

CIRCULAR

24th November 2021

STS TRANSFERS – SANCTIONS

Transferring crude oil and petroleum products from one tanker to another at sea has been a common practice for many years. STS transfers involving tankers of 150 gross tons or above have since 1 January 2011 been regulated by *MARPOL, Annex 1, Chapter 8 (Regulations 40 to 42)*. Such vessels are required to carry an STS operations plan which complies with these regulations and has been approved by the flag state of the vessel.

These detailed regulations, based upon the *ICS-OCIMF (International Chamber of Shipping - Oil Companies International Marine Forum) STS Guide*, cover matters such as who has to be notified, the personnel to be involved in the operation, the equipment to be used, for example fenders and hoses, contingency planning, STS procedures, STS planning and the records to be kept. If the STS transfer is to take place within the territorial sea or the exclusive economic zone of a nation which is a party to MARPOL the relevant government department of that nation should be notified by each participating vessel at least 48 hours before of the intention to carry out the STS transfer operation and details of the vessels involved, the type of oil and quantity, the location, expected commencement time and estimated duration of the operation should be provided together with confirmation that both vessels have on board an STS operations plan. In some countries such as Malaysia and Indonesia it is not enough merely to notify the relevant authority, namely the Malaysian Marine Department and the Indonesian Sea Communications Department, but their express written permission must also be obtained.

STS transfers may be required for various reasons the most common, at least until recently, being that the fully laden draught of the tanker carrying the crude oil or petroleum products is too great to permit that vessel to reach the discharge port or that it is economically more efficient, particularly in cases where there are numerous receivers located in different ports, to transship the cargo into smaller tankers for transport to the final destinations. Recently, however,

another less meritorious reason has emerged for such STS transfers, namely the desire to evade sanctions imposed upon oil shipments, notably from Iran and Venezuela. The object of the transshipment is to conceal the origins of the cargo, usually by the issue of fresh documentation showing a different shipper and loading port, and by having the cargo carried to destination on an *innocent* tanker which has no record of having entered the sanctioned country.

Even the owners and operators of *innocent* vessels face the possibility of action being taken against them, their associated companies, vessels or individuals, particularly if any parts of their normal commercial operations are carried out in USA. Whilst the vessel may not trade to USA, if the owners and operators are paying or receiving funds in US Dollars these funds may be blocked when they pass through the US banking system.

There is also the issue of P&I club cover. MMIA (NZ) in common with other P&I clubs provides in its General Rule 30 that where the provision of cover or any payment made thereunder may expose the Club or its Managers to the risk of becoming subject to any sanction, prohibition or adverse action in any form by a state or international organization or competent authority there shall be no cover for any loss, damage, cost or expense. What this means is that if an entered vessel is involved in breaking sanctions, even if it is the *innocent* vessel, there is no cover for any claims including those unrelated to the cargo on board.

Further, General Rule 32 provides that the P&I cover shall automatically cease upon the Members, their officers or beneficial owners appearing on the UN Security Council Sanctions List, the US Department of the Treasury Office of Foreign Assets Control (OFAC) Specially Delegated Nationals and Blocked Persons List, the EU Consolidated Financial Sanctions List or any other national or international sanctions list.

So, as can be seen, it can be expensive and damaging for a Member to become involved in sanctions breaking activities such as the ship to ship transfer and subsequent transportation of an embargoed cargo. When approached to take part in an STS transfer operation the very first step to be taken, before proceeding further or entering into any charterparty, is to establish whether the charterers and the owners, managers, operators and, if known, beneficial owners of

the counterparty vessel appear on any of the sanctions lists referred to above. If they do then obviously the Members should proceed no further. The advice below, which is primarily directed at Members who are the owners and operators of the receiving or *innocent* vessel, assumes that such search has come up negative.

As to what Members should then do to avoid becoming involved in an STS transfer operation which breaches sanctions, it is recommended that they should carefully watch out for the following red flags and, if one appears, decline to take part in the operation, at least not without pursuing further enquiries which can confirm that the proposed STS transfer operation is indeed legitimate.

1) Location of the proposed STS transfer

The fact that the proposed STS transfer is to take place in waters close to those of a sanctioned country such as Iran or Venezuela.

2) Time of the proposed STS transfer and personnel to be involved

The fact that the STS transfer is required to take place at the dead of night and that requests for information about the personnel involved receive vague responses.

3) AIS (Automatic Identification System) of counterparty vessel

The fact that there is a history of irregularities, such as the AIS not responding, ie being disabled, at certain times. *SOLAS Chapter V Regulation 19.2* requires the AIS to be switched on at all times.

4) Irregularities in the original loading documentation of the counterparty vessel

The fact that some of the usual loading port documents are unavailable or lack the customary information.

5) Doubts about ownership of the cargo

The fact that ownership of the cargo has passed through numerous hands prior to the transshipment.

6) Ownership and flag of the counterparty vessel

The fact that the ownership and / or flag of the counterparty vessel has been subject to recent and frequent changes.

7) Official permits

The lack of any official permits should these be required due to the geographical location of the proposed STS transfer operation.

Finally, last but not least

8) The absence of any credible physical or commercial reason for the STS transfer other than to conceal the true origins of the cargo.

In order to determine the presence or otherwise of any of the above red flags Members should make certain enquiries, more than they would customarily make, before committing their vessel to participate in an STS transfer operation. These should include:

- a) Obtaining full details of the proposed location of the STS transfer operation.
- b) Ascertaining the proposed time of the STS transfer operation and the personnel from the counterparty who will be in charge, in particular the identity of the *Person in Overall Advisory Control* of the operation as required by MARPOL 1.
- c) Checking the recent AIS history of the counterparty vessel, in particular whether there have been any *blackouts* indicating that the AIS has been disabled at certain times.
- d) Obtaining full details of the cargo proposed to be transshipped and checking the relevant loading documentation including the bill of lading, certificate of origin (*may be faked*), port log and ullage reports.
- e) Obtaining and checking details of the cargo ownership, including the shippers, intermediate owners and receivers.
- f) Checking the ownership history of the counterparty vessel.
- g) Establishing what permits are required given the geographical location of the proposed STS operation, whether they have been obtained, whether notice has been

given to the relevant government authority and if not whether and when it is proposed to do so.

Vague or unsatisfactory responses should prompt further enquiry.

The above are the bullet points. A comprehensive description of current sanctions evasion practices can be found in the Advisory issued by the US Department of the Treasury on 14 May 2020 which details what it terms as *Deceptive Shipping Practices* such as the falsification of cargo documents, false flags and flag hopping, voyage irregularities and disabling or manipulating the AIS system including the practice of *spoofing* which involves broadcasting under a different ship name.

Of course, by the time Members become aware of a red flag they may have already entered into a charterparty or other contract to carry out the proposed STS transfer operation. It is therefore desirable that any such charterparty or other contract should contain certain protections. These should include:

- 1) A warranty from the charterers that the none of the parties involved, including the owners of the counterparty vessel, her managers and operators, the charterers, sub-charterers, cargo interests (all of them) and all of their affiliates are sanctioned.
- 2) A warranty from the charterers that the trade and cargo are not sanctioned.
- 3) A right for the Members to refuse to perform the STS transfer operation if the counterparty vessel, her owners, managers, operators, beneficial owners, charterers or sub-charterers are sanctioned or there are reasonable concerns about the origins and destination of the cargo with regard to possible breach of sanctions.
- 4) Concerning the AIS, it is recommended that any charterparty should include what is known as an AIS Switch-off Clause the most comprehensive of which is the *BIMCO AIS Switch-off Clause 2021*. This clause includes a warranty from the charterers that they shall not give orders to conduct an STS transfer operation with a counterparty vessel whose

AIS has not been operated in accordance with the *IMO Guidelines for the Onboard Use of AIS - Resolution A1106 (29)* during the 6 months preceding the order. These guidelines set out a detailed regime for the operation of the AIS with a view to ensuring that the position of a vessel can be detected at all times.

This circular is intended for general guidance only. Members are always welcome to contact the Managers with any specific questions or concerns which they may have about a proposed STS transfer operation.