

Treasury
Customs and Excise Division

Sanctions Notice 54

Maritime Guidance

Financial Sanctions Guidance for
entities and individuals operating
within the maritime shipping sector



July 2020



Isle of Man
Government

Reil'tys Ellan Vannin

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About this Notice

This guidance is produced by the Customs & Excise Division of the Treasury, the authority for the implementation of financial sanctions in the Isle of Man.

It provides financial sanctions guidance for entities and individuals which operate in, or with, the maritime shipping sector, especially those involved in areas that may be subject to financial sanctions restrictions, including the handling of goods.

This should be considered supplementary to, and not a replacement for, the [Financial Sanctions Guidance](#).

Enquiries concerning this Notice should be addressed to the address given below and marked for the attention of the Sanctions Officer.

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This guidance does not represent legal advice. If you are unsure about your obligations in a given case, you should consider seeking independent legal advice.

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1. Illicit and suspicious shipping practices

According to [reports](#) from the International Maritime Organisation, and the UN Panel of Experts (UN POE) of the UN Security Council Sanctions Committee on North Korea published in 2019¹, a variety of tactics are deployed to confuse or conceal the identities of vessels, cargo, routes and ports. While the practices detailed in these reports relate to Democratic People's Republic of Korea (DPRK), they are indicative of approaches that could be used by anyone seeking to breach sanctions.

Individuals and entities with exposure to the maritime shipping sector should be aware of the non-exhaustive list of illicit practices below and ensure compliance and due diligence procedures take account of them.

Ship-to-ship transfers

A ship-to-ship (STS) transfer is the transfer of cargo between vessels positioned alongside each other at sea, either in anchor or underway. There are some legitimate uses for STS transfers as they provide flexibility for cargo owners and the method is becoming increasingly popular. However, the very nature of STS transfers means the origin and nature of cargo can be concealed. STS is used to facilitate the illicit transfer of coal, crude oil and petroleum products to evade sanctions.

Automatic Identification System (AIS)

AIS is a tracking system installed on vessels which broadcasts its location and details. It also displays the location and details of nearby vessels. AIS is used by maritime authorities across the globe to track and monitor vessel movement, supplementing radar, and is a primary method of collision avoidance for vessels.

There are legitimate reasons for AIS to be turned off or go dark. This could include (but is not limited to) passage through waters at high risk of piracy, or when weather interferes with satellite connectivity. However, AIS is often intentionally disabled by vessels that seek to obfuscate their whereabouts, and is often practised by vessels seeking to conduct illicit trade.

Vessels conducting ship-to-ship transfers will also typically switch off their AIS to evade detection if they are conducting illicit trade, and there have also been recorded attempts to manipulate the data transmitted via AIS.

Cyber activity

Cyberattacks have been used to illegally force the transfer of funds from financial institutions and cryptocurrency exchanges to circumvent financial sanctions and have also included attacks from cyber focussed military units tasked with generating income for the regime it reports to. Reports of these activities is discussed in the UN POE report 171 from 2019 and specifically explores the connection between cybercrime and maritime through cases such as "Marine Chain". Further information can be found in paragraphs 28-30 and 109-115 of the UN POE report.

1 UN Security Council, S/2019/171 <https://www.undocs.org/S/2019/171>, 5 March 2019 and UN Security Council, S/2019/691 <https://www.undocs.org/S/2019/691>, 30 August 2019.

Cryptoassets

Statutory definitions of “funds” and “economic resources” are wide and are explained in Annex I of this document. It should be noted that cryptoassets are covered by these definitions and are therefore caught by UK financial sanctions restrictions. As with cyberactivity above, any transaction undertaken in the maritime sphere with a UK nexus where “funds” or “economic resources” are exchanged, including exchanges using cryptoassets in full or in part, appropriate due diligence should be undertaken.

Financial system abuse

Bank accounts are often established with the primary purpose of engaging in and concealing illicit activities. These can be used as fronts to conduct transactions in violation of sanctions and facilitating illicit shipping practices.

False documentation

A commonly used approach to sanctions circumvention is the falsifying of documentation which should accompany maritime transactions. These include bills of lading, invoices and insurance paperwork, to name a few. By providing falsified documentation, the aim is to seek to obscure the origin of a vessel, its goods, its destination and even the legitimacy of the vessel itself.

Concealment

Those seeking to evade sanctions will often employ tactics that physically conceal illicit cargo onboard a vessel. This is done both during active inspection and as a precautionary measure if unscheduled inspections are carried out by relevant port or maritime authorities.

How does this breach financial sanctions?

The practices described above are not necessarily in themselves breaches of financial sanctions regulations in all cases. However, it is likely that transactions relating to or behaviours underpinning these practices, are.

For example, turning off AIS or carrying out ship-to-ship transfers does not mean that in every instance a breach of financial sanctions has occurred. It does, however, raise suspicion that the ship(s) might be carrying out illicit activity and breaching sanctions regulations - particularly where this includes use of a designated port.

Specific regions may present a high risk with respect to financial sanctions compliance. Due diligence should be carried out as part of a risk-based approach. When dealing with such regions, or when passing through or near waters where non-compliant actors are known to operate, enhanced due diligence should be considered. In addition, under the UN ISIL (Da'esh) and Al-Qaida regime and other thematic regimes that are not country specific, individuals and groups across the world are designated.

High-profile sanctions regimes include those in place for the DPRK, Iran, Libya and Syria which are described below. Please refer to the Customs and Excise [website](#) for

a list of all current sanctions regimes.

You should refer to the relevant sanctions regulations in order to determine what restrictions apply in relation to any given regime. Most financial sanctions regulations include an obligation that funds and economic resources which are owned, held or controlled by designated entities or individuals must be frozen. Additionally, most financial sanctions regulations state that making funds and economic resources available to, or for the benefit of, these entities or individuals, directly or indirectly, is prohibited in the absence of a licence. If you are looking to deal with an entity or individual designated under financial sanctions, you will need to approach the Treasury with information about your proposed dealings and the relevant grounds for licensing. The Treasury will then consider whether a licence can be issued.

2. Democratic People's Republic of Korea (DPRK)

DPRK is subject to significant sanctions measures imposed by the UN and EU. They are aimed at countering the proliferation of weapons of mass destruction (WMD) and ballistic missiles. These are imposed to prevent persons² from obtaining goods, funds and services which could contribute to DPRK's nuclear, other WMD related and ballistic missile programmes. It aims to restrict the ability of DPRK to continue prohibited programmes, promoting the abandonment by DPRK of banned programmes and the decommissioning of DPRK's prohibited weapons. It also aims to promote peace, security and stability on the Korean peninsula.

Some persons under the DPRK sanctions regime are known to use 'shell' or 'front' companies to disguise the ultimate destination of goods, funds and/or services. You need to ensure you are not engaging in prohibited activity with those who are subject to sanctions, including through these company structures. For further information on ownership and control please refer to Chapter 6 of the [Financial Sanctions Guidance](#).

This sanctions regime is wide ranging and includes sectoral financial sanctions, as well as targeted asset freezes and travel bans, and restrictive measures relating to trade and transport. You must not make funds or economic resources directly or indirectly available to, or for the benefit of, a designated person and you must freeze any funds or economic resources owned, held or controlled by a designated person, whether directly or indirectly.

There are also a number of other restrictions, including restrictions on:

- taking an ownership interest in activities or assets in DPRK or in persons incorporated in DPRK (among others);
- establishing new joint ventures;
- the sale or purchase of bonds;
- DPRK credit and financial institutions (branches, subsidiaries and representative offices);

² In this guidance, the term person includes (in addition to an individual and a body of persons corporate or unincorporated) any organisation and any association or combination of persons.

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- financial relationships;
 - transfers of funds to/from DPRK;
 - financial support for trade;
 - investment and commercial activities;
 - bank accounts for DPRK diplomats and diplomatic missions;
 - leasing or, otherwise making available, real property;
 - vessels (including, among others, insuring or chartering a DPRK flagged vessel, and facilitating or engaging in certain ship-to-ship transfers to or from any DPRK flagged vessel).

The above list is not exhaustive and does not give full details of what the restrictions are in each case. The applicable sanctions regulations for the DPRK should be consulted for a complete picture of the relevant restrictions.

Given the complexities and risks involved in DPRK-related activity, the Treasury recommends you discuss any proposed activities in DPRK with relevant financial and other institution(s) beforehand. Where you are unsure of your obligations, the Treasury recommends that you seek independent legal advice.

The 2020 report to the Security Council by the UN POE on DPRK can be found here: <https://undocs.org/en/S/2020/151>

3. Iran

On 16 January 2016 the International Atomic Energy Agency (IAEA) verified that Iran had implemented the nuclear-related measures under the Joint Comprehensive Plan of Action (JCPoA) and as a result, received extensive sanctions relief. This included the lifting of measures relating to banking, shipping, energy, and some nuclear related designations. In particular, the relief included the removal of blanket prohibitions upon financial transfers to, and from, Iran (including the requirements for prior notification and authorisation). Consequently, the requirement to seek prior authorisation for, or notify the Treasury of, transfers of funds sent to or received from Iran, is therefore no longer applicable. Payments to a designated person remain unlawful in the absence of a licence from the Treasury.

However, while the JCPoA led to the EU lifting the majority of sanctions in relation to Iran, several Iranian individuals and entities remain designated by the EU and UN, for example for proliferation, human rights and terrorism concerns. In addition to freezing assets of these individuals, there remain in place EU and UN restrictions on trade in several goods, including arms, as well as associated services. Please ensure that you have reviewed the relevant prohibitions still in place on Iran.

There have been persons subject to counter-proliferation measures who have used 'shell' or 'front' companies to disguise the ultimate destination of goods, funds and

services. For further information on ownership and control please refer to Chapter 6 of the [Financial Sanctions Guidance](#).

4. Libya

Libya is currently subject to sanctions put in place by the UN and the EU, originating in UN Resolution 1970 (2011) and as subsequently amended.

The Libya sanctions regime imposes restrictive measures (including asset freezes) on individuals and entities who have been designated by the UN Security Council, the Libya Sanctions Committee or the EU Council. The current criteria for UN designations include that a person engages in or provides support for acts that threaten the peace, stability or security of Libya, or obstruct or undermine the successful completion of its political transition. Persons may also be designated for violating the provisions of resolution 1970 (2011) and its subsequent amendments, including the arms embargo, or assisting others in doing so.

Asset freezing activity also helps prevent Libyan state funds which are suspected to have been misappropriated during the former regime of Muammar Qadhafi from being used to further threaten the peace, stability or political transition of Libya.

All designated individuals and entities listed in the EU Regulation are subject to a full asset freeze, except for two entities listed in Annex VI - the Libyan Investment Authority (LIA) and the Libyan African Investment Portfolio (LAIP). All funds and economic resources belonging to - or owned, held or controlled by - these entities, and located outside Libya on 16 September 2011, are subject to an asset freeze. However, under the terms of the EU Regulation, there is no prohibition on making new funds or economic resources available to these entities.

Under specific grounds set out in the relevant regulations for this regime, the Treasury can authorise some transactions in certain circumstances.

These include, in relation to transactions with the LIA and the LAIP, licensing grounds relating to:

- humanitarian assistance activities;
- provision of fuel etc for civil uses;
- hydrocarbons;
- civilian government and public infrastructure;
- banking sector operations etc.

There are several other derogations which may be relevant to your business. Please review the latest legislation before contacting the Treasury.

The Libya sanctions regime prohibits financial transactions relating to illicitly exported Libyan petroleum aboard vessels designated by the UN. Petroleum includes crude oil and refined petroleum products in this context. The prohibition of financial

transactions in this context includes the prohibition of the purchasing or the sale of the petroleum, its use as credit or taking out transport insurance in respect of it.

However, this does not include the acceptance of any port fees for the entry into port of a designated vessel (where the entry to the port is exceptionally permitted because it is necessary for an inspection, in the case of an emergency or where the vessel is returning to Libya).

5. Syria

The EU's Syria sanctions regime provides for restrictive measures (including asset freezes) to be imposed on those identified as:

- leading businesspeople operating in Syria;
- members of Assad or Makhoul families;
- Syria Government ministers after May 2011;
- members of Syria armed forces of the rank of colonel or higher after May 2011;
- members of Syria security and intelligence services in post after May 2011;
- members of regime-affiliated militias; and
- persons operating in the chemical weapon proliferation sector.

There are several financial restrictions including in relation to:

- making funds or economic resources directly or indirectly available to designated persons;
- sale or purchase of certain Syrian public or guaranteed bonds;
- establishment of new banking relationships;
- provision of certain insurance and re-insurance products;
- engagement or investment in the Syrian oil industry sectors of exploration, production or refining; and construction of new power plants for the production of electricity in Syria.

There are further restrictions, including on:

- the import and/or export of certain goods from/to Syria (those which might be used for internal repression, jet fuel, luxury goods, key equipment for the oil and gas industry, and telecommunications monitoring and interception equipment);
- the import, export, or transfer of certain cultural property and precious metals;

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- the import of arms, and crude oil and petroleum products;
 - the delivery of Syrian denominated banknotes and coinage to the Central Bank of Syria;

The above lists are not exhaustive and do not give full details of what the restrictions are in each case. The relevant regulations should be consulted for a complete picture of the relevant restrictions.

There are specific exemptions which apply to certain activities, which are set out in the relevant regulations. For example, organisations providing humanitarian assistance to the civilian population in Syria are exempt from the prohibitions relating to purchase and transfer of petroleum products (where these are purchased or transported for the sole purposes of providing humanitarian relief in Syria or assistance to the civilian population) if they have received funds from the UK Government, EU Commission or EU Member States. Those who don't receive such public funds will need to apply for a licence.

6. Ownership and control

If a person or entity is designated, their name will be recorded on the UK's consolidated list of Financial Sanctions Targets. An asset freeze and/or some financial services restrictions will apply to entities³ or individuals which are owned, held or controlled, directly or indirectly, by a designated person. Those entities or individuals may not be designated in their own right, so their names may not appear on the consolidated list. However, those entities and individuals are similarly subject to financial sanctions.

An entity is owned or controlled directly or indirectly by another person in any of the following circumstances:

- The person holds (directly or indirectly) more than 50% of the shares or voting rights in an entity;
- The person has the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity;
- It is reasonable to expect that the person would be able, in most cases or in significant respects, to ensure the affairs of the entity are conducted in accordance with the person's wishes. This could, for example, include appointing, solely by exercising one's voting rights, a majority of the members of the administrative, management or supervisory bodies of an entity, who have held office during the present and previous financial year;
- Controlling alone, pursuant to an agreement with other shareholders in or members of an entity, a majority of shareholders' or members' voting rights in that entity;

3 Meaning of a body of persons corporate or unincorporated, or any organisation or association or combination of persons.

- Having the right to exercise a dominant influence over an entity, pursuant to an agreement entered into with that entity, or to a provision in its Memorandum or Articles of Association, where the law governing that entity permits it being subject to such agreement or provision;
- Having the right to exercise a dominant influence referred to in the point above, without being the holder of that right (including by means of a front company);
- The person having the ability to direct another entity or individual in accordance with the person's wishes. This can be through any means, directly or indirectly. For example, it is possible that a designated person may have control or use of another person's bank accounts or economic resources and may be using them to circumvent financial sanctions.

If any of the above criteria are met, and the person who owns or controls the entity is also a designated person, then financial sanctions will also apply to that entity in its entirety (meaning these assets should also be frozen). The prohibitions on making funds or economic resources available directly or indirectly to a designated person, also prohibit making them available to an entity who is owned or controlled, directly or indirectly, by the designated person.

7. What does due diligence look like?

Illicit activity could occur across multiple sectors involved in the maritime industry. Maritime insurance companies, charterers, unions, classification societies, petroleum companies and refineries, customs and port state controls, flag registries, and shipping industry associations are all exposed to financial sanctions risk.

The risk is not only confined to these industries, as owing to the nature of the sector and its global reach, operators in this area need to take a risk-based approach as to whether they decide to conduct business.

Each organisation should assess its own risks and put due diligence measures in place to manage these risks. The Treasury does not mandate specific measures to be taken. The Treasury can provide guidance as to what measures may be helpful (set out below), but the onus is on the organisation to ensure that it has put in place sufficient measures to ensure it does not breach financial sanctions. The following is general guidance regarding due diligence measures which organisations operating in the maritime sector may wish to consider.

First, companies conducting activity in, or around high-risk jurisdictions should seek to have a robust understanding of the sanctions regulations in place, including the relevant obligations. Companies should always seek independent legal advice where necessary and operate a risk-based approach conducting enhanced due diligence to understand: the full range of activity, the persons involved in supply chains, etc.

Industry may wish to consider any benefits in AIS screening and the inclusion of 'AIS switch off' clauses in contracts. As already mentioned, while AIS switch off does not necessarily confirm illicit shipping practices, it may be one of several indicators for consideration. Due diligence could be enhanced for example, through contacting

vessels that have 'gone dark' by switching off their AIS. This is to better understand the cause of disconnection, noting such instances, and reviewing for trends. This could be considered by ship owners, charterers, insurers, flag registries and port state control entities.

Companies may have access to subscription-based resources which allow for checks on ownership structures, vessel flag information, details of home ports and recently visited ports. However, this information is also readily available online and can be accessed freely, which helps companies with limited resources to carry out a variety of checks to provide initial indicators of behaviour. Companies could look to also carry out checks with Companies House as part of their due diligence processes.

Suspected fraudulent letters of credit, bills of lading, loans and other types of financial instruments should always be checked with the relevant institution for validity. Clauses within the letters of credit, loans or other types of financial instruments should also be assessed prior to agreement, as should the validity of insurance documents, bills of lading and cargo lists.

Any person which deals with funds or economic resources owned, held or controlled by a designated person or those operating on a DP's behalf should immediately freeze the assets or funds and alert the FIU. Any person which engages in prohibited activity in relation to transport or trade restrictions should immediately contact the FIU.

Ship captains should also be reminded to:

- report any potentially suspicious behaviour to <https://mc.nato.int/nsc/operations/merchant-shipping-reporting/incident-reporting-form>, which may result in NATO interdiction. This is mandatory in certain areas.
- use IMO GISIS to find basic vessel data should they have any concerns.

For the EU, consideration should be given to information sharing initiatives such as the [Maritime CISE](#) and [Maritime Surveillance Network](#) (part of the wider [EU Maritime Security Strategy](#)). EU and non-EU members must also ensure that they are up to date with the relevant UN Security Council's Panel of Experts POE's reporting requirements.

8. Enforcement action and penalties

Any person carrying out, or partaking in, business involving maritime shipping, should be aware of the risks posed and the consequences for failure to ensure compliance.

The Treasury is responsible for monitoring compliance with financial sanctions applicable in the Isle of Man and for investigating suspected breaches of the regulations. Breaches of financial sanctions are considered a serious criminal offence and are punishable by up to 7 years in prison on information or up to 6 months for a summary conviction.

Financial sanctions are part of a wider sanctions framework targeting malign activity. As such, the Treasury works with other parts of government, supervisory bodies and

regulators to consider all reported non-compliance, and shares relevant information accordingly in line with the relevant sanctions and data protection legislation.

Treasury's approach to compliance and enforcement is detailed in Chapter 12 of its [Financial Sanctions Guidance](#).

9. UK consolidated list

The UK's [consolidated list](#) includes all designated persons subject to financial sanctions under EU and UK legislation (including designations originally made at UN level).

Amendments to this Notice

1. This Notice was first published on 30 July 2020

Further information

Amendments to these sanctions will be advised by means of news releases which will be published on the official Isle of Man Government website at <https://www.gov.im/>

The Isle of Man Customs and Excise website will contain details of all current sanctions, news releases, Sanctions Notices and links to relevant websites and lists at <https://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/sanctions-and-export-control/>

New or amended versions of this Notice will be provided on that website.

Privacy Notice

The Treasury collects information about you in order to administer taxation and carry out other functions for which it is responsible (e.g. National Insurance, customs and excise duties, property rates, social security benefits, state pensions and legal aid etc.), and for the detection and prevention of crime.

Whilst that information will primarily be provided by you, where the law allows we may also get information about you from other organisations, or give information about you to them. This may be to check the accuracy of the information provided, prevent or detect crime or protect public funds in other ways. These organisations may include other government departments, the police and other agencies.

To find out more about how we collect and use personal information, contact any of our offices or visit our website at:

<https://www.gov.im/about-the-government/departments/the-treasury/privacy-notice/>

Annex I

Funds generally means financial assets and benefits of every kind, including but not limited to:

- cash, cheques, claims on money, drafts, money orders and other payment instruments;
- deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- interest, dividends or other income on or value accruing from or generated by assets;
- credit, right of set-off, guarantees, performance bonds or other financial commitments;
- letters of credit, bills of lading, bills of sale;
- documents showing evidence of an interest in funds or financial resources;
- any other instrument of export financing.

Economic resources generally mean assets of every kind - tangible or intangible, movable or immovable - which are not funds but may be used to obtain funds, goods or services. This includes but is not limited to:

- precious metals or stones;
- antiques;
- vehicles;
- property.

Dealing with **funds** generally means moving, transferring, altering, using, accessing, or otherwise dealing with them in any way which would result in any change to their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

Dealing with **economic resources** generally means using the economic resources to obtain funds, goods, or services in any way, including, but not limited to, by selling, hiring or mortgaging them. The everyday use by a designated person of their own economic resources for personal consumption is not prohibited.

If **funds** or **economic resources** are made available (directly or indirectly) to or for the benefit of a designated person and they obtain, or can obtain, a 'significant financial benefit', or for use in exchange for funds, goods or services, this may constitute a criminal offence.

In this case, 'financial benefit' includes the discharge, in whole or in part, of a financial obligation for which the designated person is wholly or partly responsible.

Goods generally means items, materials and equipment.