



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, Ivory Coast (Cote d'Ivoire), 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.

- 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 16th January 2016 (Implementation Day) a large number of international sanctions against Iran were lifted. The EU and the US complied with their respective commitments under the Joint Comprehensive Plan of Action (JCPOA) to remove a host of sanctions, meaning that a wide range of commercial activities with Iran which were previously prohibited are now permitted.

What EU sanctions remain?

Not all EU sanctions have been lifted, some restrictions remain, so due diligence remains crucial.

Summary of the key changes for non-US persons:

Sanctions Lifted	Authorisation needed	Prohibited
Crude oil, petrochemicals and gas	Software designed for use in Iran's nuclear or military industries	Items on the Missile Technology Control Regime List
Gold, precious metals, diamonds, banknotes and coinage	The supply of graphite, raw and semi-finished metals	Dealing with sanctioned entities and individuals
Gas and oil equipment/technology	Items listed in the Nuclear Supplies Group List	
Transfer of funds and providing financial services	Listed items (including dual use items) that could contribute to activities inconsistent with the JCPOA	
Loans or credit to persons involved in oil and gas or petrochemicals		
Certain dual use items		

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

Summary of the US position

- Most of the secondary sanctions targeted at non-US persons (extra-territorial sanctions) have been lifted.
- Sanctions targeted at foreign entities owned or controlled by US persons have been reduced.
- Most primary sanctions (those applicable to US persons and US companies), including asset freezes and restrictions on certain goods remain unchanged.

Non-US businesses should consider the last point carefully to ensure they are not affected by, for example, making/receiving transactional payments in US dollars.

IRAN SANCTIONS: Top 10 things to consider:

1. Are any US persons involved?
2. Do any payments need to be made in US dollars?
3. Does the transaction involve the supply of any US origin goods or goods with US content?
4. Is your Iranian counterparty, or any other party involved in the transaction (e.g. a port operator or agent) still included on an applicable sanctions list (or is owned or controlled or acting on behalf of such an individual or entity)?
5. Have you checked that the cargo is no longer subject to any restrictions?
6. Can you document and evidence the checks which you have carried out?
7. Do you have any pre-existing banking covenants or other contractual warranties or restrictions (e.g. trading limits or policy restrictions) which limit your ability to trade with Iran?
8. Have you spoken to your bank and insurers and confirmed that they are prepared to support the transaction, in respect of payment and unqualified cover?
9. Have you considered how you would deal with any claims from third parties in Iran if those third parties are still included on an applicable sanctions list?
10. Do you need Iranian law advice, e.g. on the local requirements to sell your goods in Iran?

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; or
- Misappropriating state assets of Ukraine; or
- 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

Sanctions on Russia focus on the financial services, energy, and defence industries.

The US Sectorial sanctions target key elements of the Russian economy and restrict the following:

- New debt or equity with maturity over 90/30/14 days (depending on when it was issued) for certain financial service sector entities including Bank of Moscow, Gazprombank, Sberbank, Vnesheconombank, VTB Bank.
- New debt longer than 90/60 days (depending on when it was issued) for certain Russian energy sector entities including: Gazprom Neft, Novatek, Rosneft, Transneft.

- New debt longer than 30 days maturity for certain Russian defence and related sector entities including Rostec.
- The provision of goods, services (except for financial services) or technology in support of exploration or production for deepwater, Arctic offshore or shale projects including: Gazprom Neft, Gazprom, Lukoil, Rosneft, Surgutneftegaz.

There are also US sanctions against Russia which have extra-territorial effect, pursuant to the Countering America's Adversaries Through Sanctions Act (CAATSA).

This client guide was produced by HFW Partner, Daniel Martin 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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Hypothetical post-Brexit scenario

A UK subsidiary of a Singaporean company, which employs French and Australian nationals in its London office, ships goods on Maltese flagged vessels, relies on finance from a German bank, has insurance cover in place from a Swiss insurer and trades in US Dollars.



If the entity wanted to trade with Iran



Before the vote to leave

It would have to consider:

- Singapore sanctions (if its parent company is involved in the trades).
- EU sanctions (by reason of its UK incorporation and physical presence, French employees, German bank and Maltese flag state).
- Canadian and Australian sanctions (because of those nationals).
- Swiss sanctions (because of its insurer).
- Both US primary sanctions (because of the US Dollars) and US secondary sanctions (because those apply even where there is no US nexus).

After the UK leaves

- Sanctions imposed by the EU may no longer apply to the business directly (i.e. by reason of the UK incorporation and physical presence), but they will continue to apply indirectly, because of the French employees, German bank and Maltese flag state.
- The US, Swiss, and other sanctions will continue to apply whether or not the UK is in the EU.



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