

29th April 2024

CIRCULAR

OIL AND OIL PRODUCTS PRICE CAP - CHANGES

Introduction

The oil price cap (**OPC**), introduced by the Price Cap Coalition (comprising the G7, the EU and Australia) in December 2022, has two key objectives:

- Constraining Russian revenues that could otherwise be used to fund Russia's war of aggression against Ukraine; while
- Maintaining global oil flows and protecting energy security.

The purposes of this Circular are two-fold: to remind Members of the Club's previous Circulars, which should be read in full by any members who are or may be engaging in the transport (or trade) of Russian oil or oil products, and to draw Members' attention to the recent Oil Price Cap (OPC) Compliance and Enforcement Alert issued by the Price Cap Coalition (the **Alert**).

The Price Cap Coalition highlights in the Alert that it is concerned about cases where inadvertent circumvention or misinterpretation of the OPC occurs, or where certain actors evade the measure while operating within an otherwise compliant supply chain. Illicit activity could occur across multiple entities and sectors trading in Russian oil and oil products. Poor and insufficient compliance processes by relevant entities could lead to breaches of the OPC.

This Circular includes an overview of key OPC evasion methods and recommendations for identifying such methods and mitigating their risks and negative impacts.

The Club refers to its Circular dated 23 February 2024. Members are reminded that the two key changes were:

- A requirement for attestations to be provided on a per-voyage basis. The attestations provided by shipowners to P&I Clubs must be provided within 30 days of loading;
- Itemised price information for ancillary costs to be recorded by those entities with access to price information and then provided to shipowners and P&I Clubs upon request within 30 days.

The OPC evasion methods relate to:

- Falsified documentation and attestations;
- Opaque shipping and ancillary costs;
- Third country supply chain intermediaries and complex and irregular corporate structures;
- Flagging;
- The "shadow" fleet;
- Voyage irregularities

Evasion methods outlined in this alert occur separately or are interlinked with other illicit activities. Risk profiles are dynamic and may change over time. Monitoring should consider legitimate reasons for apparent evasion red flags to manage security risks for vessels in high-risk areas.

This circular is not legal advice and Members should consult independent legal advice where necessary.

We summarise below some of the content of the Alert, which reflects the views of the Price Cap Coalition, rather than necessarily those of the Club.

Falsified documentation and attestations

Complete and accurate OPC attestations and transaction and shipping documentation ensure compliance with the OPC. Falsified documentation can be used to disguise the true price paid for Russian oil and oil products. It can also disguise the origin or legitimacy of a vessel, its goods or its destination. This could lead to Coalition services inadvertently being used to support non-price cap compliant transactions.

Opaque shipping and ancillary costs

Manipulation of shipping and ancillary costs, the bundling of such costs, or the failure to itemise these costs is used to obfuscate Russian oil and oil products being purchased above the price cap. These costs should be at commercially reasonable rates and in line with industry standards, including any geopolitical risk premiums. The billing of commercially unreasonable or opaque shipping and ancillary costs should be viewed as a sign of potential OPC evasion.

The Coalition statement of 20 December 2023 announced revisions to the price cap compliance regime including: 1) that relevant Coalition service providers must receive attestations from their counterparties each time they lift or load Russian oil or oil products; and 2) changes that require supply chain participants with access to itemised ancillary costs (such as insurance and freight) to share these upon request with entities further down the supply chain. These changes will support the implementation of the OPC and disrupt circumvention by reducing opportunities for bad actors to use opaque shipping costs to disguise oil purchased above the cap.

Third country supply chain intermediaries and complex and irregular corporate structures

Entities attempting to evade the OPC are increasingly looking to third country supply chain intermediaries and the use of complex and irregular corporate structures to trade Russian oil and oil products. Many of these enablers and facilitators are legitimate entities but some are deliberately trying to evade the OPC while using Price Cap Coalition services. This includes:

- The use of shell companies;
- Multiple levels of ownership and management to disguise the ultimate beneficial owner of Russian oil and oil products; and
- Frequent changes in the ownership or management of companies and vessels involved in a transaction.

Appropriate and enhanced due diligence

Members should undertake appropriate due diligence of customers and counterparties across the supply chain that they engage with when trading Russian oil and oil products. This is especially important where Price Cap Coalition services are being used or sought and there are OPC evasion red flags. If business intelligence, information, or market assessments indicate that Russian oil or oil product prices exceed the price cap then members should not proceed with the transaction and should notify the relevant authorities.

Members should conduct due diligence according to the specificities of the transaction and the related risk exposure. They should institutionalise effective sanctions compliance programmes and monitoring for OPC evasion red flags. They should identify and manage risks including through appropriate due diligence and Know Your Customer (**KYC**) or Know Your Customer's Customer (**KYCC**) procedures. KYCC procedures can be used to identify ultimate beneficial ownership, including any links to Russian entities.

Members should scrutinise carefully documents that appear incomplete, inconsistent, or contradictory to previously shared or publicly available information, as this may suggest illicit activity. They are encouraged to retain documents showing that Russian oil or oil products were purchased at or below the relevant price cap. Members should share these documents, where necessary, with other service providers throughout the supply chain and at the request of Price Cap Coalition authorities. Members should use alternative documentation and information sources to corroborate the information held as necessary.

Members should use enhanced due diligence for ships:

- That have undergone numerous administrative changes;
- Ships with complex and irregular corporate structures; and
- When dealing with intermediary companies that conceal their beneficial ownership or otherwise engage in unusually opaque practices.

Members should use due diligence assessments to build risk profiles of vessels and companies that they engage with in the trade of Russian oil and oil products. This due diligence may help inform what the Price Cap Coalition calls an internal "whitelist" of entities considered ordinarily compliant with the OPC, and with whom routinely conducting business may offer reduced risk exposure. OPC evasion methods, prevalence, and risk profiles are dynamic and may change over time, and therefore members should regularly review entities on any such list.

Flagging

The Price Cap Coalition states that certain flagging and reflagging activities may indicate that a vessel is attempting to obfuscate its true ownership and/or affiliation with Russia. They consider that these activities are high-risk and warrant enhanced compliance and KYC checks.

These activities may include where a vessel:

- Uses a false flag to mask illicit trade in which the vessel continues to use a country's flag after it has been removed from a registry or claims a country's flag without proper authorisation;
- Changes flag on multiple occasions in a short period of time to avoid detection;
- Changes to a different flag registry from the Russian flag registry since the OPC was implemented; and
- Registers with registries known to employ insufficient KYC and compliance checks when registering vessels.

"Shadow" fleet

The Alert discusses what the Price Cap Coalition uses the terms "shadow" fleet (and also the "ghost," "dark," or "parallel" fleet) to refer to older vessels with anonymous or opaque ownership structures, which solely trade in sanctioned oil or oil products and engage in various deceptive shipping practices.

The Price Cap Coalition says that there is ample evidence that Russia utilises these vessels to transport its oil and oil products. Whilst these vessels may be compliant with relevant laws, or not covered by them, these vessels give Russia an outlet for its oil exports and a means to circumvent sanctions with limited exposure and without clear attribution.

The Price Cap Coalition notes that the shadow trade also involves ships that may rely on unknown, untested, sporadic, or fraudulent insurance. Without legitimate insurance coverage, these ships are likely unable to pay the costs of accidents in which they are involved.

Members should undertake enhanced due diligence of vessels which fit the shadow fleet description and transport Russian oil and oil products.

Some Price Cap Coalition institutions operate measures to monitor the sale of tankers to third countries more closely and prevent them from being used to transport oil priced above the cap. Members should report to relevant competent authorities any tanker sales they observe which display evidence to indicate that these tankers are part of the shadow fleet.

If a member engages with a ship that is not insured by a legitimate insurance provider, they should conduct sufficient due diligence to ensure that the insurer can cover all relevant risks. This could include a review of an insurer's (i) financial soundness, (ii) track record, (iii) regulatory record and (iv) ownership structure.

Voyage irregularities

Members should know and trace voyage details from the port of loading to the final destination. While a vessel could legitimately deviate from this, illicit actors may disguise the ultimate destination, origin of cargo, or recipients by using indirect routing, unscheduled detours, or transfer of cargo through third countries.

The Price Cap Coalition recognises that there are legitimate reasons for a vessel to turn off the Automatic Identification System (AIS). For example, ships often turn off their AIS to evade threats which is not a red flag for illicit activity. However, AIS manipulation and spoofing can allow for evasion of the OPC. For example, a vessel can disguise visits to ports and their whereabouts when engaging in a breach of OPC. Repeated, prolonged, and unexplained gaps in AIS, particularly in sensitive locations as well as unusual transmissions, are cause for further investigation.

Ship-to-ship (STS) transfers are often legitimate. However, STS transfers can conceal the origin, nature, and destination of cargo and therefore be used to evade the OPC. This includes:

- Through ignoring pre-notification and reporting obligations under international law;
- Transferring cargo at night in areas known for illicit behaviour; and
- Transferring cargo in conjunction with other evasion practices such as AIS manipulation.

Relevant counterparties should explain voyage and shipment details. Members should conduct enhanced monitoring of vessels and regions which display evidence of (i) voyage irregularities, (ii) AIS manipulation, (iii) spoofing and (iv) illicit STS transfers. This should consider legitimate reasons for apparent voyage irregularities. There are a number of maritime and sanctions intelligence and assessment tools to support this.

Members should scrutinise routes and destinations that deviate from normal business practices for unknown reasons, including routine transit and transshipment. They should also stay aware of locations known for STS transfers associated with deceptive or evasive activity, particularly in combination with AIS manipulation and/or previous voyage history.

Members should investigate signs and reports of AIS manipulation before entering into new contracts or when engaging in ongoing business. They should also incorporate contractual language, and explicitly notify clients, that AIS disablement or manipulation inconsistent with the International Convention for the Safety of Life at Sea (**SOLAS**) is possible grounds for investigation of the ship's activities. This could result in cancellation of service provision if illicit or sanctioned activity is identified.

No single vessel behaviour should be viewed in isolation. A legitimate operation between a vessel and a partner vessel may still present an exposure to sanctions if the partner vessel has previously engaged in an STS operation with a vessel carrying Russian oil or oil products above the price cap or other sanctioned cargo.

Reporting a suspected breach

Members are reminded that for matters with a nexus to certain jurisdictions, such as the UK, reporting of a suspected sanctions breach is mandatory. If Members have any concerns about a suspected breach of the OPC, sanctions legal advice should be sought immediately.

Yours faithfully

The Board of Directors

Maritime Mutual Insurance Association (NZ) Limited