

SANCTIONS

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SANCTIONS

A key political weapon used by governments to exert pressure on a particular country or regime to encourage a change in behaviour or compliance with certain objectives. The main sanctions regimes exist in the EU, US and UK, often implementing measures imposed by the United Nations.

Types of restrictions

Where financial sanctions apply, restrictions are placed on carrying out certain activities and will depend on the exact terms of the legislation. The most commonly applied restrictions are:

- Arms embargoes
- Visa or travel bans
- Export/import bans
- Bans on provision of specific services
- Prohibition on investment, payment and capital movements
- Asset freezes

The asset freezes and the restrictions on trades in certain goods and services are the measures which are likely to have the greatest impact on commercial organisations.

The key elements of the asset freeze are:

- All funds and economic resources of the listed individuals and entities are frozen
- No funds or economic resources are made available, directly or indirectly, to or for the benefit of the listed persons, entities and bodies

Consequences of violations

These can be severe and include:

- Criminal penalties including huge fines for businesses and prison sentences for individuals
- Reputational or commercial damage
- The costs of investigation and dealing with regulators
- Inability to make/receive payment in US dollars
- Inability to enforce contracts (including security)

Enforcement actions in 2017 over sanction and regulatory violations include Transtel, a Singapore telecoms company, paying USD12 million to settle its liability for breaching US sanctions and ZTE, a Chinese telecoms company, paying USD100 million to settle its liability for breaching US sanctions against Iran.

The list of countries on which sanctions have been imposed changes regularly. Currently it includes countries from Africa (Burundi, Central African Republic, Democratic Republic of Congo, Egypt, Republic of Guinea, Republic of Guinea-Bissau, Libya, Somalia, South Sudan, Sudan, Tunisia and Zimbabwe), Asia (North Korea), Europe (Belarus, Ukraine, Russian Federation and Crimea) and the Middle East (Afghanistan, Iran, Iraq, Lebanon, Syria and Yemen).

Tips for mitigating risk

It is essential to devise a robust and effective risk management programme. To do this you must:

- Understand and identify the risks to your business
- Conduct (and document) suitable due diligence to mitigate the risks which arise

- Get buy-in at all levels of your organisation
- Train staff and communicate your risk management effectively
- Contract on suitable terms
- Work closely with your banks and insurers
- Ensure your policy is kept up to date

Spotlight on EU sanctions

The EU imposes sanctions in accordance with the EU Common Foreign & Security Policy with the aim of maintaining or restoring international peace and security.

EU sanctions apply:

- Within the territory of the EU
- On board any aircraft/vessel under the jurisdiction of a Member State
- To any person inside or outside the territory of the EU who is a national of a Member State
- To any legal person, entity or body which is incorporated or constituted under the law of a Member State
- To any legal person, entity or body in respect of any business done in whole or in part within the EU

The EU sanctions create strict liability offences. A defence is available where the person did not know and had no reasonable cause to suspect that their actions would infringe the prohibition.

Anyone who facilitates or enables an infringement of sanctions by another person or entity, may themselves infringe sanctions. Sanctions legislation typically includes anti-circumvention provisions which are widely interpreted.

What about after Brexit?

The UK may keep many of the restrictions in place and continue adopting the EU line, as Norway currently does, because:

- The UK has a commitment to maintain national legislation to give effect to UN sanctions
- Many UK businesses will find that EU restrictions still apply indirectly
- Current UK foreign policy is broadly aligned with EU policy, and the UK has driven the debate in respect of many of the sanctions which have been imposed

Nevertheless, it is possible that in the future UK foreign policy might diverge from EU policy in relation to a particular sanctioned regime. This may happen in the context of sanctions against Russia, where aligning different EU member states' national interests made agreeing a common package of restrictions challenging.

Spotlight on US sanctions

US sanctions apply to "US persons", meaning:

- US citizens
- Permanent resident aliens

- Entities organised under the laws of the United States (including foreign branches)
- Any person in the United States

They may affect non-US companies indirectly because of a US nexus, for example:

- US directors
- US banks processing US dollar payments

In addition, US extra-territorial sanctions can apply to non-US companies and foreign financial institutions.

PENALTIES for breaching these extra-territorial measures include prohibitions on certain foreign exchange transactions and transfers of credit or payment.

Iran

On 8 May 2018, President Trump announced a withdrawal from the US participation in the Joint Comprehensive Plan of Action ("JCPOA") under which Iran agreed to curb its nuclear program in exchange for sanctions relief.

This results in the re-imposing sanctions on areas including Iran's energy, petrochemical and financial sectors, effectively a return to the pre- January 2016 US sanctions position on Iran.

What are the US Sanctions on Iran?

Secondary Sanctions

The first group of sanctions follow a 90 day wind down period (ending on 6 August 2018) and specifically target:

- Purchase or acquisition of US dollar banknotes by the Iranian government
- Iran's trade in gold or precious metals
- Sale, supply or transfer to or from Iran of graphite, raw or semi-finished metals such as aluminium and steel, coal and software for integrating industrial processes
- Significant transactions related to the purchase or sale of Iranian rials or the maintenance of significant funds or accounts outside Iran denominated in Iranian rial
- Purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt
- Sanctions on the country's automotive sector
- Activities undertaken specific to licensing issued in connection with the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services, including those undertaken pursuant to OFAC's General License

The second group of sanctions to be re-imposed following an 180 day wind down period (ending 4 November 2018) affect:

- Shipping and shipbuilding sectors
- Petroleum related activities with (among others) the National Iranian Oil Company, (the purchase of petroleum, petroleum products or petrochemical products)
- Foreign financial institutions doing business with the Central Bank of Iran (CBI) and designated Iranian financial institutions

- Provision of specialised financial messaging services to the CBI and Iranian financial institutions
- Provision of underwriting services, insurance or re-insurance
- Iran's energy sector as a whole

Russia

EU

EU Sanctions against Russia were first implemented in March 2014 in reaction to the developments in the Ukraine. On 21 December 2017, the EU economic sanctions that target the financial, energy and defence industries of Russia, as well as dual-use goods, were prolonged until 31 July 2018. There are three main restrictive areas:

In respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

EU sanctions impose travel and asset bans on designated Russian officials and companies deemed to be responsible for:

- Undermining sovereignty or territorial integrity of Ukraine
- Misappropriating state assets of Ukraine
- Deemed to be responsible for or complicit in "significant corruption"

An asset freeze (as described above) is imposed on specific individuals and entities (146 individuals and 37 entities as of 31 January 2018).

In response to the illegal annexation of Crimea and Sevastopol

No import into EU of goods originating in Crimea/ Sevastopol (or related financing/insurance). EU measures also provide that there is no supply to Crimea/ Sevastopol of goods and technology (or related finance or technical assistance) suited for use in the following sectors: transport, telecommunications, energy, exploration and production of oil, gas and mineral reserves. Finally a ban on investment in Crimea/Sevastopol.

In view of Russia's actions destabilising the situation in the Ukraine

EU regulations relating to supplies to Russia/access to debt and capital markets:

- Restrict the supply of technology for the Russian oil industry
- Restrictions on Russian companies' access to debt and capital markets (including Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB), Rosselkhozbank). OPK Oboronprom, United Aircraft Corporation, Uralvagonzavod, Rosneft, Transneft, Gazprom Neft
- Ban on services for deep water, arctic and shale oil projects (terms all defined by Regulation 1290/2014)
- Restrictions on Russian companies' access to loans and credit, except for certain trade finance and certain emergency funding

US

While the last quarter of 2017 ended with sectorial sanctions restricting new debt and equity of varying maturity levels for the Russian financial, energy and defence sectors, 2018 has seen considerable sanctions imposed on Russia.

On 6 April 2018, United Company Rusal, senior political figures, oligarchs in Russia were hit with OFAC blocking sanctions.

Primary Sanctions

The affected persons were listed by OFAC as specially designated nationals (SDNs). The sanctions (i) prohibit US persons from transacting with SDNs unless otherwise authorised by OFAC; and (ii) require US persons (including US banks) to block or freeze assets and/or property of the listed persons in their control. The restriction extends to entities owned 50% or more by one or a combination of the listed persons.

Secondary Sanctions

Non-US persons (including foreign financial institutions) face secondary sanctions pursuant to Section 228 of CAATSA for knowingly facilitating "significant transactions" for or on behalf of SDNs, (or their spouse, child, parent or sibling or entities owned 50% or more by them).

What constitutes a "significant transaction"?

OFAC takes into account seven broad factors in the determination the significance of a transaction:

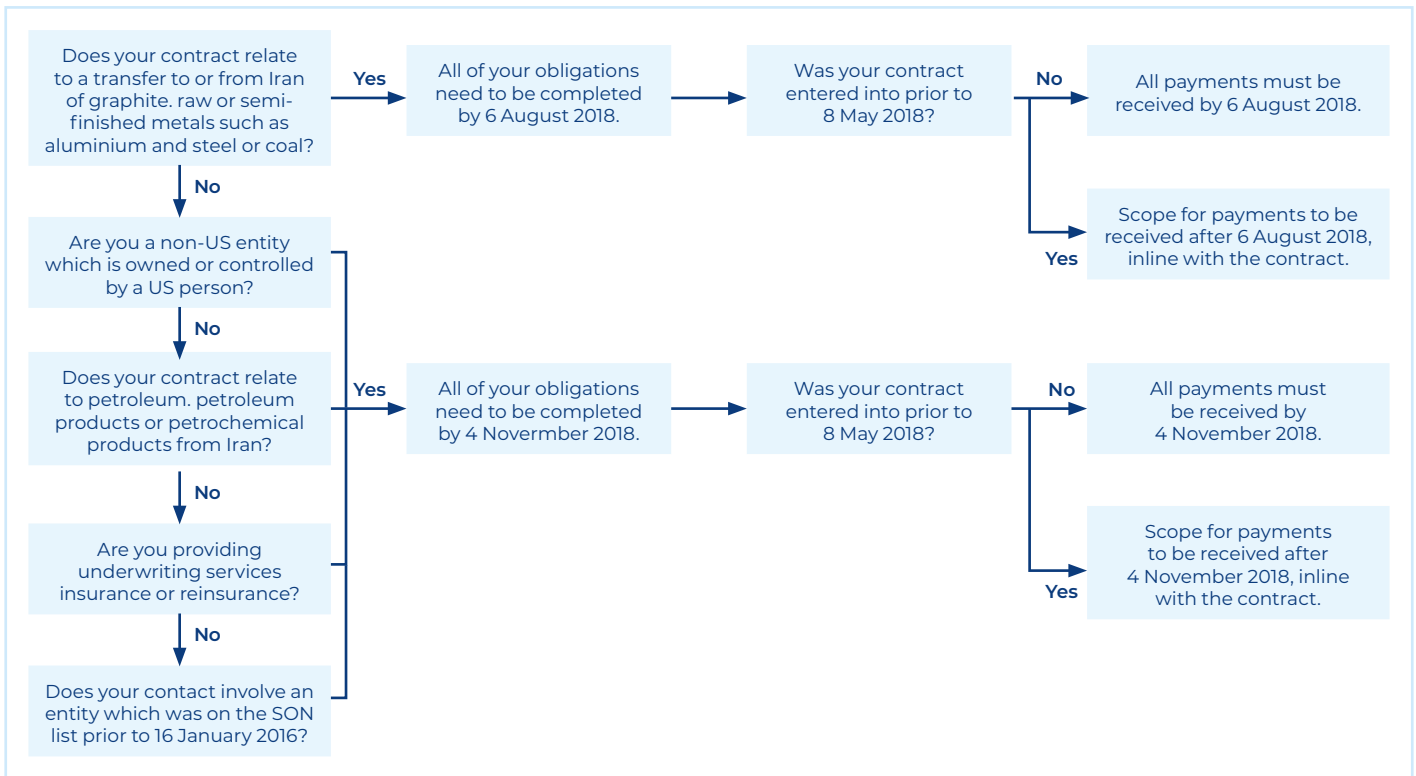
- Size, number and frequency of the transaction(s)
- Nature of the transaction(s)
- Level of awareness of the management and whether the transaction(s) are part of a pattern of conduct
- Nexus between the transaction(s) and a blocked person
- Impact of the transaction on statutory objectives
- Whether the transaction(s) involves deceptive practices
- Such other factors that the Secretary of the Treasury deems relevant on a case-by-case basis

Section 226 of CAATSA further provides that "facilitating" a transaction extends to the "purchasing, selling, transporting, swapping, brokering, financing, approving, guaranteeing the provision of services of any kind, the provision of personnel, or the provision of software, technology, or goods of any kind."

Summary of the US position

- Business dealings of non-US persons with sanctioned persons are subject to secondary (extra-territorial) sanctions
- Engaging in activities with listed individuals or entities could result in an infringement of secondary sanctions and/or lead to being listed as an SDN

Figure 1: Flowchart of Impact of US Sanctions on Iran*



*OFAC has warned in its Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA) dated 8 May 2018 that: "When considering a potential enforcement or sanctions action with respect to activities engaged in after August 6, 2018, or November 4, 2018, as applicable, OFAC will evaluate efforts and steps taken to wind down activities and will assess whether any new business was entered into involving Iran during the applicable wind-down period". Companies should refrain from conducting any new business with Iran.

This client guide was produced by HFW Partners Daniel Martin and Sarah Hunt and the HFW Knowledge Management team, should you require any further information or assistance with any of the issues dealt with here, please do not hesitate to contact them at KM@hfw.com or your usual HFW contact to discuss.



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