

Alert 10-080

[Mobile and Print-friendly version](#)

New U.S. Somalia Sanctions Impact Global Shipping, Piracy Incidents

White House Order Blocking Order has Implications for Owners, Charterers, and Insurers

An Executive Order issued by the White House on April 13, 2010, blocks certain named individuals—identified by the U.S. government as contributors to instability in Somalia—from receiving any contributions or other property interests from the United States, or from U.S. persons. Of particular concern for shipping interests is the extent to which the Order prohibits ransom payments to rescue crewmen and recover vessels and cargo hijacked off the coast of Somalia, or otherwise impacts the international maritime community's responses to acts of piracy off the Somali coast.

The scope of the Order was addressed at a joint agency/industry piracy roundtable meeting held at U.S. Coast Guard Headquarters on April 16, 2010. Reed Smith's participation in that meeting and one-on-one consultations with other Administration officials have yielded further guidance for applying the Order to international shipping:

Application to Particular Piracy Events

Representatives from the U.S. Departments of State and Treasury emphasized that the Order is not "piracy wide," but rather, is a ban on transfers by U.S. persons to specific individuals named in an SDN list annexed to the Order.¹ The list is primarily comprised of Somali political actors, of which two are self-described pirate leaders.

In practice, the question of how to determine whether a particular pirate operation is affiliated with an SDN is a difficult one. In other contexts, the U.S. government has issued and administered blocking orders under the assumption that, for screening purposes, parties to a transaction will typically have access to EFT-based information about the identity of the parties with whom they are dealing. That is clearly not the case in ransom transactions, so the Treasury Department is currently considering how best to advise the shipping industry regarding its due diligence and screening responsibilities. At a minimum, shipowners and other interested U.S. persons are urged to consult with U.S. authorities, starting with the Coast Guard and Treasury Department, to determine whether persons involved in a ransom transaction are on the SDN list or have some demonstrable connection with such a person.

Scope of the Order: Who are "U.S. Persons" to Whom it Applies?

The Order clearly applies to U.S. persons, including U.S. citizens, U.S. companies and their overseas branches, and other persons in the United States. However, the Order does not directly address the extent to which foreign entities are affected by virtue of having a U.S. presence. According to Treasury's Office of Foreign Assets Control ("OFAC"), a foreign entity

does not become a "U.S. person" under the Order merely because it has operations, or maintains an office, in the United States. However, if a foreign entity's U.S. citizen or resident employees, offices, systems or accounts in any way facilitate, approve, or participate in a prohibited transaction, the Order is, likely to be implicated. Such determinations are often complex and fact specific, at times requiring case-by-case evaluation.

Impacts Beyond Owners: Charterers, Insurers

The Order's impacts are not limited to owners; indeed, it raises several important questions for insurers, charterers and cargo interests. Regarding insurers and reinsurers, the Treasury Department asserts that the Order's ban on "any contribution . . . for the benefit of" a blocked individual should be construed quite broadly. Treasury likely would find a violation and if a U.S. insurer (or reinsurer) paid a claim for funds used to compensate a foreign shipowner for payment of ransom to a barred party. Similarly, the Order would work to bar claims contribution or indemnity from charterers or cargo interests in the U.S. for ransom paid to a barred party, even well after the fact.

Approach for Dealing With Piracy Events

At present, the Treasury Department is not planning a formal "licensing" process to permit ransom payments to barred parties, a position that has caused concerns among representatives of U.S. shipowners and U.S. crews. Treasury has indicated, however, that it plans to use its enforcement discretion to come up with "appropriate responses" to exigent circumstances. The Administration is emphasizing the need for timely consultation with the Coast Guard and Treasury in the event of a piracy events, and stresses that it is sensitive to the paramount importance of hostage safety. Accordingly, it appears that Administration expects the application of the Executive Order to piracy will be handled in real time on a case-by-case basis, as part of its broader role in piracy response.

1. The list is available at www.ustreas.gov/offices/enforcement/ofac/sdn/prgrmlst.txt.

→ [C. Jonathan Benner](#)
Partner
Washington, D.C.
+1 202 414 9287

→ [Matthew J. Thomas](#)
Partner
Washington, D.C.
+1 202 414 9257

→ [Jeffrey Orenstein](#)
Associate
Washington, D.C.
+1 202 414 9217

ReedSmith

reedsmith.com

About Reed Smith

Reed Smith is a global relationship law firm with nearly 1,600 lawyers in 22 offices throughout the United States, Europe, Asia and the Middle East. Founded in 1877, the firm represents leading international businesses, from Fortune 100 corporations to mid-market and emerging enterprises. Its lawyers provide litigation and other dispute resolution services in multi-jurisdictional and other high-stakes matters; deliver regulatory counsel; and execute the full range of strategic domestic and cross-border transactions. Reed Smith is a preeminent advisor to industries including financial services, life sciences, health care, advertising, technology and media, shipping, energy trade and commodities, real estate, manufacturing, and education. For more information, visit reedsmith.com

U.S.: [New York](#), [Chicago](#), [Los Angeles](#), [Washington](#), [San Francisco](#), [Philadelphia](#), [Pittsburgh](#), [Oakland](#), [Princeton](#), [Northern Virginia](#), [Wilmington](#), [Silicon Valley](#), [Century City](#), [Richmond](#)

Europe: [London](#), [Paris](#), [Munich](#), [Greece](#)

Middle East: [Abu Dhabi](#), [Dubai](#)

Asia: [Hong Kong](#), [Beijing](#)

© Reed Smith LLP 2010. All rights reserved.

Business from offices in the United States and Germany is carried on by Reed Smith LLP, a limited liability partnership formed in the state of Delaware; from the other offices, by Reed Smith LLP of England; but in Hong Kong, the business is carried on by Richards Butler in association with Reed Smith LLP (of Delaware, USA). A list of all Partners and employed attorneys as well as their court admissions can be inspected at the firm's website.

Attorney Advertising. This Alert may be considered advertising under the rules of some states. Prior results described cannot and do not guarantee or predict a similar outcome with respect to any future matter that we or any lawyer may be retained to handle.

To opt-out from future communications, [click here](#).