



POLICY ALERT /// July 29, 2020

UK Releases Maritime Sanctions Guidance

Summary

On July 27, 2020, the United Kingdom's Office of Financial Sanctions Implementation ("OFSI"), the office in Her Majesty's Treasury responsible for administering UK sanctions, released [Maritime Guidance: Financial sanctions guidance for entities and individuals](#) (the "UK Guidance").¹ The UK Guidance warns those in the maritime sector about sanctions threats they face, identifies examples of illicit activity, and makes recommendations for how companies can limit their sanctions risks.

The threats and concerns raised in the UK Guidance parallel a U.S. advisory issued in May 2020, [Sanctions Advisory for the Maritime Industry, Energy and Metals Sectors, and Related Communities: Guidance to Address Illicit Shipping and Sanctions Evasion Practices](#) (the "U.S. Advisory").² The U.S. Advisory was the subject of a previous K2-FIN Policy Alert "[U.S. Government Issues Significant New Advisory on Maritime Sanctions Risk](#)."³

The issuance of the UK Guidance is an important milestone, as the United Kingdom is the first non-U.S. jurisdiction to provide a comprehensive guidance document on the subject. The UK Guidance, while not as extensive as the U.S. Advisory, highlights the United Kingdom's focus on sanctions implementation in the maritime sector and further signals that the United Kingdom will take a proactive approach towards issuing and implementing sanctions once its exit from the European Union is complete on December 31, 2020.⁴

Key Highlights and Considerations

- **The UK Guidance highlights specific suspicious activity similar to the U.S. Advisory.**⁵ The UK Guidance highlights well-known red flags for potential sanctions evasion activity, including ship-to-ship transfers; Automatic Identification System ("AIS") manipulation; illicit cyber activity; financial system abuse (including the use of front and shell companies); falsifying cargo and vessel documents; and physical concealment of goods.
- **The UK Guidance recommends that companies in the maritime sector adopt risk-based due diligence steps to manage their exposure.** While the UK Guidance does not mandate specific measures, it recommends that companies review their sanctions compliance programs, employ a risk-based approach, and conduct appropriate due diligence to manage sanctions risks.



- **The UK Guidance reinforces existing regulatory expectations for companies subject to UK jurisdiction operating in the maritime sector that they should increase their compliance efforts.** Like the U.S. Advisory, the UK Guidance recommends that a wide range of actors in the shipping and maritime sector bolster their sanctions compliance programs. While the UK Guidance and the U.S. Advisory are generally complementary, firms who are subject to both U.S. and UK sanctions regulations should understand the differences in emphasis between the two.
- **The UK Guidance identifies specific threat actors relevant to UK foreign policy.** OFSI names North Korea, Iran, Libya, and Syria as key jurisdictions for maritime sanctions exposure and warns that companies who are operating in or around these jurisdictions should be aware of all applicable sanctions regulations and how they may impact business operations.

The Components of the UK's Maritime Guidance

Companies should be aware of how sanctions evaders may employ illicit shipping practices identified in the UK Guidance. The UK Guidance identifies a number of emerging threats that are increasingly intersecting with the maritime domain in addition to illicit activities previously raised in the U.S. Advisory. They include:

- *Illicit cyber activities and crypto-assets:* Sanctioned entities, particularly linked to North Korea, have built out their cyber activities to steal financial resources, including both fiat currency and crypto-assets. Both types of assets are an important funding source for maritime sanctions evasion and are subject to freezing and other restrictions under UK regulations;
- *Financial system abuse:* Maritime sanctions evasion is often facilitated through financial transactions undertaken by front and shell companies, making it harder for banks to link the transactions to sanctioned individuals or entities; and
- *False documentation and concealment:* Illicit actors will falsify bills of lading, invoices, and insurance paperwork to obscure important details about vessels, their cargoes, and their destination. Vessel operators will also often conceal illegal cargo among legitimate shipments in an effort to avoid detection during inspections.

Companies operating in the maritime space are encouraged to undertake risk-based due diligence. The UK Guidance is focused on educating firms about how the risk environment around the shipping sector has changed and encourages firms operating in the sector take a number of steps to protect themselves.

- *Understanding risk exposure across the supply chain:* Companies who are conducting business in or around any high-risk jurisdiction should conduct enhanced due diligence on all of their counterparties in the maritime supply chain and also should understand all applicable sanctions obligations. In particular, ship owners, charterers, insurers, flag registries, and port state control authorities should routinely query vessels as to why they



have turned off their AIS systems to ensure such activity arose out of legitimate circumstances (e.g., weather-related interference or avoiding broadcasting in areas of pirate activity). Firms should consider adopting standard contractual language that terminates business relationships if AIS manipulation is suspected.

- *Conducting Know-Your-Customer/Know-Your-Vessel due diligence:* Companies should consult relevant databases to check on vessel owners and ownership structure, flag information, port visits, and other information that may indicate suspicious behavior. Companies that have access to relevant documentation supporting a shipment—letters of credit, bills of lading, cargo manifests, loans, or insurance paperwork—should verify the authenticity of the documents and their details with the issuing institutions.
- *Knowing how and where to report suspicious activity:* Firms should know how to report suspicious maritime activity. Depending on the jurisdiction, such reporting can be either a regulatory requirement or a best practice. For UK entities, this may include OFSI as well as other cabinet departments (Department for Transport and Department for International Trade), as well as European Union or United Nations bodies.

The UK Guidance stresses that its recommendations are not legally binding and it is ultimately incumbent on the firms themselves to develop and implement specific steps commensurate with their risk exposure. The UK Guidance makes clear, however, that firms operating in the maritime sector should be aware of the sanctions risks they face and may face enforcement actions if they fail to comply with UK prohibitions.

Similarities and Differences between the UK Guidance and the U.S. Advisory

The UK Guidance complements the information and recommendations provided in the U.S. Advisory, but also differs in important ways:

- **The UK Guidance and the U.S. Advisory both signal an increased regulatory and enforcement focus on sanctions evasion in the maritime sector.** Companies should carefully consider both of these advisories and expect additional scrutiny in this sector going forward.

The Office of Foreign Assets Control (“OFAC”) at the U.S. Department of the Treasury has raised its compliance expectations for firms operating in the maritime sector. OFSI now encourages companies operating in this sector to augment their capabilities as well. The U.S. and UK advisories together send a strong signal to the industry about how compliance standards in the maritime sector are increasing and that other jurisdictions are expected to undertake similar action.

Companies should also expect that this focus will lead to more designations, including of large operators in the sector, as OFAC did in sanctioning two subsidiaries of COSCO Shipping in September 2019.⁶ They should also recognize that the UK Guidance and the U.S. Advisory will directly inform penalties for sanctions breaches; good faith efforts to follow its guidelines would be considered a mitigating factor for penalizing violations.⁷



- **The UK Guidance is not as prescriptive as the U.S. Advisory but nonetheless provides specific recommendations to companies in the maritime sector.** For example, while the UK Guidance suggests companies should investigate why vessels shut off AIS systems, the U.S. Advisory tells each of the ten specific types of companies and regulatory authorities how they should approach AIS manipulation, reflecting their differentiated roles in the global maritime supply chain. Companies that follow the UK Guidance should be aware that it may not be sufficient to satisfy U.S. authorities given that the U.S. Advisory imposes greater and more specific demands.
- **As the United States and United Kingdom employ sanctions to address distinct foreign policy challenges, companies operating in both jurisdictions should understand how these distinctions translate into differing compliance expectations.** For example, the UK Guidance focuses on sanctions compliance in the Libya context whereas the U.S. Advisory does not, in part because the United Kingdom has historic exposure to maritime issues in the Mediterranean and has different foreign policy interests in that country than the United States. Likewise, the information and recommendations provided in the UK Guidance relating to Iran sanctions are less extensive than in the U.S. Advisory, in part reflecting the significant U.S. focus on Iran as a foreign policy challenge. Understanding which regulatory and enforcement authorities have jurisdiction over firms and activities, and what activities are proscribed, is a critical feature of a robust sanctions compliance program.

Endnotes

¹ HM Treasury, Office of Financial Sanctions Implementation, "Maritime Guidance: Financial sanctions guidance for entities and individuals operating within the maritime shipping sector," (July 27, 2020), available at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903869/OFSI - Maritime guidance July 2020 .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903869/OFSI_-_Maritime_guidance_July_2020_.pdf).

² The U.S. Advisory can be found here: United States Department of State and the Treasury, and the U.S. Coast Guard, "Sanctions Advisory for the Maritime Industry, Energy and Metals Sectors, and Related Communities: Guidance to Address Illicit Shipping and Sanctions Evasion Practices," (May 14, 2020), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/05142020_global_advisory_v1.pdf.

³ K2-FIN, "U.S. Government Issues Significant New Advisory on Maritime Sanctions Risk," K2-Financial Integrity Network, (May 18, 2020), available at [https://www.finintegrity.com/uploads/8/7/8/0/87802750/2020.05.18 - maritime guidance policy alert - final.pdf](https://www.finintegrity.com/uploads/8/7/8/0/87802750/2020.05.18_-_maritime_guidance_policy_alert_-_final.pdf).

⁴ Until the end of the year, the United Kingdom will continue to apply EU restrictive measures, using UK legislation linked to its membership in the European Union. After that date, its powers will be fully autonomous and based entirely on UK law. Earlier this year the United Kingdom introduced a human rights sanctions program based on UK law and made its first independent designations. UK Foreign and Commonwealth Office, "UK global human rights sanctions," (July



6, 2020), available at <https://www.gov.uk/government/collections/uk-global-human-rights-sanctions>.

⁵ The OFSI guidance defines the scope of the guidance as applying to “entities and individuals which operate in, or with, the maritime shipping sector, especially those involved in areas that may be subject to UK financial sanctions restrictions, including the handling of goods.”

⁶ United States Department of State, “The United States Imposes Sanctions on Chinese Companies for Transporting Iranian Oil,” press release, (September 25, 2019), available at <https://translations.state.gov/2019/09/25/the-united-states-imposes-sanctions-on-chinese-companies-for-transporting-iranian-oil/>. The United States subsequently lifted the sanctions in January 2020.

⁷ For an example of an enforcement action in the maritime sector see, inter alia, United States Department of the Treasury, “Eagle Shipping International (USA) LLC Settles Potential Civil Liability for Apparent Violations of the Burmese Sanctions Regulations,” (January 27, 2020), available at https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20200127_eagle.pdf.