

# ‘A key market for our company has just had sanctions imposed on it. What do we do?’

Daniel Martin and Anthony Woolich suggest a simple but effective procedure for responding to the news that existing contracts may be impacted by sanctions.

It was the Global Compliance Officer's worst nightmare. Of course she knew what sanctions were, and she'd worked with her business colleagues in various departments carrying out proper due diligence to make sure that they never traded in breach of sanctions – but the sanctions had never had a huge impact on the business, as they hadn't been targeted at any of the markets in which the company operated.

Now, suddenly, she'd found herself summoned to a hastily arranged board meeting where all eyes were on her.

Sanctions had just been imposed by the EU and the US against one of their most important markets, where they had orders to fulfil, suppliers to pay, and shareholders to satisfy. This was no longer about making sure that they were not impacted by sanctions, this was about managing a situation where sanctions directly impacted on them.

She needed to explain to the rest of the business what they needed to do, in a clear, straightforward way, so that they could focus on the key issues.

Fortunately, there was time for a quick phone call to their external lawyer before the meeting.

‘IRAN,’ the lawyer said.

‘No,’ the Global Compliance Officer interrupted, ‘it's not Iran. We never did business in Iran.’

‘I know,’ replied the lawyer. ‘But it's a helpful way to remember what you need to do, and it applies whichever sanctioned country you're dealing with.’

By “IRAN”, I mean

Identify,  
Review,  
Analyse,  
Notify.

‘These,’ said the lawyer, ‘are the four elements you need to focus on.’

‘You need to *identify* any contracts or other transactions which relate directly or indirectly to the sanctioned country, or which have any potentially sanctions-related element. That way, you know your exposure and you can start to manage the process. You need to impress on the business at the outset the need to tell you about all of the trades and other activities

in or with the sanctioned country – they must not hold anything back, as that will make the process more difficult and challenging in the long run.

‘You need to *review* your current and future performance obligations under those contracts – delivery of cargoes, payments, etc – and whether the new

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sanctions impact on them. What is it that you actually have to do under your current contracts. And by when? This will allow you to plan and prioritise the most urgent cases.

‘You need to *analyse* the contract terms to see what your legal position is, in light of the new sanctions. You are looking to see whether there is any wording or other contractual mechanism that will allow you to manage the situation and avoid a dispute.

‘Start by looking for a specific sanctions clause. This may include warranties from your counterparty that the trade does not infringe sanctions and, more importantly, it may include some form of break clause. At the most extreme end of the spectrum, that would allow termination of the contract. But even if it doesn't, it may allow suspension of your obligations, or give you a liberty to perform the contract in another way, and that may be enough to deal with the short-term issue. The more options you have, the better.

‘Remember to consider not only your obligations (for example, to deliver a cargo), but also the obligations of the companies which you rely on: Is there a sanctions clause in your contract with them which they can exercise and which will leave you exposed to your customer because you can no longer perform?

‘If there is no specific sanctions clause then you'll need to rely on more general wording. For example, you should check whether the contract includes a general warranty that the trade is lawful or a clause which requires compliance with laws. If not, we can think about other options, like arguments about illegality, frustration, and *force majeure*. Those arguments will not be straightforward, and will depend on the facts, so you need to gather as much information as you can to understand exactly why you don't want to perform: Is it illegal, or is this an internal policy decision? Are you actually prohibited from performing, or is this something which your bank or another third party is insisting on?

‘If there is no clause, what are the consequences of breaching the contract? How will you manage that exposure? You may want to raise the issue with your counterparty at the first opportunity and agree a joint approach.

‘Finally, you need to *notify* the business of the new corporate policy with respect to future transactions with the sanctioned country. Make sure people know that the situation has changed and that they must proceed with caution. Also think about what you might need to say to your bank and insurers, as they will have their own sanctions concerns.’

At the board meeting the CEO was reassured. ‘Great job. We have a plan and we know what we're going to do. Let's get on with it, everyone.’ ■



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