

Shipping needs to keep a close eye on the regulatory environment, which provides guidelines for safeguarding life, property and the environment. *Fairplay* looks at the latest developments

regulation

Sanctions watchdog 'blesses' ransoms



The US's Somali ransom vetting system turns out to have a huge loophole, reports **Greg Miller**

President Barack Obama's emergency order targeting Somalis with ties to terrorism and piracy sent shockwaves through shipping in April 2010.

Obama's ban on financial assistance to certain Somalis created a perceived threat that ransom-paying shipowners could face crippling US sanctions. But that fear proved unfounded. A system to comply with Obama's order has evolved among shipowners, insurers, lawyers and America's sanctions watchdog, the Office of Foreign Assets Control (OFAC).

When the rule first emerged, there was confusion on whether it covered ransom. It's now clear that it does. "OFAC takes the view that the order encompasses ransom payments as well as subsequent reimbursements by insurers," Seward & Kissel partner Bruce Paulsen confirmed to *Fairplay*.

There was also confusion on who was covered. Was it just US shipowners? Did it cover a non-US owner with a New York business licence? Did it cover firms with no US connection apart from the dollars paid to pirates?

All of the above, asserted



Tough talk, easy get-out:
Obama's emergency order on ransom payments hasn't stopped a single one
[Photo: USCG]

The 'ultimate insanity'

Blank Rome partner John Kimball voiced dismay on the "unbelievable" financial and legal framework that has evolved for ransom payments.

"There are now players in the industry whose job is to facilitate ransom payments, so it has become almost a vested interest – which is the ultimate insanity," lamented Kimball.

"The shipping industry, including law firms, has developed a whole system to grease the wheels to facilitate ransom.

That is definitely not the solution," he asserted to *Fairplay*.

Kimball doesn't fault the OFAC's decision to "in effect, bless payments", but he does criticise shipping for institutionalising ransom into a "modus operandi" process.

He acknowledged that owners must do everything possible to rescue crew, but noted that ransom per vessel has doubled over the past year. "I'm firmly convinced that the industry is going in the wrong direction."

Paulsen. "If there is any 'US nexus', OFAC has jurisdiction. Even if you have money in a Norwegian bank and create a pile of dollars near a Dubai airport for the purpose of paying ransom, that's sufficient to trigger OFAC scrutiny."

This broad definition of 'US

nexus' covers virtually all ransoms, prompting the question: why isn't Obama's order a dangerous legal threat to ransom-payers? The answer is that the OFAC narrowly interprets the rule to only cover payments to pirates on its sanction list, and

there are just two of those – Mohamed Abdi Garaad and Yemane Ghebreab.

This loophole has spawned a system whereby many shipowners and insurers are pre-emptively seeking 'non-rejection' of ransom payments from OFAC, equating to

a *de facto* US blessing. The shipowner provides the OFAC with due diligence on pirate contacts, then the OFAC decides whether ransom is going to an individual on its sanction list.

"We're hip deep in these things," Paulsen told *Fairplay*, disclosing that Seward & Kissel has handled more than 20 ransom requests to the OFAC since the Obama order.

"No comment," said Blank Rome partner John Kimball when asked if his firm handled OFAC vettings. "Our clients would not want us talking about this." But asked if owners should liaise with the OFAC before paying ransom, Kimball answered: "Unquestionably. The risk of not doing so is too great and the risk of OFAC declining a request is so remote."

Numerous sources confirmed to *Fairplay* that the OFAC has never blocked a ransom payment. But questions linger. Would the OFAC actually deny permission for a payment to a pirate on its sanction list? And will that list expand as more shipowners provide piracy evidence to the US government?

Kimball discounted such fears. He insisted the Obama order was driven by terrorism, not piracy, and being guilty of piracy alone won't put a Somali on the OFAC list. As with Garaad and Ghebreab, it would require ties between piracy and terrorism funding (via links to al-Shabaab or al-Qaeda).

That belief is supported by the fact that no additional pirates have been added to the OFAC list since April 2010, despite significant evidence on perpetrators provided by clients of Seward & Kissel and other law firms.

"Shipping was unanimously opposed to putting any restriction on the ability to pay ransom and the [Obama] administration heard that message," maintained Kimball. "The US has not banned ransom payments. It's looking the other way." ■