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Circular From NORTH

Date: 29 June 2018

Sanctions: Importance of Due Diligence

It is a Member's responsibility to carry out sufficient due diligence checks to minimise the risks of an inadvertent sanctions violation. Members should be aware of the different sanctions programs which may apply, and also that other parties (including insurers) may fall within the jurisdiction of additional sanctions programs.

As is often the case in sanctions matters, it can be helpful to break an analysis into two parts. Firstly, there should be an investigation into the activity being contemplated which, for our Members will often be the cargo to be carried, and secondly an evaluation of the parties involved in the transaction.

The onus is on every company and individual to know the law and to conduct due diligence by checking the available information to ensure that the cargo being carried and the individuals/companies being traded with are not sanctioned, that the transaction is not otherwise prohibited, and that it would not constitute sanctionable activity.

It is very difficult to say the extent of due diligence that is required, not least because it would depend upon the specific sanctions program with which the party is seeking to comply.

In terms of the steps required to establish whether a party is on a sanctions list, there is an expectation from the US authorities that the OFAC lists will be searched as a minimum, although that will not always be sufficient. The EU and OFAC lists can be searched using the links on our sanctions regimes page.

One of the biggest challenges in any sanctions check is to decide what steps, if any, should be taken to ensure that a company is not owned or controlled by a designated person and thus deemed to be sanctioned themselves, even when they do not appear expressly on the lists. There is no easy answer to this but it is suggested that a risk based approach may be appropriate. Sanctions compliance policies can also be used to record such items as the steps that will be taken to ensure that sanctions are complied with, how compliance is monitored, who has responsibility for ensuring sanctions compliance, the training to be provided to employees, and the different levels of due diligence to be completed in different situations.

Additional due diligence on prospective partners can include conducting corporate searches, appointing external lawyers to assist and obtaining reports from risk management providers. It is also possible to purchase software to check the sanctions status of individuals and companies and to monitor any changes. Members should also be aware that it is not only partners who may be subject to sanctions. Other parties with which the ship or shipowner may interact with during the voyage - such as port agents, charterers, bunker suppliers and port authorities - could also be sanctioned.

For more information, including a list of current sanctions regimes by country, visit our Insights area here.

Source of Information: North of England P&I Club