



# Economic Sanctions - Compliance Guidance

## Introduction

Economic sanctions laws and regulations have become increasingly more complex, numerous and impactful on the shipping industry. Sanctions have also had a major impact not only on shipping operations but also on financial institutions and insurance companies, including P&I clubs. Regulators in the US, as well as those in other key jurisdictions with sanctions programs affecting international maritime commerce and insurance, such as the UK and EU, have increasingly issued new regulations and related guidance directed at maritime trade and insurance. These regulators emphasize the need for the maritime community to assess their sanctions risks and implement compliance controls to address identified gaps in their compliance programs.

This Economic Sanctions - Compliance Guidance document provides general guidance on certain sanctions related resources which can be utilized by the American Club's Membership to foster and encourage general awareness of sanctions-related issues, to better 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, Member Alerts, and other guidance on sanctions related issues. The Membership is encouraged to consult these existing resources, including those referenced below, and to seek legal advice from counsel. Circulars on sanctions issues are regularly issued by the American Club and should be consulted for more recent developments than may be reflected in this general advice. In the event of conflict or ambiguity between this general guidance and a more recent or specific circular, the guidance in the circular controls over the general guidance in this document. In any event, this general guidance and the other guidance disseminated by the American Club do not constitute legal advice and do not take the place of advice from legal professionals licensed in the relevant jurisdiction(s) whose sanctions laws and regulations are at issue, which will always take precedence over this general guidance on issues of legal interpretation and advice.

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. Guidance by the principal sanctions regulators makes clear that each Member has a non-delegable obligation to perform its own sanctions due diligence investigation into every voyage and transaction. However, for questions concerning the implications of sanctions for cover under the American Club's Rules, Members are encouraged to reach out to Shipowners Claims Bureau, Inc., as Managers of the American Club ("the Managers"), to obtain guidance on the availability of cover for particular voyages. Members will be asked to provide evidence of their own sanctions due diligence into the voyage in question when making such coverage inquiries.

When used in conjunction with a Member's internal compliance program and legal counsel, 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.



## 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, or where cover would expose the American Club to the risk of being subject to any sanction or penalty. Consequently, although, in certain cases, economic sanctions may not prohibit a Member from engaging in the activity of transportation in question (for example, if 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) 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). Under the US sanctions program, such blacklisting usually occurs when a non-US person is designated as a "specially designated national" or "SDN" by the Treasury Department in consultation with the Department of State. However, US persons are also subject to enforcement actions for failure to comply with applicable sanctions. In addition, non-US persons are subject to designation/blacklisting and other adverse consequences if they cause a US person to wittingly or unwittingly violate sanctions.

Generally, the sanctions laws of the US, UK, and EU (as well as other jurisdictions), 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 and screen relevant parties against applicable sanctions lists when considering a proposed transaction or voyage to better assess any potential sanctions issues. Members should be aware that the sanctions laws and regulations of various jurisdictions, including the US, UK, and EU, consider an entity to be implicitly sanctioned if it is either owned (or in some cases controlled) to a specified degree by an expressly sanctioned entity or person. It is therefore generally necessary to consider the ownership and beneficial ownership of counterparties to transactions when screening for sanctioned parties.

As discussed in more detail in the American Club's circulars, US regulators have also highlighted several red flags that may indicate attempts to evade sanctions and export controls, and which may indicate heightened sanctions risk posed by a party. These include:

- Manipulation of location or vessel identification data;
- Falsification of cargo and vessel documents;
- Ship-to-ship transfers at night or conducted in high-risk areas;
- Voyage irregularities and use of abnormal shipping routes that appear to be done without a legitimate reason;
- Frequent registration updates (flag hopping); and
- Obscure ownership structures or frequent changes in ownership.

## **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 US, UK, and/or EU sanctions laws or the laws of the state in which they are domiciled, and what these laws prohibit (*e.g.*, embargoed countries, designated persons, prohibited exports or supply, prohibited support). Members should 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 extensive economic sanctions against Iran, Syria, Cuba, Venezuela (to a certain extent), Russia, the Crimea region, and Luhansk and Donetsk Republics 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 associated with Cuba, Iran, Syria, North Korea, and other countries (such as the Russian Federation). Vessels have also been designated by name and IMO number under various sanctions programs.

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

- Afghanistan-Related Sanctions
- Balkans-Related Sanctions
- Belarus Sanctions
- Burma-Related Sanctions
- Central African Republic Sanctions
- Chinese Military Companies Sanctions
- Counter Narcotics Trafficking Sanctions
- Counter Terrorism Sanctions
- Countering America's Adversaries Through Sanctions Act-Related Sanctions
- Cuba Sanctions
- Cyber-Related Sanctions
- Democratic Republic of the Congo-Related Sanctions
- Ethiopia-Related Sanctions
- Foreign Interference in a United States Election Sanctions
- Global Magnitsky Sanctions
- Hong Kong-Related Sanctions
- Hostages and Wrongfully Detained U.S. Nationals 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
- Russia Harmful Foreign Activities Sanctions



Somalia Sanctions  
South Sudan-Related Sanctions  
Sudan and Darfur Sanctions  
Syria Sanctions  
Syria-Related Sanctions  
Transnational Criminal Organizations  
Ukraine-/Russia-Related Sanctions  
Venezuela-Related Sanctions  
West Bank-Related Sanctions  
Yemen-Related 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.

#### **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. 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 as well as the results of its own sanctions due diligence, and seek confirmation, on a case-by-case basis, as to whether coverage is available.

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 in the case of the US sanctions against Iran, US as well as, for example, UK and EU laws could impact the underlying transportation in question, in which case, Members should conduct screening of information under UK and EU as well as US sanctions applicable to them. If neither US, UK, 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, as well as the results of its own sanctions due diligence investigation and seek confirmation, on a case-by-case basis, as to whether coverage is available under US law applicable to the American Club.

If a Member lacks access to the resources permitting enhanced due diligence into the nature of a voyage and the involved parties (including beneficial ownership of parties) for purposes of sanctions screening, it may consider utilizing an outside vendor to assist in this process. As discussed in Circular 27/22, the Managers have a cooperation with International Compliance Services, Inc., which can assist Members with their screening at discounted Member rates: <https://intlcomplianceservices.com/>

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, and its Rules automatically exclude cover for such prohibited trades.

## **V. Consult Legal Counsel**

In concert with an internal sanctions' compliance program, Members are encouraged to consult legal counsel in crafting their compliance program, and 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, UK, and EU or other sanctions, they should contact the American Club's Compliance Department.

## **VI. Contact the American Club's Compliance Department**

After conducting the due diligence screening described in Section IV, the Member should contact the American Club's Compliance Department ([scbcompliance@american-club.com](mailto:scbcompliance@american-club.com)) to address any sanctions related insurance coverage issues or questions.

When making such an inquiry to the Compliance Department, 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.)

A due diligence questionnaire is made available by the American Club for providing key voyage details: [https://www.american-club.com/files/files/Economic\\_Sanctions\\_Due\\_Diligence\\_Questionnaire.pdf](https://www.american-club.com/files/files/Economic_Sanctions_Due_Diligence_Questionnaire.pdf)

The American Club's managers will assess the inquiry and may consult with its sanctions 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 Department'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.

## 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 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.

## VIII. Country-specific links to relevant American Club Circulars

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

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, does not constitute legal advice, and the American Club does not assume responsibility for completeness or accuracy.

## IX. Useful Sanctions Related Web Links

### United States

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

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



OFAC Sanctions List Search:

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

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

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

Overview of US sanctions by program

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

## **United Kingdom**

The Office of Financial Sanctions Implementation (OFSI) of HM Treasury:

<https://www.gov.uk/government/organisations/office-of-financial-sanctions-implementation>

OFSI Consolidated List Search

<https://sanctionssearchapp.ofsi.hmtreasury.gov.uk/>

Guidance on UK Sanctions

<https://www.gov.uk/guidance/uk-sanctions>

## **European Union**

European Union Sanctions (Restrictive Measures):

[https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures\\_en](https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures_en)

EU Sanctions Map – Restrictive Measures Search:

<https://www.sanctionsmap.eu/#/main>

## **International Group**

The International Group's website IGP&I News provides access to various useful links including to the European Union Foreign Affairs Council regulations on US sanctions:

<https://www.igpandi.org/news-and-insights/>





**Disclaimer**

***This brief economic sanctions compliance guidance has been prepared by the Managers of 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.***