

9 December 2022

## TO ALL MEMBERS

Dear Sir or Madam

### Sanctions - The Price Cap on Russian Oil

#### Executive Summary

- The EU, G7 and Australia (the “Price Cap Coalition”) has recently introduced legislation and guidance effective 5 December 2022 intended to maintain the supply of Russian oil to world markets whilst at the same time reducing Russia’s earnings from its oil exports (the “Price Cap Scheme”).
- Under the Price Cap Scheme, IG P&I Clubs will now be able to provide P&I cover for Russian crude oil shipments to countries which are not part of the Price Cap Coalition provided that the price of the Russian crude oil cargo from the time it is loaded until it has cleared customs at the port of destination is at or below \$60 per barrel (the “Price Cap”).
- A separate price cap will be introduced on 5 February 2023 for Russian petroleum products.
- Ships with Russian crude oil on board on the 5 December commencement date may continue to lawfully perform the voyage even if the cargo has been sold at a price above the Price Cap if the voyage will be completed and the cargo off loaded by 19 January 2023.
- Clubs, shipowners and charterers will now be required to check the price of Russian oil cargoes on board ships they own, charter or insure. These checks will take the form of contractual attestations provided by their contractual counter parties stating that for the relevant period the price will not exceed the Price Cap.
- A Shipowner or Charterer that intends to transport Russian crude oil cargoes after 5 December will now need to provide its P&I Club with an attestation that it will not for the duration of the period of insurance carry Russian oil cargoes which have been sold at a price that for the period it is on board the vessel has exceeded the Price Cap. The attestation Clubs require is at Annex II to this circular.

- Additionally, Shipowners and Charterers currently engaged in trades involving the carriage of Russian crude oil that commenced prior to 5 December 2022, but which will be completed by 19 January 2023 will need to complete a separate attestation. The attestation Clubs require is at Annex I to this circular.
- Club cover for the carriage of Russian crude oil loaded after 5 December 2022 and petroleum products loaded after 5 February 2023 is dependent on Members complying in full with the requirements of the price cap schemes, including the provision of appropriate attestations. Clubs will be required to withdraw cover where there are reasonable grounds to suspect that the cargo being carried has been purchased at a price greater than the price cap.

## Introduction

Trade sanctions aimed at Russia have been in place since Russia's annexation of Crimea in 2014.

In the months preceding the current crisis the EU, G7 and other countries warned of an unprecedented programme of sanctions in the event of a Russian invasion. Following the invasion of 24 February 2022, the EU, UK, US, and other allies, responded with a significant coordinated sanctions programme, targeting Russia's financial sector, aviation and shipping, strategic sectors of the economy such as defence, aerospace and energy and individuals facilitating Russia's invasion of Ukraine. These sanctions programmes are subject to continuous review and development and are expected to remain in place for so long as Russian armed forces remain within the internationally recognised territory of Ukraine. The impact of those measures upon shipping and P&I insurance to date have been covered by the International Group clubs in circulars available on the [Ukraine/Russia Sanctions webpage](#).

## The Price Cap on Russian origin crude oil and oil products

Russia is the world's third largest exporter of crude oil, and its economy derives a substantial benefit from earnings derived from these exports. Such earnings are used by Russia to fund its war in Ukraine and the EU / G7 have focussed much of their efforts on devising sanctions that reduce Russia's ability to generate revenue from its sales of oil.

These efforts culminated in a meeting of the G7 and EU at Elmau in Germany on 2 September 2022 at which the G7 Finance Ministers committed to implementing a ban on maritime services for Russian origin oil shipments where the Russian oil cargo had been sold above a set price – the "Price Cap". The object of the Price Cap is threefold:

1. To maintain the supply of Russian oil to world markets; and
2. To reduce the upward pressure on world oil prices; and
3. To reduce Russia's earnings from its export of crude oil and oil/petroleum products.

Under the Price Cap scheme those persons that are subject to the jurisdiction of the EU, G7 and other coalition partners such as Australia will be prohibited from transporting and / or providing services (including P&I insurance) that enable the transportation of Russian origin crude oil and oil/petroleum products unless it has been sold at or below the Price Cap. The prohibition on

services provided by a service provider based in an EU, G7 or other coalition partner jurisdiction extends to shipments by or to third countries that are not part of the EU / G7 coalition and to that extent will have extra territorial effect. The Price Cap Scheme is to commence on 5 December 2022 in respect of crude oil cargoes (CN2709-00) (hereinafter referred to as "Crude Oil") and 5 February 2023 in respect of oil/petroleum products (CN2710) (hereinafter referred to as "Petroleum Products").

On the 2 December 2022 the EU / G7 Coalition announced that the Price Cap for Russian Crude Oil after 5 December 2022 would be initially set at \$60 per barrel.

Legislation and guidance giving effect to the Price Cap Scheme has recently been published by the European Union, the United Kingdom and the United States and this circular describes the impact of the scheme on shipowners, charterers and cover for such trades by the International Group of P&I Clubs and its reinsurers.

### The United States

US legislation is relevant because many service providers including one P&I Club and re-insurers and banks either fall within its territorial jurisdiction or have financial arrangements or contracts subject to US law.

On 21 November 2022, the US Department of the Treasury issued a [Determination pursuant to Executive Order 14071](#) that prohibits the following categories of services related to the maritime transport of Crude Oil of Russian Federation origin: (i) trading/commodities brokering; (ii) financing; (iii) shipping; (iv) insurance, including reinsurance and protection and indemnity; (v) flagging; and (vi) customs brokering. The prohibition on providing these services takes effect on 5 December 2022. The Determination on the Price Cap is available [here](#).

On 22 November 2022 the US Department of Treasury published a document titled ["OFAC Guidance on Implementation of the Price Cap Policy for Crude Oil of Russian Federation Origin"](#).

This Guidance applies only to Crude Oil cargoes. Further guidance is expected in relation to the Petroleum Products Price cap which will come into effect on 5 February 2023.

On the same date the Department of Treasury / OFAC published ["General Licence No. 57 Authorizing Certain Services Related to Vessel Emergencies"](#)

Members considering participating in Price Cap Scheme cargoes are recommended to read these documents.

Under the US Price Cap Scheme, it will be lawful for US persons to transport and provide services for the transportation of Russian origin Crude oil to countries outside the EU / G7 coalition provided that the price paid for the oil is at or less than the Price Cap from the point at which the Crude Oil is sold by a Russian entity for maritime transport until the first landed sale after passing customs clearance in a jurisdiction other than the Russian Federation.

Shipowners and service providers must take certain steps to check the price of the Crude Oil for this period. The nature of those steps depends on the proximity of a party to the sale contract

with those having access to the price subject to more onerous obligations. For this purpose, the EU/ G7 coalition deems parties engaged in the oil shipment to fall into one of three “Tiers”. More extensive checks are expected of those falling within the definition of a Tier 1 Actor than those of a Tier 2 or 3 Actor. Tier 3 Actors are those without direct access to information on the price of a cargo and will include P&I Clubs and Shipowners. Charterers may also be considered a Tier 3 Actor but could also be a Tier 2 Actor or even a Tier 1 Actor depending on their proximity to and their knowledge of the sale contract.

Parties engaging in the Price Cap Scheme are also obliged to keep records of the transaction including written statements or evidence (“Attestations”) obtained from those with whom they contract that the price paid for the cargo complies with the Price Cap. Such records must then be kept for a period of five years.

The OFAC guidance referred to above establishes a so-called “safe harbour” from OFAC enforcement for U.S. service providers that comply in good faith with the applicable recordkeeping and attestation process.

US persons must not engage in a trade that violates the EO 14701 Determination and / or seek to evade the provisions of the Determination and must report any such activities to OFAC.

### The United Kingdom

UK legislation is relevant because many marine service providers including P&I Clubs either fall within its territorial jurisdiction or have financial arrangements or contracts subject to English law.

On 1 November 2022 the UK government published the Russia (Sanctions) (EU Exit) (Amendment) (No.16) Regulations 2022 the effect of which was to broadly align UK law with that of the EU Sixth Sanctions Package published on 4 June 2022. Under Amendment No. 16 it is prohibited to provide:

- Maritime transport of Russian Crude Oil and Petroleum Products to third countries; and
- ancillary maritime and financial services for such transport.

On 4 December 2022 HM Treasury published a document titled [“UK Maritime Services Prohibition and Oil Price Cap Guidance”](#).

On the same date the UK also published a General Licence to give effect to the Price Cap Scheme <https://www.gov.uk/government/publications/russian-oil-services-ban> and again on 4 December 2022 the UK published a General Licence – Winddown to deal with transitional arrangements for handling vessels already loaded with Russian oil at the time the Price Cap scheme commences.

The effect of the UK Price Cap scheme largely mirrors that of the US but does contain some significant differences. To fall within the scope of the General Licence the price of the relevant cargo must remain at or below the Price Cap from the “...receipt of cargo on a ship up to the point

*where it is delivered and passes through customs controls in a third country or is substantially transformed into a different good in line with the non-preferential Rules of Origin”.*

As with the US Guidance the UK requires parties participating in the Price Cap Scheme to obtain evidence that the cargo complies with the Price Cap and the extent of a party's obligations in this regard depends on its proximity to the sale contract. The “Tier” structure is adopted, and the descriptions of each Tier are largely the same as for the US. Participating entities are also required to keep records of Price Cap transactions for a period of four years.

The reference to the concept of a “safe harbour” in the US Guidance does not appear in the UK Guidance. Instead, a party subject to UK jurisdiction (which includes British nationals irrespective of domicile) will need to demonstrate to OFSI “... *that they have fulfilled the requirements of the attestation process ...in a timely manner and in full to OFSI's satisfaction and undertaken appropriate due diligence...*” if they are to avoid enforcement action, where the price cap scheme has not been complied with.

It is now a criminal offence for a British company or citizen to provide financial services, funds, or brokering services to anyone globally who is transporting Russian origin Crude Oil or Petroleum Products by ship, for Russian Crude Oil Petroleum Products from a place in Russia to a third country, or from one third country to another third country, if the Crude Oil or Petroleum Product has been purchased above the price cap after the relevant dates (5 December 2022 in respect of Crude Oil and 5 February 2023 in respect of Petroleum Products). The range of enforcement action available to OFSI also includes civil fines that may be imposed on a strict liability basis, and which can be as high as 50% of the value of the breach of the Price Cap scheme.

The UK also introduces significant reporting obligations on a party participating in the Price Cap scheme. For instance, a UK service provider is required both to report any breach of the Price Cap prohibitions to OFSI and must “...*withdraw their services as soon as reasonably practicable should they suspect a breach of UK sanctions has occurred*”.

### The European Union

Like the UK, the EU is home to much of the financial and technical maritime services industry.

The EU's sixth sanctions package published on 4 June 2022 and contained in EU Regulation 833/2014 prohibited the provision of maritime services to ships carrying Russian origin Crude Oil to third countries after 5 December 2022 in respect of Crude Oil and 5 February 2023 in respect of Petroleum Products. Regulation 833/2014 and the accompanying consolidated Frequently Asked Questions (FAQs) forms the basis of the Price Cap scheme announced by the EU / G7 coalition in September.

On 6 October 2022 the EU announced the eighth sanctions package which included exceptions for transportation and associated maritime services for cargoes sold at or below the Price Cap <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:259I:FULL&from=EN>

On 3 December 2022 the EU Council published a [Decision \(Council Regulation 2367/2022\)](#) giving effect to the Price Cap.

On 3 December 2022 [Frequently Asked Questions \(FAQS\)](#) and a [guidance document](#) were published by the EU Commission setting out how the Price Cap Scheme was to be interpreted.

The EU Price Cap scheme mirrors much of that contained in the US and UK schemes. Again, there are some important differences reflecting existing EU legislation.

The period during which the Price Cap must apply to benefit from the EU Price Cap scheme is longer than under the equivalent UK and US legislation. Under the EU scheme even where the oil has cleared customs at the third country destination in circumstances where it then *"...becomes seaborne again without being substantially transformed into a different good in line with non-preferential rules of origin. (i.e. without being refined) ... the price cap will still apply."*

Again, parties are expected to obtain appropriate attestations of cargo price the nature of which will depend on which Tier they fall into. The definition of the Tiers is the same as that adopted by the UK and US with shipowners and P&I clubs identified as Tier 3 Actors. The FAQs go on to say that: *"In cases when an EU operator without direct access to price information reasonably relies on an attestation, after performing appropriate due diligence, and such an attestation was falsified or provided by illegitimate actors, the EU operator would not be considered in breach of the price cap provided it has acted in good faith."*

Parties are required to keep records of Price Cap transactions for a period of five years.

There had been concern about how Article 3n 7 of EU Regulation 833/2014 would be interpreted as it had appeared to prohibit the provision of financial and technical services to a vessel found carrying oil at a price that exceeded the Price Cap in perpetuity. Interpretation of the article is addressed by FAQs 32-34 which explain that in respect of non-EU vessels such a prohibition will be limited to a situation in which the Price Cap was intentionally breached and the prohibition on the provision of maritime and technical services to subsequent voyages applies only to Russian cargoes and for a period of 90 days. EU vessels that breach Article 3n 7 will be dealt with in accordance with the relevant Member State law.

### Transitional arrangements

All three legislatures provide for a 45 day winddown period expiring on 19 January 2023 for vessels carrying Russian Crude Oil at the time Price Cap scheme commences. The exact timings at which the winddown period commence and expire differ slightly between the three jurisdictions.

**Under UK law P&I Clubs may only provide cover to a shipowner or charterer that has loaded Russian Crude Oil prior to 12:01 GMT 5 December 2022 where that shipowner and / or charterer has provided the club a Date Attestation, which confirms that the cargo was fully loaded prior to 05:01 GMT 5 December 2022 and will be discharged prior to 05:01 GMT 19 January 2023.**

**To enable the club to continue to provide cover, shipowners and charterers currently carrying Russian Crude Oil must comply with this requirement by completing the form of attestation set out in Annex I to this circular and return it to the club as soon as possible.**

### Form of Attestation required

Shipowners are considered Tier 3 Actors by all three jurisdictions. As such a Shipowner must obtain a contractual commitment from its contractual counter party – usually the charterer – that its counter party has committed not to purchase Crude Oil or Petroleum Products above the Price Cap. Such an Attestation may be a stand-alone document or included within a wide contract.

All three jurisdictions provide draft attestation wordings which may be adapted to particular contracts.

Charterers may be Tier 3 or more probably Tier 2 Actors depending on their role in the sale contract. Exceptionally they may be Tier 1 Actors particularly where they are a party to the sale contract or benefit directly from it. As such the Attestation obligations are more onerous. As Tier 2 Actors they will be required to obtain details of the price under the contract and make it available to other parties on request. If that information is not available commitments not to purchase oil above the Price Cap will need to be obtained. Additional reporting obligations will apply, including but not limited to where the Tier 1 counterparty is subject to the jurisdiction of the UK.

### Record Keeping

All three jurisdictions require parties participating in the Price Cap scheme to keep records. In the case of the UK records must be kept for four years. In the case of the US and EU that period is five years. The extent of the record keeping is determined by a party's status in the Price Cap transaction – i.e. whether they are a Tier 1, 2 or 3 Actor.

### Club Cover

International Group clubs can provide cover to vessels engaged in the lawful carriage of Russian Crude Oil or Petroleum Products in accordance with their rules. To engage in such lawful carriage an insured shipowner or charterer must comply fully with the requirements of all the Price Cap schemes, conduct appropriate due diligence and adhere fully to the Attestation processes.

Members should note the requirements of all three jurisdictions when carrying Russian origin Crude Oil or Petroleum Products and must be prepared to provide their P&I club with a copy of the Attestation on which they rely to perform the voyage upon request.

To comply with the Price Cap scheme Clubs are required to withdraw cover in circumstances where there are reasonable grounds to suspect that the Price Cap attestations provided to a shipowner or charterer are false and / or where the cargo is sold after the voyage has commenced at a price greater than the Price Cap.

In all circumstances, Club cover is conditional upon strict adherence to the Price Cap scheme. Those Clubs subject to UK and US law are also obliged to notify their respective regulators of any suspected breach of the Price Cap scheme.

Clubs will now review their existing sanctions exclusion clauses to ensure that they comply with the Tier 3 Attestation requirements in light of recent legislation and guidance.

**Members should note that from 05:01 GMT 5 December 2022, P&I cover for Russian Crude Oil Price Cap cargoes is conditional upon the unit price of the Russian Crude Oil supplied or delivered, or being supplied or delivered, being at or below the Price Cap.**

**Owner and charterers Members that intend to carry Russian Crude Oil or Petroleum Products in accordance with the Price Cap scheme should complete the form of Attestation set out in Annex II to this circular and return it to their club as soon as possible.**

### Cover in Emergencies

Price cap legislation appears to recognise the need to ensure that sanctions do not prevent persons from responding to marine emergencies. The UK legislation has an exception for activities of persons dealing with a marine emergency that assist with prevention or mitigation of harm to human health or safety, infrastructure, or the environment; similar provisions, although perhaps of narrower scope, are found in the EU legislation; and the US General License 57 authorises maritime services transactions that are ordinarily incident and necessary to addressing vessel emergencies related to the health or safety of the crew or environmental protection.

The International Group Clubs are mindful of their direct obligations to third party victims of maritime emergencies (including coastal states) under Blue Cards issued pursuant to the CLC, Bunkers and Wreck conventions, and therefore welcome the recognition of a need to be able to respond to third party claims relating to the prevention and mitigation of harm caused by maritime emergencies.

However, Club members should be aware that if their Club incurs and is permitted to discharge blue card obligations in respect of a voyage involving unlawful carriage, the Club will be entitled to recover the costs thereof from the Member.

### Risks

The Price Cap scheme advanced by the EU/ G7 coalition (which also includes Australia) presents unique compliance challenges.

Russia is opposed to the Price Cap scheme and there is a risk that attempts to evade sanctions by creating false documentation and / or using multiple ship to ship transfers to mix and or obscure the origin of the cargo may become common place.

Whilst an Owner or Charterer may not break any law if it conducts appropriate due diligence and receives an ostensibly valid Attestation, providers of maritime services and technical assistance such as insurers, reinsurers, Flag states and banks are obliged to withdraw their services in the event they have reasonable grounds to suspect that the Price Cap has not been complied with.



Where a breach is identified after loading vessels may be left uninsured and without access to normal banking services for an extended period whilst the authorities determine how best to dispose of the cargo.

All International Group clubs have issued similar circulars.

Yours faithfully  
A BILBROUGH & CO LTD  
(MANAGERS)

## ANNEX I

Issued to:

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Name of P&I Club

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Address of P&I Club

### RUSSIAN OIL WIND DOWN ATTESTATION

1. The Assured represents and warrants that Russian oil loaded on board the [INSERT NAME OF VESSEL] (the "Vessel") was:
  - (a) loaded onto the Vessel at the port of loading prior to 5:01 a.m. GMT December 5, 2022, and
  - (b) was or will be offloaded at the port of destination prior to 5:01 a.m., GMT, 19 January 2023
2. The Assured has retained information and documentation; (i) pertaining to the details of the voyage (including the load and discharge port, and parties to the transaction); and (ii) demonstrating that the Russian oil was loaded onto the Vessel at the port of loading prior to 5:01 a.m. GMT December 5, 2022, and was or will be offloaded at the port of destination prior to 5:01 a.m., GMT, 19 January 2023; and will supply the same to the Club as quickly as practicable upon request and in no case later than five business days of the request.
3. The Assured and the Club will retain the executed version of this attestation for five years.

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Policy Number or other reference

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Insured name

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Insured address

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Represented by (name)

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Position of representative

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Signature

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Date of signature

**ANNEX II**

Issued to:

\_\_\_\_\_  
Name of P&I Club

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Address of P&I Club

**PRICE CAP ATTESTATION FOR RUSSIAN ORIGIN OIL**

1. The Assured represents and warrants that for any provision of services related to the maritime transportation of Russian origin oil or petroleum products by any party entitled to cover has been, is, and will be in compliance with the price cap policy administered and enforced by the governments of the United Kingdom, the United States, the European Union and its Member States, including their allies and partners such as Japan and Norway. The Assured represents and warrants that it has not taken and will not take any action with the effect or purpose of evading, circumventing, or attempting to violate the price cap policy.
2. The Assured shall provide to the Club information and documentation related to compliance with the price cap policy, including any relevant attestation and/or proof of reporting provided by a Tier 1 or Tier 2 actor, as quickly as practicable upon request and in no case later than five business days of the request.
3. In the event the Assured becomes aware of circumstances that provide reasonable cause to suspect that it may have been or may be involved in any activity contrary to the price cap policy, the Assured shall immediately notify the Club of such circumstances. The Club may notify relevant authorities of information that provides a reasonable cause to suspect that a violation of the price cap policy has taken place.
4. The Club shall not indemnify an Assured against any liabilities, costs or expenses where the provision of cover, the payment of any claim, or the provision of any benefit in respect of those liabilities, may expose the Club to risk of violation of the price cap policy. In the event the Club determines that a violation of the price cap policy has taken place, the Club may immediately terminate the policy and will have no liability whatsoever under the policy beyond what is permitted by applicable law.
5. The Assured and the Club will retain the executed version of this attestation for five years.

\_\_\_\_\_  
Policy Number or other reference

\_\_\_\_\_  
Insured name

\_\_\_\_\_  
Insured address

\_\_\_\_\_

Represented by (name)

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Position of representative

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Signature

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Date of signature