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Editorial Office  
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862  
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# The Broad Reach and Limitations of U.S. Forfeiture Law

***By Matthew J. Thomas, Jed M. Silversmith, and Dana S. Merkel\****

*The U.S. government has continued to make the international shipping sector—especially petroleum shipping—a central focus of its trade sanctions policy, in an effort to inflict economic harm on targets such as Iran, Venezuela, and Cuba. The authors of this article explain civil forfeiture and its limitations, and advise maritime businesses to implement compliance policies that encourage employees to identify sanction violations and money laundering red flags and to create an adequate reporting chain.*

In August 2019, the world watched closely to learn what would become of the *Grace 1* and the more than two million barrels of Iranian crude oil that she carried. The tanker was boarded in the British Overseas Territory of Gibraltar by the British Royal Navy on July 4 as it passed through Gibraltar's territorial waters. It was detained on suspicion that it was delivering Iranian oil to Syria in violation of European Union sanctions.

Gibraltar released the *Grace 1* on August 15, in spite of a request by the United States to seize the vessel. Gibraltar's chief minister stated that Iran had provided assurance that the vessel would not deliver the oil to Syria when released, and there were no longer grounds for detention. Although Gibraltar denied the United States' request, the U.S. government filed a civil forfeiture complaint (the "Complaint") in a U.S. federal court seeking authority to seize the ship, the oil, and funds held in a U.S. bank account belonging to Paradise Global, an alleged front company used to help launder funds to assist the operation.

According to the Complaint, the *Grace 1* was managed by a company registered in Singapore, which was part of a network of companies operating throughout the world. These companies allegedly purchased insurance in the United States on behalf of the *Grace 1*, which, because it was to help an Iranian business interest, violated the U.S. sanctions regime. The Complaint also explained how these non-U.S. companies transferred funds in dollar-denominated transactions to other non-U.S. companies. These international transfers violated the U.S. sanctions regime because, by simply engaging in

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\* Matthew J. Thomas is a partner in Blank Rome LLP's International Trade practice. Jed M. Silversmith is of counsel in the firm's White Collar Defense and Investigations group. Dana S. Merkel is an associate in the firm's Maritime practice. The authors may be contacted at [mthomas@blankrome.com](mailto:mthomas@blankrome.com), [jsilversmith@blankrome.com](mailto:jsilversmith@blankrome.com), and [dmerkel@blankrome.com](mailto:dmerkel@blankrome.com), respectively.

dollar-denominated transactions to support trade with Iran, U.S. law was violated.

The United States' attempt to seize the *Grace 1* echoes the U.S. seizure of the North Korean bulk carrier *Wise Honest*. The *Wise Honest* had been detained in April 2018 by Indonesia for multiple violations of international law and sanctions. Similar to the *Grace 1*, a civil forfeiture complaint outlined transactions in U.S. dollars in support of the *Wise Honest*, which was used to deliver North Korean coal and bring equipment into North Korea. Indonesia turned the vessel over to the United States and it was eventually listed for sale by the U.S. Marshal Service.

### **WHAT IS CIVIL FORFEITURE?**

Civil forfeiture is a legal proceeding in which the U.S. government initiates a civil, not criminal, proceeding against property that was derived from or used in connection with a criminal violation of U.S. law. The government has historically brought forfeiture actions against vehicles owned by drug dealers or sought to seize real estate purchased by Ponzi-scheme operators. It has been used more recently to seize property of individuals and companies who acted with "conscious avoidance"—not criminally culpable, but turned a blind eye to probable criminal activity.

As the *Wise Honest* and *Grace 1* forfeiture complaints reveal, property needs to have few or no U.S. contacts to be subject to U.S. forfeiture. Forfeiture applies to nearly every crime imaginable, including wire fraud, drug trafficking, public corruption crimes, and money laundering. In practice, many of these U.S. crimes have an extensive extraterritorial reach, especially in sectors like shipping where the use of U.S. dollars as a default currency is ubiquitous and U.S. courts have imposed criminal liability based simply on the use of U.S. dollars. Of particular note to businesses in the shipping industry, violations of U.S. export laws and trade sanctions can provide a basis for forfeiture. In addition, even violations of foreign criminal law can subject property to forfeiture in a U.S. court even if the property's contacts with the United States were minimal.

### **HOW ARE SANCTIONS AND CIVIL FORFEITURE LINKED?**

The U.S. government has imposed sanctions against international actors throughout the world, including Cuba, Iran, North Korea, Syria, and Crimea, as well as the government of Venezuela and numerous other designated persons and entities around the world. U.S. financial institutions and other U.S. persons continue to be broadly prohibited from engaging in transactions or dealings with Iran, the government of Iran, and Iranian financial institutions. On September 4, 2019, the U.S. Treasury issued an extensive Office of Foreign

Assets Control (“OFAC”) Advisory to the Maritime Petroleum Shipping Community<sup>1</sup> addressing “Sanctions Risks Related to Shipping Petroleum and Petroleum Products from Iran,” highlighting the significant sanctions risks arising from Iranian shipping and urging the maritime industry to adopt robust due diligence processes and anti-money laundering controls.

Transactions that violate U.S. sanctions laws and regulations can trigger penalties under the sanctions laws, but they also can serve as the basis of civil forfeiture actions. Property connected to sanctions-breaching transactions can be subject to forfeiture, even if not owned by a U.S. person. This can include not just the profits from the illegal transactions, but also the “instrumentalities” of those dealings—in this case, the *Grace 1* and its cargo.

### **WHAT ARE THE LIMITATIONS OF CIVIL FORFEITURE?**

Civil forfeiture proceedings are conducted in the United States for violations of U.S. law. However, as a matter of international law, the United States does not have the authority to unilaterally seize property on the high seas or in other countries. With respect to ships, countries may only enforce their laws within their waters, with the exception of vessels flying their flag, which they have authority over anywhere in the world. Thus, property that is the subject of forfeiture proceedings must either be in the United States to be seized or be turned over to the United States—for example, through the cooperation of the country in which the property sits.

The forfeiture of the *Wise Honest* succeeded because Indonesia reportedly chose to assist the United States. Gibraltar did not provide the same assistance, and the *Grace 1*, since renamed the *Adrian Darya 1* and reflagged to Iran, eluded U.S. seizure and proceeded to Syria. The United States reportedly has made a variety of attempts to find a way to seize the vessel or negatively impact its operations, including offering to pay the captain to bring the vessel to the United States, listing the vessel and its captain on the specially designated nationals (“SDN”) list, and warning that all mariners on listed vessels will be denied visas and all entities providing services to the vessel will be added to the SDN list.

### **WHAT ARE MY COMPANY’S OBLIGATIONS UNDER U.S. LAW?**

U.S. law does not impose sector-specific obligations for maritime businesses to maintain an anti-money laundering policy other than those imposed by other U.S. laws. However, maritime businesses, including foreign maritime businesses, must comply with U.S. laws wherever they apply. Given the

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<sup>1</sup> See [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran\\_advisory\\_09032019.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_advisory_09032019.pdf).



incredibly broad reach of many U.S. laws, including the money laundering statutes, U.S. export laws, and U.S. sanctions, it is imperative that all businesses be vigilant to protect against the use of their businesses for violations of U.S. law. Therefore, it is important that companies in the maritime industry adopt appropriate policies and procedures to screen for compliance risks and identify potential red flags.

## CONCLUSION

In the current administration, the U.S. government has continued to make the international shipping sector—especially petroleum shipping—a central focus of its trade sanctions policy, in an effort to inflict economic harm on targets such as Iran, Venezuela, and Cuba. The *Grace 1* and *Wise Honest* cases represent an expansion of this foreign policy strategy, by allowing U.S. authorities to use existing legal tools to disrupt shipping with sanctioned states and entities. This increasing focus on shipping as a pressure point for U.S. foreign policy comes with significant risks for shipowners, lenders, investors, charterers, and operators, as evidenced by the recent OFAC advisory. U.S. civil forfeiture proceedings represent a new front in an already treacherous sanctions landscape, with the potential to result in permanent losses of maritime assets. Although U.S. power to physically seize some assets overseas is limited under international law, little or no contact with the United States is needed to initiate proceedings and set in motion negative and unpredictable impacts. All maritime businesses should implement compliance policies that encourage employees to identify sanction violations and money laundering red flags and to create an adequate reporting chain.