



MARCH 14, 2024

CIRCULAR NO. 09/24

TO MEMBERS OF THE ASSOCIATION

Dear Member:

OBLIGATIONS OF FOREIGN-BASED PERSONS TO COMPLY WITH US SANCTIONS AND EXPORT CONTROL LAWS

On March 6, 2024, the US Department of Commerce, Department of the Treasury and Department of Justice issued a Tri-Seal Compliance Note (the “Compliance Note”) highlighting the need for foreign-based (non-US) persons to abide by the US sanctions and export control laws. Members are encouraged to review the Compliance Note, which is available at the following link:

<https://ofac.treasury.gov/media/932746/download?inline>

APPLICABILITY OF US SANCTIONS AND EXPORT CONTROL LAW TO FOREIGN PERSONS

US Sanctions Laws

The Compliance Note underlines that non-US persons are subject to prohibitions set out by OFAC, including the prohibitions against causing or conspiring to cause US persons to violate US sanctions wittingly or unwittingly, or engaging in conduct that evades US sanctions. In the recent past, OFAC has sanctioned foreign persons who have caused or conspired to cause US persons to violate sanctions. Such violative behavior includes cases where a non-US person:

- obscures or omits reference to the involvement of a sanctioned party or jurisdiction in a financial transaction involving a US person;
- misleads a US person into exporting goods ultimately destined for a sanctioned jurisdiction; and
- routes a prohibited transaction through the US or US financial system.

Export controls

The Compliance Note also emphasizes that the US export controls apply not only to direct exports from the US but extend to items subject to the US Export Administration Regulations (EAR) anywhere in the world, as “the law follows the goods.”

Specifically, apart from the initial export, the US export controls cover:

- **reexports** (from one foreign country to another) and **in-country** transfers (transfer within a foreign country), of items subject to the EAR.

- Goods that incorporate a certain minimum percentage of controlled US content (*de minimis* thresholds); and
- **Exports from abroad**, reexports, and in-country transfers of certain foreign-made items products produced using US software, technology, or production equipment (known as the foreign direct product rule).

Natural and legal persons involved in the shipment of items subject to the EAR, cannot bypass the export controls and the respective requirements, by shipping, for example, items through a third country or by changing the end use and/or the end user of an item within a foreign country. The Compliance Note includes summaries of numerous enforcement actions taken against foreign companies, or involving foreign-produced items, for violations of US sanctions and export control laws.

Compliance Considerations

Due to the complexity of the sanctions regulations and the impact that such laws might have on the operations of foreign-based entities, the Compliance Note highlights the importance of implementing a robust compliance program by adopting, among others, the following measures:

- Employ a risk-based approach to sanctions compliance by developing, implementing, and routinely updating a sanctions compliance program.
- Establish strong internal controls and procedures for payments and the movement of goods involving affiliates, subsidiaries, agents, or other counterparties.
- Ensure that KYC (know-your-client) information (i.e., passports, phone numbers, nationalities, countries of residence, incorporation, operations, and addresses) and geolocation data are appropriately integrated into compliance screening protocols and information is updated on an ongoing basis based on its overall risk assessment and specific customer risk rating.
- Ensure that subsidiaries and affiliates are trained on US sanctions and export control requirements, can effectively identify red flags, and are empowered to escalate and report prohibited conduct to management.
- Take immediate and effective action when compliance issues are identified, to the extent possible, to identify and implement compensating controls until the root cause of the weakness can be determined and remediated.
- Identify and implement measures to mitigate sanctions and export control risks prior to merging with or acquiring other enterprises, especially where a company is expanding rapidly and/or disparate information technology systems and databases are being integrated across multiple entities.

- Parties who believe that they may have violated sanctions or export control laws should consult with counsel and consider if voluntary self-disclosure to the relevant agency is warranted. Please review the Compliance Note: Voluntary Self-Disclosure of Potential Violations at:

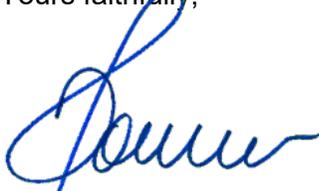
<https://ofac.treasury.gov/media/932036/download?inline>

Conclusion

Foreign-based entities, and individuals participating in international trade, are encouraged to take into consideration the impact of the US sanctions and export controls on their business and operations. As such, operators should take appropriate steps to identify in what way such laws might impact them, what kind of risks are posed depending on their business operations, and how they can mitigate them.

Members are also referred to [Circular No. 02/24 of January 19, 2024 - Quint-Seal Compliance Note: Know Your Cargo](#), [Circular No. 03/23 of February 14, 2023 - The Price Cap on Russian Oil: an Update](#), [Circular No. 22/20 of May 22, 2020 - United States Issues Global Advisory Providing Guidance to Maritime Sector to Preclude Illicit Shipping and Sanctions Evasion](#), [Circular No. 27/22 of October 5, 2022 - Compliance and Due Diligence Partnership](#), and [Circular No. 20/20 of May 15, 2020 - Vessel Monitoring and P&I Insurance](#).

Yours faithfully,



Dorothea Ioannou, CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB