THE SHIPPING LAW REVIEW

NINTH EDITION

Editors
Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

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PREFACE

The aim of the ninth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry, including ocean logistics, piracy, shipbuilding, ports and terminals, marine insurance, environmental issues, decommissioning and ship finance.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development (UNCTAD) estimating that the operation of merchant ships contributes about US$380 billion in freight rates within the global economy, amounting to about 5 per cent of global trade overall. Between 80 per cent and 90 per cent of the world's trade is still transported by sea (the percentage is even higher for most developing countries) and, as of 2021, the total value of annual world shipping trade had reached more than US$14 trillion. Although the covid-19 pandemic has had a significant effect on the shipping industry and global maritime trade (which plunged by an estimated 4.1 per cent in 2020), the recovery was swift. The pandemic truly brought to

the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

Andrew Chamberlain, Holly Colaço and Richard Neylon
HFW
London
May 2022

Chapter 2

INTERNATIONAL TRADE SANCTIONS

Daniel Martin[1]

At the turn of the century, the area of international trade sanctions was niche and of limited interest to the great majority of commercial organisations. Fast-forward to today and they have become a board-level issue for almost every company engaged in international commerce because of the number of countries targeted by sanctions, the breadth of the restrictions and the consequences if they are breached. There have been a number of high-profile enforcement actions in the recent past, with fines running into millions and billions of US dollars.

The use of sanctions as a diplomatic tool is expected to continue, given (1) the developments with respect to Iran – where sanctions were seen as a key factor in bringing about an agreement to resolve the issues surrounding its nuclear programme (and which have now been reintroduced in response to US concerns) – and (2) issues with respect to Russia in both the United Kingdom and the United States during 2018. There are also measures in place against Venezuela and North Korea. New sanctions are likely to be imposed in response to other diplomatic issues. It is also anticipated that there will be increased enforcement of the sanctions already in place.

I BASIS FOR INTERNATIONAL TRADE SANCTIONS

Trade sanctions are commonly imposed by a multitude of authorities, including the United Nations, the European Union and national governments (including the United States, Switzerland, Australia and Canada).

The UN Charter gives the Security Council 'primary responsibility for the maintenance of international peace and security'[2] and requires UN members to 'accept and carry out the decisions of the Security Council in accordance with the Charter'.[3] Article 41 gives the Security Council authority to impose measures, including 'complete or partial interruption of economic relations'.

The European Union adopts sanctions and other restrictive measures pursuant to the Common Foreign and Security Policy and, in particular, Article 25 of the Treaty on European Union and Article 215 of the Treaty on the Functioning of the European Union. National legislation sets the penalties for breaching sanctions.

1 Daniel Martin is a partner at HFW. The information in this chapter was accurate as at May 2021.

2 UN Charter, Article 24.

3 id., Article 25.

To achieve specific foreign policy and national security objectives,[4] the United Kingdom implements its own domestic sanctions and other restrictive measures through a combination of statutory instruments and primary legislation (discussed in more detail below). Penalties for breaching sanctions can be either criminal or civil: the maximum criminal penalties include up to seven years' imprisonment and unlimited fines;[5] and civil monetary penalties can be up to £1 million or 50 per cent of the estimated value of the funds that breach the sanctions. Deferred prosecution agreements are also available in respect of sanctions breaches.

On 31 March 2016, the UK's Office of Financial Sanctions Implementation (OFSI) was established. The OFSI has a twofold mandate: to help ensure that financial sanctions are properly understood, but also to ensure that the sanctions are properly implemented and enforced. There is more information about enforcement in Section V.

II EXTENT OF INTERNATIONAL TRADE SANCTIONS

As at 25 March 2021, there were EU and UK restrictions in place against companies and individuals in or connected with more than 30 countries (including Libya, Venezuela and Sudan). The restrictions that were likely to have most impact on businesses engaged in shipping and international commerce were those restrictions imposed pursuant to the sanctions relating to Iran, Syria, North Korea and Ukraine (including measures affecting trade with Russia).

In January 2016, in a hugely significant development, a large number of the restrictions affecting Iran were suspended, pursuant to the Joint Comprehensive Plan of Action (JCPOA). The JCPOA, commonly referred to as the Iran Deal, was the culmination of many months of negotiation between Iran and the P5+1,[6] and is considered in more detail in Section VI. Following a period of sanction relief, many of the US sanctions against Iran were reimposed in August and November 2018 (see Section VI).

In January 2019, existing US restrictions on the government of Venezuela were extended to include the Central Bank of Venezuela and Petroleos de Venezuela SA (PdVSA). In addition, PdVSA was added to the US Specially Designated Nationals (SDN) List. These restrictions prohibit US persons from conducting virtually all dealings with these entities and have the potential to affect non-US persons (see Section III for further discussion of US sanctions and their impact on non-US persons). The US Secretary of State also has the remit to designate anyone (including non-US persons) determined to operate in the following sectors of the Venezuelan economy: gold, oil, defence and security and financial.[7] In June 2020, a number of tankers and owning companies that had engaged in Venezuela trades were added to the US SDN list for operating in the Venezuelan oil sector. Some of these designations were quickly removed through owner cooperation with the Office of Foreign Asset Controls (OFAC).

4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961516/General_Guidance_-_UK_Financial_Sanctions.pdf.

5 Per the UK Policing and Crime Act 2017 and the European Union Financial Sanctions (Enhanced Penalties) Regulations 2017.

6 The five permanent members of the United Nations Security Council (China, France, Russia, the United Kingdom and the United States) plus Germany.

7 US Executive Order 13850.

III SCOPE OF APPLICATION OF INTERNATIONAL TRADE SANCTIONS

UN sanctions do not apply directly to companies or individuals, whereas EU sanctions have direct effect on EU companies and individuals, as well as applying to any legal person, entity or body in respect of any business done in whole or in part within the European Union. UK sanctions have direct effect on the actions of UK companies and individuals (anywhere in the world) and acts by anyone that take place in the United Kingdom. Branches of UK incorporated companies are also subject to UK sanctions, irrespective of where their activities take place.

US sanctions can be split into two broad categories, namely domestic measures that apply to all US nationals and entities (including banks in the United States whose only role in a transaction is to clear US dollar payments) and measures that seek to have extraterritorial effect, by empowering US agencies to impose penalties against non-US companies, such as complete exclusion from the US banking system.

IV NATURE OF RESTRICTIONS

Virtually every sanctions programme includes an asset freeze, the effects of which are twofold: first, the funds and economic resources of the designated individuals and entities are frozen, meaning that they cannot deal with their own assets; second, it is prohibited to make funds and economic resources available, directly or indirectly, to or for the benefit of the designated individuals and entities. The United States refers to the designated individuals and entities as SDNs and publishes the SDN List of designated individuals and entities.

The designated entities frequently include politicians (e.g., government ministers) and members of the military and intelligence services, but they may also include prominent businessmen who are supporting the regime via their business activities, and the spouses and children of high-ranking politicians. For example, under the Libya sanctions, the European Union designated not only Muammar Gaddafi but also his daughter and several sons, and there are businessmen designated under the Syria and Ukraine-related sanctions.

Funds and economic resources are defined very broadly in sanctions legislation (e.g., in Article 1 of Council Regulation (EU) No. 267/2012 concerning restrictive measures against Iran) and will include virtually any asset that has any economic value. In particular, 'funds' includes not only cash, cheques and deposits at banks but also performance bonds, letters of credit and bills of lading. 'Economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, that are not funds but may be used to obtain funds, goods or services.

In addition, many of the programmes include bans on trading in specific items. Some bans are common to many programmes (such as the prohibition on the supply to the sanctioned country of military and dual-use equipment, and equipment for internal repression), but other bans are specific to the sanctions programme and demonstrate a more targeted approach.

By way of example, as of 7 April 2020, it is 'prohibited to sell, supply, transfer or export' to Syria identified equipment, technology or software that may be used for the monitoring or interception of internet or telephone communications.[8] Similarly, licences are required for

8 Council Regulation (EU) No. 36/2012 concerning restrictive measures in view of the situation in Syria (as amended), Article 4.

the 'sale, supply, transfer or export' to Russia of listed oil and gas equipment, and no licences may be granted in respect of new contracts for supply to Russian Arctic, deep water or shale projects, other than in the event of an emergency.[9]

Sanctions imposed against North Korea in April and May 2016 in response to the nuclear test conducted by North Korea on 6 January 2016 and the rocket launch conducted on 7 February 2016 specifically targeted shipping. In particular, they restricted the provision of vessels and crew to North Korea, restricted access by Korean vessels to EU ports and restricted the supply of insurance, vessel registration and vessel classification services to North Korean vessels.[10] There are also export bans on commodities such as gold, coal, iron, lead, other metals and seafood.[11]

Finally, the sanctions against Syria include wide-ranging restrictions on the availability of finance and insurance, and the sanctions relating to Ukraine include restrictions on certain Russian entities' access to debt, equity and capital markets, new loans and credit. These latter restrictions, commonly referred to as 'sectoral sanctions' require businesses to conduct due diligence not only on their counterparties (to see whether they are included on the list of entities that are subject to sectoral sanctions) but also on the specific transaction (to see whether it includes any prohibited activities).

V ENFORCEMENT OF SANCTIONS

As at 25 March 2021, the majority of high-profile international sanctions enforcement has been by US authorities, and particularly OFAC within the US Treasury. However, in the first quarter of 2020, European authorities, such as OFSI and the Dutch courts, began to show a greater appetite for enforcement, issuing large fines for sanctions breaches.

Notable examples of OFAC enforcement include fines imposed or penalties agreed with a host of international banks, including BNP Paribas,[12] HSBC,[13] Commerzbank,[14] ING,[15] Credit Suisse,[16] Barclays,[17] Société Générale,[18] UniCredit Bank AG[19] and Standard Chartered Bank.[20] In addition, penalties were imposed against businesses involved in shipping and international trade, including PdVSA,[21] the American P&I Club,[22] Dr Cambis/Impire Shipping[23] and Eagle Shipping International (USA) LLC.[24]

9 Council Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (as amended), Article 3.

10 Council Regulation (EU) No. 2017/1509 (as amended), Articles 39 and 43.

11 id., Articles 3, 16a and 16b.

12 www.justice.gov/opa/pr/bnp-paribas-agrees-plead-guilty-and-pay-89-billion-illegally-processing-financial.

13 www.treasury.gov/press-center/press-releases/Pages/tg1799.aspx.

14 https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20150312.

15 www.treasury.gov/press-center/press-releases/Pages/tg1612.aspx.

16 www.treasury.gov/press-center/press-releases/Pages/tg452.aspx.

17 https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20100818.

18 https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20181119_33.

19 https://home.treasury.gov/news/press-releases/sm658.

20 www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190408_scb_webpost.pdf.

21 https://2009-2017.state.gov/r/pa/prs/ps/2011/05/164132.htm.

22 https://home.treasury.gov/system/files/126/20130509_american_club.pdf.

23 https://2009-2017.state.gov/r/pa/prs/ps/2013/03/206268.htm.

24 https://home.treasury.gov/system/files/126/20200127-eagle-settlement.pdf.

The enforcement actions against banks generally relate to their involvement in processing payments in breach of US sanctions against the likes of Iran, Sudan and Cuba. By way of example, according to the settlement agreement that Commerzbank reached with OFAC in March 2015 and pursuant to which Commerzbank agreed to pay US$259 million to OFAC to settle its potential civil liability for apparent violations of US sanctions regulations, the bank:

a processed thousands of transactions through US financial institutions that involved countries, entities or individuals subject to the sanctions programmes administered by OFAC;

b engaged in payment practices that removed, omitted, obscured or otherwise failed to include references to US-sanctioned persons in SWIFT[25] payment messages sent to US financial institutions and bank employees;

c deleted or omitted references to Iranian financial institutions;

d replaced the originating bank information with Commerzbank's name; and

e later created a process to route payments involving Iranian counterparties to a payment queue requiring manual processing by bank employees rather than routine, automated processing.

In June 2014, BNP Paribas entered into a plea agreement with the US Department of Justice, pursuant to which the bank agreed to pay total financial penalties of US$8.9736 billion, including forfeiture of US$8.8336 billion and a fine of US$140 million. As part of the plea agreement, BNP Paribas acknowledged that, from at least 2004 until 2012, it knowingly and wilfully moved more than US$8.8 billion through the US financial system on behalf of sanctioned Sudanese, Iranian and Cuban entities, in violation of US economic sanctions. The conduct also led to penalties being imposed by other US regulators, including the New York State Department of Financial Services, which announced at the time that BNP Paribas had agreed, among other things, to terminate or separate from the bank 13 employees, including the group chief operating officer and other senior executives, and suspend US dollar clearing operations through its New York branch and other affiliates for one year for business lines on which the misconduct centred.

PdVSA was penalised for supplying two cargoes of reformate to Iran between December 2010 and March 2011. The penalties imposed on PdVSA prohibited the company from competing for US government procurement contracts, from securing financing from the Export-Import Bank of the United States, and from obtaining US export licences. These penalties did not apply to PdVSA subsidiaries and did not prohibit the export of crude oil to the United States by PdVSA.

The American P&I Club agreed to pay US authorities around US$350,000 in May 2013 to settle potential liability for 55 apparent violations of US sanctions against Cuba, Sudan and Iran. The violations concerned settling P&I claims and providing security by way of letters of undertaking and letters of indemnity. The penalty could have been as high as US$1.7 million but was reduced because of various mitigating factors.

Dr Dimitri Cambis was added to the SDN List in March 2013 on the basis that he helped the National Iranian Tanker Company (NITC) obtain eight tankers in late 2012 in a manner that concealed the Iranian origin of crude oil by obscuring or concealing the ownership, operation or control of the vessels by the NITC. Although the vessels were

25 The Society for Worldwide Interbank Financial Telecommunication (SWIFT SCRL).

purchased and seemingly controlled by Dr Cambis and his company, Impire Shipping, they were in fact said to be operated on behalf of the NITC, which at the time was on the US SDN List.

In March 2017, Zhongxing Telecommunications Equipment Corporation, a telecommunications corporation established in China, agreed to pay US authorities more than US$100 million to settle potential liability for more than 250 apparent violations of US sanctions against Iran. The violations concerned direct or indirect sale or supply of goods from the United States to Iran and the re-exportation of controlled US-origin goods from a third country with knowledge that the goods were intended specifically for Iran.[26]

In January 2020, Eagle Shipping International (USA) LLC, a ship management company registered in the Marshall Islands, agreed to pay US authorities US$1.1 million to settle potential liability for 36 apparent violations of US sanctions against Myanmar. The violations concerned dealings by Eagle Shipping's Singapore affiliate with Myawaddy Trading Limited, formerly a US SDN listed entity, both before and after its application for an OFAC licence was denied.[27]

On 31 March 2016, the OFSI was established. Part of the OFSI's mandate is to ensure that sanctions are properly implemented and enforced. The March 2015 Budget[28] referred to the UK government's intention to create the OFSI and included the following indication of the direction this might take:

> *The government will review the structures within HM Treasury for the implementation of financial sanctions and its work with the law enforcement community to ensure these sanctions are fully enforced, with significant penalties for those who circumvent them. This review will take into account lessons from structures in other countries, including the US Treasury Office of Foreign Assets Control.*

The Policing and Crime Act 2017 includes, at Section 146 onwards, powers for HM Treasury to impose monetary penalties for sanctions breaches. The penalties can be up to £1 million or, if the relevant offence involves a breach of the asset freeze, up to 50 per cent of the value of the relevant funds or economic resources, whichever is the higher. Rather than having to satisfy the criminal burden of proof (beyond reasonable doubt), HM Treasury needs only to satisfy the civil standard, namely that HM Treasury is satisfied on a balance of probabilities that there has been a breach of the EU sanctions. OFSI published guidance on the new powers in April 2017.[29]

In January 2019, OFSI announced that a monetary penalty of £5,000 (reduced from £10,000) had been imposed on Raphaels Bank for breaching the EU sanctions against Egypt by dealing with funds (only £200) that belonged to a target of the asset freeze.[30]

26 https://home.treasury.gov/system/files/126/20170307_zte_settlement.pdf.

27 https://home.treasury.gov/system/files/126/20200127-eagle-settlement.pdf.

28 www.gov.uk/government/publications/budget-2015-documents.

29 www.gov.uk/government/uploads/system/uploads/attachment_data/file/605884/Monetary_penalties_for_breaches_of_financial_sanctions.pdf.

30 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781275/21.01.2019_Penalty_for_Breach_of_Financial_Sanctions.pdf.

In March 2019, OFSI announced that a monetary penalty of £10,000 had been imposed on Travelex UK for dealing with funds of the same asset freeze target in breach of EU sanctions against Egypt.[31]

In September 2019, OFSI announced that Telia Carrier UK Ltd had been issued with a monetary penalty of £146,000 (reduced from £300,000) for facilitating phone calls to SyriaTel, a designated entity under the EU Syria regime.[32]

On 7 February 2020, the Limburg Court in the Netherlands imposed penalties of €600,000 and €4 million, respectively, on the Dutch company Euroturbine BV and its Bahrain-based subsidiary Euroturbine SPC for breaching EU and Dutch export controls on Iran.[33] The penalties represented the value obtained by each entity as a result of the illegal transport of gas turbine components to Iran without an export licence. The Court found that Euroturbine BV structured the Iranian trades via its Bahrain subsidiary in an attempt to circumvent national and international export control legislation, with Euroturbine SPC acting as the crucial link for the delivery of the goods and receipt of payment in most instances.

On 18 February 2020, the Limburg Court convicted Euroturbine BV and its subsidiary for exporting gas turbine parts to Iran without a licence and imposed further fines of €500,000 and €350,000, respectively.[34] It also imposed custodial sentences on two individuals.

In March 2020, OFSI's £20.47 million penalty on Standard Chartered Bank was upheld. The penalty was reduced from £31.5 million and was imposed in respect of Standard Chartered's breach of EU financial sanctions on Sberbank and its former subsidiary Denizbank AS.[35]

New OFSI guidance on monetary penalties for breaches of financial sanctions[36] applies as of 1 April 2021. The new guidance takes a wide view of OFSI's jurisdiction and powers, which may indicate a more robust approach towards enforcement of financial sanctions in future.

VI IRAN SANCTIONS – RELIEF AND RENEWAL

The full details of the Iran Deal under the JCPOA are outside the scope of this short chapter, but in essence the deal provided Iran with staged relief from the sanctions imposed by the United Nations and the European Union, and many of the sanctions imposed by the United States, in return for continued commitments by Iran in respect of its nuclear programme.

31 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804021/Travelex_monetary_penalty.pdf.

32 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842548/Telia_monetary_penalty.pdf.

33 www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Limburg/Nieuws/Paginas/Terugbetaling-voordeel-na-illegale-uitvoer-gasturbineonderdelen-naar-Iran.aspx.

34 www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Limburg/Nieuws/Paginas/Veroordelingen-voor-het-zonder-vergunning-uitvoeren-van-gasturbineonderdelen-naar-Iran-.aspx.

35 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876971/200331_-_SCB_Penalty_Report.pdf.

36 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/968229/MP_guidance_April_2021.pdf.

The JCPOA envisaged a 10-year time frame, with the agreement not fully performed until 2025. There were two main phases of sanctions relief, the first occurring on Implementation Day, which was 16 January 2016, and the second not occurring until Transition Day, which is in October 2023.

The first phase of sanctions relief was triggered by verification by the International Atomic Energy Authority that Iran had complied with its JCPOA commitments. This resulted in the suspension of those EU restrictions that had been characterised as being 'nuclear-related' (as opposed to 'proliferation-related') as well as equivalent US extraterritorial sanctions. It did not significantly affect the US sanctions that apply to US persons.

Some of the most significant changes from an EU perspective were the delisting of numerous individuals and entities, including Islamic Republic of Iran Shipping Lines, the NITC and Iran Insurance Company, and the suspension of prohibitions relating to the purchase, import or transport of crude oil, petroleum products, petrochemical products and natural gas of Iranian origin.

There were due to be further delistings on Transition Day, as well as further lifting of trade restrictions, but on 8 May 2018, President Trump withdrew the United States from the JCPOA. On 6 August and 5 November 2018, all the US secondary sanctions on Iran that the JCPOA had removed were reinstated.

A number of difficult challenges continued to arise even when the sanctions were suspended, including the fact that the US domestic sanctions (i.e., those that apply to US persons, and therefore US banks processing US dollar transactions) were largely unaffected by the JCPOA, with the result that US persons were still largely prohibited from trading with Iran.

The US withdrawal from the JCPOA creates new challenges for non-US businesses that want to engage in trade with Iran. They risk exclusion from US markets, and face challenges finding banks and insurers that are willing to support lawful trade with Iran. The EU Blocking Regulation was also expanded to make it unlawful for EU businesses to comply with these US secondary sanctions.

The EU continues to uphold its commitments under the JCPOA despite the US withdrawal and reports that Iran has increased its stockpiles of enriched uranium in breach of the deal. In light of this, in January 2020, the E3 (the United Kingdom, Germany and France) announced that they were initiating the JCPOA's dispute resolution mechanism in an attempt to resolve allegations of Iran's non-compliance. In January 2019, the E3 created a new payment mechanism or special purpose vehicle, called INSTEX, which is intended to facilitate financial transactions with Iran. The E3 announced that the first INSTEX transaction facilitating the export of medical goods from Europe to Iran had successfully taken place in March 2020.

In December 2020, Iran passed a new law requiring a substantial phasing up of Iran's nuclear activities in the first half of 2021. The E3 issued a statement expressing concerns about the implications of the new law for the return to the JCPOA. Iran has made assurances that all activities initiated in accordance with the new law (and all other breaches of the JCPOA) can be reversed if sanctions on Iran are lifted. At the time of writing, the US position on Iran does not yet appear to have changed substantially with the arrival of President Biden.

VII SANCTIONS – IMPACT OF BREXIT

The United Kingdom left the European Union on 31 January 2020. EU sanctions continued to have a direct effect on UK companies and individuals during the transition period, which ended on 31 December 2020. EU sanctions no longer have any direct effect on UK companies or individuals. Instead, UK sanctions regimes are currently in force under the Sanctions and Anti-Money Laundering Act 2018, the Counter Terrorism Act 2008 and the Anti-Terrorism, Crime and Security Act 2001.

It is not anticipated that these changes will have a major effect on UK businesses, as the UK measures adopted under the Sanctions and Anti-Money Laundering Act 2018 are intended to deliver substantially the same policy effects as the regimes derived from EU law (in a manner analogous to the approach that Norway and Switzerland currently adopt). The UK and EU regimes are not identical, however, with divergence already in the language used in UK legislation, the scope of the UK's global human rights sanctions, and as the United Kingdom did not implement designations corresponding to the EU's misappropriation sanctions (imposed in respect of Egypt, Tunisia and Ukraine).

Although it is possible that UK sanctions could diverge further from EU sanctions in particular areas (if, for example, the United Kingdom considers that the economic cost to the nation of adopting additional restrictions is outweighed by the benefits of those measures), it seems unlikely that wholesale differences will emerge, given the United Kingdom's long-standing support for EU sanctions, including those against Iran and Russia.

In accordance with international law, the United Kingdom will regardless implement UN sanctions into UK domestic law.

VIII COMPLIANCE WITH INTERNATIONAL TRADE SANCTIONS

Companies that are at risk of infringing sanctions by reason of the areas in the world in which they trade and operate need to have processes in place to screen counterparties and other parties involved in the transaction (including banks) to check that they are not included on any sanctions list. They also need to review the products that are being traded and be aware of any relevant restrictions.

Finally, they need to work closely with their banks and insurers to check that those institutions can support the trade, and they need to think carefully about contractual protections to deal with existing and future sanctions risks.

Appendix 1

ABOUT THE AUTHORS

DANIEL MARTIN

HFW

Daniel Martin read law at Downing College, Cambridge, and has been a partner at HFW since April 2013. He advises shipowners, operators, freight forwarders, insurers and brokers on a host of regulatory and compliance issues, including international trade sanctions, export controls, customs and anti-corruption legislation. He advises on all aspects of EU and UK legislation, and is familiar with the application of US sanctions to non-US persons.

Daniel initially specialised in advising clients on disputes arising from charter parties, bills of lading, marine insurance and logistics operations, and he uses that experience and expertise to provide detailed, practical advice that is tailored to clients in the shipping, logistics and marine insurance sectors.

As well as advising clients on the impact of international trade sanctions in particular circumstances, including ways to engage effectively with regulators, Daniel also advises on compliance procedures and controls that shipowners, logistics companies, banks, insurers and brokers should adopt to minimise risk. He regularly presents to insurers and others on recent developments in sanctions legislation and enforcement, and contributes to industry publications. Daniel also advises extensively on anti-corruption legislation, and his clients include the industry's Maritime Anti-Corruption Network.

Daniel is ranked in *The Legal 500* and he was featured in *Acritas Star Lawyers*, in which clients described him as 'down to earth, commercially minded, understands my business and thinking outside the box'.

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