisories:** Finally, in Annex B OFAC updates and combines its previously issued maritime advisories from 2018 and 2019 involving North Korea, Iran, and Syria. The Annex largely provides the same information including a summary of the applicable U.S. and UN (with respect to North Korea) sanctions authorities and prohibitions and common examples of deceptive practices. It does provide recently identified examples of deceptive practices in North Korea from the 2020 UN DPRK Panel of Experts Final Report, including STS transfers from North Korea-flagged vessels to local barges in Chinese territorial sea, acquisition of old vessels to be used to transport coal and other goods, and use of non-ocean-going barges that do not transmit an AIS signal to illicitly transport North Korea origin goods to China.

## CONCLUSION

Although the published guidance is somewhat more focused on providing risk-based approaches to compliance than in original drafts, as noted above, the Advisory still retains some challenges for the private sector. Notably, the Advisory warns the private sector that it is critical to appropriately assess sanctions risk and implement controls to address gaps in compliance programs.

Also of note, the Advisory makes recommendations to State Port Authorities – and appears to take a page out of the anti-money laundering world. In particular, the concepts of information sharing, enhanced due diligence for higher-risk counterparties, collection and verification of beneficial ownership information, and guidance for government entities are consistent with what we have seen under the Bank Secrecy Act and the FATF 40 Recommendations. What also is new is an acknowledgment that local laws may trigger adjustments to prescriptive compliance programs. The call for information sharing among industry groups regarding illicit activity and new tactics to tackle

sanctions evasion, such activity could face the risk of violating data privacy rules and therefore may require redacting some information shared among industry sectors.

Finally, the Advisory does little to address the hassles created by the sanctions designation of vessels. For example, a vessel placed on the SDN list finds itself receiving a virtual commercial “death sentence” as registries, insurers, classification societies, fuel providers, and the myriad other entities required to support a vessel in operation, would refuse to transact from fear of also being designated as SDNs. Such a “death sentence” can result in a number of related and dangerous consequences, particularly environmental if petroleum tankers are refused cover, registration, or certification. Although the Advisory reinforces that private actors in the maritime industry are advised to establish appropriate risk-based procedures and controls to avoid exposure to U.S. or international sanctions, it importantly provides a call for such entities to work collaboratively in creating solutions when faced with similar circumstances in the future.

5 Min Read

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## Author

[Cari Stinebower](#)

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