

15 April - Ransom payments could fall foul of Obama order Rajesh Joshi - Wednesday 14 April 2010 -- PRESIDENT Barack Obama has issued an executive order that would block the US property of entities determined to be contributing to the Somalia conflict, which is wrapped into the declaration of a national emergency. Under certain circumstances, entities paying ransoms to pirates could end up falling foul of this order, and see their assets frozen by the US government.

Mr. Obama said in a message to Congress on Tuesday night: Pursuant to the International Emergency Economic Powers Act and the National Emergencies Act, I have determined that the deterioration of the security situation and the persistence of violence in Somalia, and acts of piracy and armed robbery at sea off the coast of Somalia, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. The order declares a national emergency to deal with this threat. The order is not targeted at the entire country of Somalia, but rather is intended to target those who threaten peace and stability in Somalia, who inhibit the delivery of humanitarian assistance to Somalia or the distribution of such assistance in Somalia, or who supply arms or related materiel in violation of the arms embargo.

The order blocks the property and interests in property in the US of persons listed in an annex, as well as of any person determined by the Secretary of the Treasury in consultation with the Secretary of State to have conducted activities that constitute violations of the above criteria. Blank Rome partner and piracy specialist John Kimball told Lloyds List that at face value, the executive order reads like a normal blocking order primarily aimed at the militant Islamic group Al Shabab that is linked with the insurgency in Somalia.

The executive order further authorises the Treasury Secretary to block the property of any person determined to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for an entity in the annex. Mr. Kimball noted that usually in the case of ransom payments, there is no way of knowing the identity of the recipient. I do not believe the intent of this executive order, either implicitly or explicitly, is to punish ship owners for ransom payments, Mr. Kimball added. However, he agreed that in a peculiar case where the name of the recipient of a ransom payment were known, and if such a recipient featured in the annex, the executive order would have the effect of blocking the ship owner involved.

16 April Obama's ransoms order gives US wide discretion Maritime legal experts fear a deliberate lack of clarity could spell trouble for ship owners Rajesh Joshi - Friday 16 April 2010 PRESIDENT Barack Obamas executive order on Somalia and piracy is designed to allow the US government sufficient flexibility to be able to target and penalise ransom payments to pirates at its discretion, reliable sources have confirmed to Lloyds List. At the same time, well-placed sources within the administration emphasised that Mr. Obamas order was not a blanket prohibition against ransoms, and in fact was a shining example of how his administration is seeking to forge new partnerships with other nation states in tackling global challenges, of which piracy is only a symptom. Nonetheless, senior maritime legal sources expressed concern that Mr. Obamas executive order was purposefully vague and designed to plant a seed of doubt among ship owners that paying ransoms could land them in trouble. The White House executive order has authorised the Treasury Department to freeze the US property of entities determined to be contributing to

the Somalia conflict.

According to the Obama blueprint, such support would most clearly be established if a person or entity is found to have had dealings with 11 designated individuals (see box), or the militant Islamic group Al-Shabaab. In addition, the Treasury at its discretion can block the US assets of persons or entities that, in the Treasury's opinion, have engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia. In a message to Congress, Mr. Obama said: I determined that, among other threats to the peace, security, or stability of Somalia, acts of piracy or armed robbery at sea off the coast of Somalia threaten the peace, security, or stability of Somalia.

A Washington source, speaking on condition of anonymity, said: The executive order only prohibits US persons from dealing with the 11 designated individuals and the designated entity [Al-Shabaab]. It is not a blanket prohibition against ransoms. That being said, [US authorities] intend to target those who help individuals or entities that support piracy. However, the determining factor would be whether these persons freely choose to support piracy. The source was unclear in response to a specific question whether payment of ransoms amounted to freely choosing to support pirates.

Seward & Kissel senior litigation partner Bruce Paulsen said: It appears that the Obama administration has chosen to be purposefully vague. The executive order does not mention the words ransom or payments to pirates. I believe this is deliberate, to raise concern among ship owners that paying ransoms could land them in hot water. The lack of clarity in this executive order is disturbing. It appears as if the Obama administration wants to remain free to blame the victim.

The last comment is consistent with Mr. Paulsen's high-profile public speaking run stretching back to the spring of 2009, during which he has sought to hammer home the point that pirates are criminals and not terrorists. Mr. Paulsen has made the case that while current US laws allow ransom payments as long as pirates are considered ordinary criminals, re-classifying them as terrorists would immediately make these payments illegal. He added: Penalising the owner who pays ransoms is like mugging him twice. If someone holds a gun to your forehead in a dark alley, the sensible thing to do is hand over your wallet. Being punished for doing so is what it would amount to, if such ransoms were to be targeted by this executive order. Mr. Paulsen was not entirely satisfied with the administration's assurance that only persons who freely choose to support pirates would be targeted. The executive order is vaguely worded, and so is Mr. Obama's message to Congress perhaps this is deliberate, to allow the government to treat ransoms on a case-by-case basis, and construe each case as it chooses to construe it.

Blank Rome partner and piracy specialist John Kimball said: If Mr. Obama's aim was to prohibit all ransom payments to Somali pirates; the executive order would say so. It does not. Nevertheless, it does appear to extend to ransom payments should a link be established between pirates and Al-Shabaab or, indeed, any known terrorist group. There have been rumors in the industry about such ties. The groundwork appears to have been laid for a more serious US effort to penalise those who pay ransoms, in case such a link is established. I hope we will see a parallel statement from the United Nations in the near future. I also urge the US administration to be very clear about ransom payments when regulations are issued. Ship owners need clear legal guidelines when they are confronted with the terrible situation of having a vessel and crew taken hostage. Reliable sources said US government agencies are to

convene today to fine tune the Obama administrations next steps. Private parties would not be allowed into this meeting, the sources said. The sources also claimed that the UN is expected to soon issue a similar communiqué on Somalia and piracy.

The proscribed list Eleven designated individuals Abshir Abdillahi [born circa 1966] Hassan Abdullah Hersi Al-Turki [born circa 1944] Hassan Dahir Aweys [born 1935] Ahmed Abdi Aw-Mohamed [born 10 July 1977] Yasin Ali Baynah [born circa 1966] Mohamed Abdi Garaad [born circa 1973] Yemane Ghebreab [born 21 July 1951] Fuad Mohamed Khalaf [born circa 1965] Bashir Mohamed Mahamoud [born circa 1979-1982] Fares Mohammed Manaa [born 8 February 1965] Mohamed Said [born circa 1966] ... and one entity Al-Shabaab