

***Circulars 202301
Monday, June 26, 2023***

Russian Oil Price Cap update: UK Reporting requirements and evasion alert

Dear Members:

UK Reporting requirements

On 4 December 2022, the UK Government issued General Licence INT/2022/2469656 (“GL”) to implement the EU/G7 price cap in respect of Russian origin crude oil, which was amended on 3 February 2023 to implement the separate price cap in respect of petroleum products.

Insurers domiciled or operating from the UK (“UK insurers”) who wish to rely upon the GL are required to keep a record of the maritime transportation of Russian origin crude oil or petroleum products from Russia to a third country or from a non-Russian port or via ship-to-ship (“STS”) transfer operations.

These record-keeping requirements are broader than under the terms of the General Trade Licence (“GTL”) issued by the UK Government in March 2022, which permits UK insurers to provide insurance for vessels calling at Russian ports or transiting Russian territorial waters providing they keep a record of each occasion the GTL is used, as the vessel does not need to have called at a Russian port or have transited Russian waters. An International Group (IG) Circular dated 18 May 2022 advised shipowner members that they are required to notify their UK domiciled P&I clubs or UK domiciled subsidiaries, branches, and management companies of Clubs of each occasion they call at a Russian port or transit Russian territorial waters to enable their club to rely upon the GTL.

EU import ban

In addition Members are reminded that under Article 3m of EU Council Regulation 833/2014, it is prohibited, subject to certain very limited exceptions and derogations, to import Russian crude oil / oil products into the EU. This prohibition covers any leg of a voyage, ie the prohibition does not cover just the vessel which delivers the cargo to the EU. If Russian cargo banned by the EU is imported into the EU, then any vessel which has had that oil / products on board will be in breach of sanctions. The same article also prohibits financing or any financial assistance, thus including insurance, for the maritime transport of such cargo to the EU. The cesser or termination provisions of the insurance may further be triggered by a sanctions breach so the member may find itself without insurance cover. There may be a defence available for the vessel and its owner and insurer if they did not know, and had no reasonable cause to suspect, that the cargo was destined for the EU.

Thus, for example, where Vessel A has Russian oil on board and transfers it to Vessel B, and that oil or some of it is delivered to the EU, both vessels and potentially their insurers will have breached EU and possibly other sanctions. This follows from the principle that the EU sanctions look at the cargo in question – rather than merely looking at the carrying vessel or vessels.

In summary:

- Voyage details must be provided to the Club for all Russian port calls and transits of Russian waters.
- For the transport of Russian origin crude oil or petroleum products that fall within the price cap, voyage

details must be provided irrespective of whether or not the vessel calls at a Russian port or transits Russian waters AND an attestation must also be provided to the Club.

- Any vessel involved in STS operations of Russian crude oil/oil products where the cargo ends up in the EU risks being in breach of EU sanctions. Thorough due diligence is thus recommended to ensure a defence is available to an inadvertent sanctions breach.

We have updated our circular of 19 May 2022 as attached at the end of this circular (the new text is highlighted in bold) to advise members about the reporting requirements under the GL in respect of the price cap.

Possible evasion of the Russian Oil Price Cap

In addition, volatility in worldwide crude oil and products prices may increase the risk of Russian cargoes being traded above the applicable price caps. Clubs are unable to provide cover for the carriage of a cargo sold at a price above these caps, so Members looking to lift Russian oil cargoes should ensure that they exercise due diligence and obtain appropriate attestations from their charterers to confirm that the cargo has been purchased at a below cap price, particularly since an increase in prices to above cap levels may cause shippers and others involved in the sale chain to seek to obfuscate the true value of the cargo.

Members are also reminded that as per our Circular 12/2022, the price cap requirements apply not just at the point of loading but “from the time [the cargo] is loaded until it has cleared customs at the port of destination”, i.e., throughout the time it is on board the vessel. Members are therefore strongly advised to implement due diligence procedures to satisfy themselves that the relevant attestations remain valid throughout the venture such that the cargo is not sold at a price over the cap levels either upon shipment or at any time during the voyage should it be traded onwards, perhaps in reaction to further market movements. There will be no Club cover if a sale above the relevant cap price take place at any point during the voyage. Members are also reminded that price cap attestations in the format indicated in our circular dated 9 February 2023 must be provided to the Club before the first voyage with cargo subject to the price cap. Clubs may require an updated attestation at the beginning of subsequent policy years if Members continue to carry price capped cargoes.

On 2 March 2023 US issued a Tri-Seal Compliance Note: Cracking Down on Third-Party Intermediaries Used to Evade Russia-Related Sanctions and Export Controls warning about the evasion of Russia-related sanctions and export controls via use of third-party intermediaries and transshipment points to circumvent restrictions and obscure the true identities of Russian end users. The Compliance Note also highlights common evasion tactics and identifies red flags:

- The use of corporate vehicles to obscure ownership, source of funds and/or countries involved, particularly sanctioned jurisdictions
- A customer’s reluctance to share information about the end use of a product, including reluctance to complete an end-user form
- The use of shell companies to conduct international wire transfers
- A payment coming from a third-party country or business not listed on the end-user form
- The use of personal email accounts instead of company email addresses
- Transactions involving entities with little or no web presence
- Routing purchases through certain transshipment points to illegally redirect restricted items to Russia or Belarus. Such locations may include China (including Hong Kong and Macau), Armenia, Turkey, and Uzbekistan

On 17 April 2023 the US Office of Foreign Assets Control (OFAC) published an alert highlighting the possible evasion of the price cap on crude oil, particularly involving oil exported through the Eastern Siberia Pacific Ocean (ESPO) pipeline and ports on the eastern coast of the Russian Federation such as Kozmino. Of particular note is the concern that some tankers may be manipulating their Automatic Identification Systems (AIS) to disguise the facts that the vessel has called at the port of Kozmino or other ports on the Russian Federation's eastern coastline. Members are urged to read the alert in full: [download \(treasury.gov\)](#) and are also referred to our February 2022 circular on recent deceptive practices [[insert link](#)]. Members are reminded of the importance of not turning off, "spoofing" or in any other way manipulating vessels' AIS transmission.

Attached circular:

Reporting of vessel calls to Russia and transiting Russian territorial waters.

On 17 March 2022 the UK Government published a General Trade Licence in part to clarify earlier amendments to the UK Russia (Sanctions) (EU Exit) Regulations (the "Regulation"). Specifically, the licence addresses the issue as to whether it is lawful under the Regulation for insurers and reinsurers domiciled or operating from the United Kingdom to provide insurance for vessels calling at Russian ports or transiting Russian territorial waters.

A copy of the General Trade Licence (the "Licence") can be found here.

<https://www.gov.uk/government/publications/general-trade-licence-russia-sanctions-vessels>

The Licence provides that where the underlying trade is lawful and in accordance with applicable sanctions, UK domiciled Clubs, or UK domiciled subsidiaries, branches and management companies of Clubs, may insure and handle claims arising out of vessels engaged in a trade to and from Russia and / or transiting Russian waters provided that the Club notifies the UK Secretary of State of the name and address at which records are kept in relation to each use of the Licence. The contents of the records that the Club is required to keep are set out in Regulation 76 (General trade licences: records) and include:

- (a) a description of the act;
- (b) a description of any goods, technology, services or funds to which the act relates;
- (c) the date of the act or the dates between which the act took place;
- (d) the quantity of any goods or funds to which the act relates;
- (e) [the Insurer's] name and address;
- (f) the name and address of any consignee of goods to which the act relates or any recipient of technology, services or funds to which the act relates;
- (g) in so far as it is known to [the Insurer's], the name and address of the end-user of the goods, technology, services or funds to which the act relates; and
- (h) if different from [the Insurer's], the name and address of the supplier of any goods to which the act relates.

This information must be held by the Club until the end of the calendar year in which the information is recorded plus a further period of four years.

From 17 March 2022, it is now necessary for the owners of vessels that have called in a Russian port or transited Russian territorial waters to notify their club of that call providing as far as possible the details required by Regulation 76. A failure to do so may invalidate the vessel's P&I insurance cover and / or prevent the Club from covering a claim. Please note that this requirement applies to all entered vessels (including Russian domiciled and flagged vessels) and is not limited to Members domiciled in the UK or operating UK flagged vessels.

Members are therefore requested to provide within one month of a call to a Russian port or a transit of

Russian waters the information requested on the attached spreadsheet together with a copy of the bill(s) of lading for the relevant voyage.

Russian Oil Price Cap

Under UK law, the maritime transportation of Russian origin crude oil (CN code 2709 00) or petroleum products (CN code 2710) and the provision of associated services including P&I insurance is prohibited under The Russia (Sanctions) (EU Exit) (Amendment) (No. 16) Regulations 2022 (amending the Russia (Sanctions) (EU Exit) Regulations 2019). This ban came into effect on 5 December 2022 in respect of Russian origin crude oil and on 5 February 2023 in respect of petroleum products.

The Price Cap Coalition which comprises the UK (and EU, US, Australia, Canada and Japan) created a price cap exception to this ban, to facilitate the maritime transportation of Russian origin crude oil and petroleum products between third countries if sold at or under the price cap. The relevant price caps are currently \$60 per barrel for crude oil, \$45 per barrel for petroleum products traded at a discount to crude oil and \$100 per barrel for petroleum products traded at a premium to crude oil.

In the UK the GL implements the price cap by permitting the maritime transportation of Russian origin crude oil or petroleum products and associated services (including P&I insurance) from Russia to a third country, or from one third country to another third country, provided that the price per barrel of oil or petroleum products is at or below the relevant price cap from the time they are loaded on board the vessel until they have cleared customs at the port of destination.

The GL includes a requirement to keep accurate and complete records, readable in English, on paper or electronically, detailing the following:

- (a) a description of the activity taking place under the General Licence;
- (b) a description of the nature of any goods, services or funds to which the activity relates;
- (c) the date of the activity or the dates between which the activity took place;
- (d) the value and/or quantity of any goods, services or funds to which the activity relates;
- (e) the name and address of the [insurer] relying upon the General Licence;
- (f) the name and address of any consignee of goods to which the activity relates or any recipient of services or funds to which the activity relates;
- (g) in so far as it is known to the [insurer], the name and address of the end user of the goods, services or funds to which the activity relates;
- (h) if different from the [insurer], the name and address of the supplier of any goods to which the activity relates; and
- (i) where relevant, copies of any attestation produced or supplied.

This information must be kept for a period of four years beyond the end of the calendar year in which the record was created.

As explained in the IG circular dated 9 December 2022 (which was updated on 9 February 2023) a shipowner or charterer member that intends to transport Russian origin crude oil and/or petroleum products will need to provide its P&I club with an attestation that it will not for the duration of the period of insurance, carry oil and/or petroleum products which have been sold at a price that for the period it is on board the vessel has exceeded the price cap. Members also need to obtain attestations from those with whom they contract stating that the price paid for such cargoes complies with the relevant price cap.

The GL requires a record to be kept of the maritime transportation of Russian origin crude oil or petroleum products from Russia to a third country or from a non-Russian port or via ship-to-ship (STS)

transfer operations. Shipowner members are therefore requested to provide within one month the information requested on the attached updated spreadsheet together with a copy of the bill(s) of lading for the relevant voyage or STS operation. A failure to provide these details may invalidate the vessel's P&I insurance cover and / or prevent the Club from covering a claim. This requirement applies to all entered vessels and is not limited to members domiciled in the UK or operating UK flagged vessels.

Trade involving Russia is now subject to significant legal restrictions. Members are reminded that cover is not available for trade that breaches applicable sanctions and are advised to conduct thorough due diligence on the parties, cargoes and trade involved before engaging in trade to, through or from Russia.

All Clubs in the International Group have issued a similarly worded circular.

Copy from Gard P&I Club