

This client alert provides an update on recent announcements regarding port prohibitions for Russian vessels.

This client alert supplements our update on developing sanctions against the Russian Federation [here](#).

The United Kingdom announced on Monday that it would block entry to its [ports](#) by any Russian-linked vessels. In a letter sent to all UK ports, The Rt. Hon. Grant Shapps, Secretary of State for Transport, requested that ports prevent access to any ship which they have reason to believe is:

- Owned, controlled, chartered or operated by any person connected with Russia
- Owned, controlled, chartered or operated by Designated Persons
- Flying the Russian flag
- Registered in Russia (**Russian Vessels**)

The letter also noted that the UK government will seek to support ports in identifying Russian Vessels, and notify ports of the same when a Russian Vessel is bound for the UK.

The government has now produced prohibiting legislation (the Regulation) which came into effect at 3pm on 1 March 2022.¹ Part 3 of the Regulation deals with Shipping Sanctions and provides for a prohibition on port entry for the above categories of vessels, but also confers powers on the Secretary of State and harbour authorities to issue port barring orders, movement directions, powers to detain Russian Vessels and direct the UK Ship Registrar to refuse registration of Russian Vessels.

Clients should note the meaning of some of the key terms in the Regulation:

Owned: means a person who has legal title or a beneficial interest in the vessel or any share of the vessel in question.

Controlled: means a person who is able to take decisions about the vessel's operation, including decisions about the route of the ship and the appointment of the master or crew.

Connected with Russia: means an (i) individual or association or combination of individuals ordinarily resident or located in Russia; (ii) a person other than an individual (i.e., a company) incorporated or constituted under the laws of Russia; or (iii) a person other than an individual which is domiciled in Russia.

The Explanatory Memorandum to the Regulation suggests that the authorities may "look through" subsidiary entities to the ultimate beneficial owner when applying the term "connected with Russia". The Explanatory memorandum says:

To prevent obfuscation and target the ultimate beneficiary owners, who may hide behind shell companies or similar, these measures may be taken against those who:

- possess the legal title to the ship, or to any share in the ship, or
- have a beneficial interest in the ship or in any share in the ship; or
- are able to take decisions about its operation, including (but not limited to) decisions about the route the ship may take and the appointment of master or crew.

The only exemption is set out in regulation 61A, which states that a ship will be allowed to access a port if (a) port entry direction has been given in relation to the ship under regulation 57C (movement of ships), or (b) the access is needed by the ship in case of emergency. There is no exemption for ongoing contracts and relief cannot be applied for.

Currently the legislation does not extend to Russian owned cargoes, but it may only be a matter of time before the regulations are changed to target Russian owned cargoes.

Wider Implications

Canada has announced it will also restrict Russian access to her ports, banning Russian-owned or Russian-registered vessels. While Canadian prohibitions may only affect a small number of ships, should the European Union follow suit, the impact could be significant.

Reports suggest Spain is considering such measures and the European Parliament near-unanimously passed a non-binding resolution on Tuesday calling for, amongst other things, EU ports to be closed to Russian ships² In the past the EU has granted other sanction schemes transitory exceptions for existing contracts, but given the current circumstances, such exceptions may not be afforded here.

The significance of such a move can be seen in information provided by Europe's largest port, Rotterdam. The port has noted that at present EU sanctions are having "only a rather limited impact" and that "extensive imports of energy (crude oil, oil products, LNG, coal) have not yet been hit". However, the port noted that 13% of tonnage transhipped through Rotterdam is oriented towards Russia, including significant energy imports (30% of Russian crude oil, 25% of LNG and 20% of oil products and coal).³

¹ The Russia (Sanctions)(EU Exit)(Amendment)(No. 4) Regulations 2022

² European Parliament Resolution on the Russian aggression against Ukraine (2022/2564(RSP))

³ <https://www.portofrotterdam.com/en/news-and-press-releases/impact-of-russia-ukraine-conflict-on-port-of-rotterdam>

As it stands, very careful review of shipping arrangements and proper due diligence will need to be undertaken for any vessels calling into UK ports, and particular care should be taken in the case of ships owned, controlled, chartered or operated by non-Russian subsidiaries of Russian companies. Discussions with a number of our global commodity and shipping clients reveal that some of the existing restricted party screening programs and compliance platforms are identifying just the flag of the vessel and identity of the head owner, but not picking up Russian disponent owners or charterers in the charter party chain which may satisfy the definitions above of “controlled” and “connected with Russia.” Special precautions may need to be taken by client to conduct additional compliance due diligence on vessels coming into U.K. ports and potentially other ports as these sanction measures expand.

Authors

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How We Can Help

We have a dedicated team of commodities, shipping and sanctions experts with a track record of successfully advising clients of the legal and commercial issues arising out of such events. For further queries, please get in touch with your SPB contact or any other persons listed.

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