NOVEMBER 2011

INTERNATIONAL COMMERCE

Strategic, regulatory and operational insight from Holman Fenwick Willan

NEW ENERGY FRONTIERS

THE BATTLE TO MEET SOARING DEMAND

THE GROWING IMPACT OF SANCTIONS

HEDGING COMMODITIES

DIRECTORS UNDER PRESSURE

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WELCOME

The rapid changes brought about by the ongoing downturn continue. As the world's energy demand increases and environmental awareness grows, we examine the energy industry on page 6, analysing moves into new energy sources and the increasing importance of Africa. On page 18 we gain a valuable insight from CLP, an energy business with a longstanding presence in Asia.

Amid an influx of cheap products from new industrial powerhouses, legislation has made entry to Europe's markets increasingly difficult for some non-EU based manufacturers, leading to charges of 'Fortress Europe'. On page 12 we look at the facts behind these allegations.

Given the complexity of modern commerce, political sanctions can cause real headaches for business. We explain the risks on page 22.

The liabilities of Directors are considered on page 16, and we provide an edifying explanation of the use of commodities hedging to reduce exposure to the volatile commodities markets on page 10.

Clearly, we live in challenging times and we hope this issue of *International Commerce* offers assistance for global businesses in steering a path through the many obstacles in this uncertain environment.

RICHARD CRUMP
SENIOR PARTNER
HOLMAN FENWICK WILLAN

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If you have any questions about the issues raised in this publication please contact Tania Phayre, Holman Fenwick Willan, on +44 (0)20 7264 8546

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INBRIEF

Emerging legal and commercial issues for international business

Emissions rules for shipping

The International Maritime Organisation (IMO) on 15 July adopted mandatory measures to reduce emissions of greenhouse gases from international shipping. In similar news, the European Commission announced a proposed amendment to the EU Sulphur Directive to bring it into line with the IMO's sulphur regulations.

The new IMO regulations make the Ship Energy Efficiency Management Plan (SEEMP) and the Energy Efficiency Design Index (EEDI) mandatory for all new ships. The IMO estimates that the regulations will cut greenhouse gases by 45-50 million tonnes each year by 2020 and will save ship operators $5 billion in fuel costs every year. But there is concern that influential countries such as China, Brazil and Saudi Arabia voted against the amendments.

The regulations will apply to ships of at least 400GT and are expected to come into force on 1 January 2013. However, a waiver may be granted to delay implementation for up to four years for new ships registered in developing countries. The EEDI sets a minimum efficiency standard for new ships but permits a choice of technologies.

The SEEMP sets out various energy management methods, such as increased fuel efficiency and improved voyage planning. It requires ships to keep a ship-specific SEEMP on board. The IMO is working on guidelines for monitoring and enforcement.

EEDI figures will be a major concern in ship construction – the importance and potentially the cost of sea trials will increase.

The EC's steps to align the EU's sulphur regulations with the IMO standards on sulphur content, announced on 15 July, proposed amendments that are expected to reduce sulphur emissions from shipping by up to 90% and fine particle emissions by up to 80%.

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The new provisions are likely to put significant pressure on shipowners, and the capacity of oil refineries may be inadequate for the required amounts of low sulphur fuel. Shipowners should take account of these new regulations in negotiating or renegotiating the costs in charterparties, and should also consider a cost-benefit analysis to decide the best way to meet the requirements.

Supreme Court's decision allays arbitration fears

An important decision in the world of arbitration has helped allay concerns about an apparent threat to restrictions on the nationality of arbitrators.

The UK Supreme Court's 27 July judgment clarified issues raised by the earlier Court of Appeal decision regarding the ability of parties to exclude certain categories of person from appointment as arbitrators. The decision in *Jivraj v Hashwani* in fact dealt with discrimination on grounds of belief or religion.

The Court of Appeal decision restricting the ability of parties to exclude certain persons from appointment as arbitrators appeared to threaten arbitration agreements' nationality restrictions, designed to ensure neutrality and impartiality.

The specific concern that the Supreme Court considered arose from the Employment Equality (Religion or Belief) Regulations 2003, which made unlawful any arrangement to discriminate on grounds of – among other things – religion when choosing persons offering personal services.

The Supreme Court found that there was a clear distinction between those who are employed and those who are "independent providers of services who are not in a relationship of subordination with the person who receives the services". The objective of the relevant EC legislation was to give protection against inequality and discrimination to those who might be vulnerable to exploitation. On the contrary, arbitrators are not in a relationship of subordination with the parties who appoint them and receive their services.

This decision was only ever applicable by analogy and so perhaps gave only limited cause for concern. Nevertheless, the Supreme Court decision has helped to allay any residual fears among the arbitration community that London may have lost some of its appeal as a centre for the resolution of international business disputes.

Crown and sovereign immunity in Hong Kong

The Hong Kong courts have recently handed down landmark judgments on the application of crown immunity and sovereign immunity.

Sovereign immunity is based on the principle that the courts of one state may not exercise jurisdiction over another state. Crown immunity is based on the principle that the crown enjoys immunity from being sued in its own courts.

In *Democratic Republic of Congo v FG Hemisphere Associates LLC*, the Hong Kong Court of Final Appeal (CFA) held that absolute sovereign immunity applies in Hong Kong unless the state party waives immunity. This decision followed the Court of First Instance decision of Justice Stone in *Hua Tian Long* that absolute crown immunity applies to the Central People's Government (CPG) of the People's Republic of China (PRC) in Hong Kong.

The ruling that the CPG of the PRC is entitled to absolute Crown immunity in Hong Kong is based on a contentious finding that crown immunity survives in post-colonial Hong Kong.

A foreign claimant with a judgment validly obtained against a state party may need to establish the state party has waived its entitlement to immunity. The findings of the *CFA in FG Hemisphere* suggest that contractual waivers, such as exclusive jurisdiction clauses or express waiver clauses, may be insufficient.

FG Hemisphere should not affect the choice of Hong Kong as the seat of arbitration, as the CFA confirmed an agreement to arbitrate does not constitute a submission to any state's jurisdiction. However, enforcement of an arbitral award against state assets may need to occur in a jurisdiction that does not recognise absolute sovereign immunity. An institutional unit or department of a state or the crown would appear to be protected by immunity but the determining factor is likely to be the state or crown's degree of control.

The full commercial implications of the *FG Hemisphere* and *Hua Tian Long* rulings are still to be determined.

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Australian coal plight

Floods earlier this year have severely impacted on production and infrastructure in Australia's coal industry for the second time in three years, causing an estimated 30 million tonne downturn in Queensland's coal production during the fiscal year 2010-11.

The development of the Galilee and Surat basins is forecast to bring an estimated 5 billion tonnes of thermal coal onto the market in the coming years. But the recovery and development of Australia's coal production is uncertain. As demand and supply dynamics across the Asia Pacific region continually shift, many are keeping a close eye on Australia's role in meeting soaring demand for coal, and how a potential wealth of opportunities in this evolving industry can be maximised.

James Donoghue, a Holman Fenwick Willan Partner with more than 20 years' experience in the energy and resources sector, offered valuable analysis at the seventh Annual Coaltrans Australia conference, held in Brisbane on 22-23 August. He spoke about the changes in the country's coal industry, focusing on M&A activity and its impact on the industry, asking whether this trend would continue to increase. Performing due diligence and negotiating the process of acquisition, and the criteria and the strategies shaping M&A activity were also discussed.

EVENTS DIARY

Piracy: Protective Measures
Geneva, 8 November 2011
Holman Fenwick Willan Associate Sally Buckley will present a seminar on legal issues related to the use of armed guards aboard commercial vessels.

Port Finance International
London, 9-10 November 2011
Holman Fenwick Willan Associate Matthew Gore will be basing his presentation at this annual ports conference on the recently published *Global Investment in Ports & Terminals* report.

Mining Seminar
London, 17 November 2011
Holman Fenwick Willan will be co-hosting a seminar aimed at mining companies with Moore Stephens and KBC Technologies, focusing on raising finance and dealing with associated issues.

Maritime Law Asia
Singapore, 22-25 November 2011
Holman Fenwick Willan Partners Paul Aston and Chanaka Kumarasinghe will host a workshop on protecting shipowners' and shipbuilders' interests during this annual shipbuilding focused event.

Conference on Strikes, Riots & Civil Commotion, Political Risks & Terrorism Insurance
Dubai, 23 November 2011
Holman Fenwick Willan Partner Costas Frangeskides will present at this conference focusing on the challenging and rapidly changing insurance industry environment.

Cross-border Insolvency
Geneva, 13 December 2011
Holman Fenwick Willan Partner Noel Campbell and Associate Richard Brown will present a seminar on cross-border insolvencies, including protocols and co-operation between courts of different countries.

For further details, please contact Sarah Vertanness, Events Executive:
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NEW ENERGY FRONTIERS

Soaring demand set against a backdrop of tighter legislation, political and financial volatility, and a bottleneck of skilled labour, materials and equipment mean dramatic changes in the global energy industry.

WORDS GAIL RAJGOR

Amid an unsettled energy landscape, new directions are being vigorously explored, although companies need to exercise caution and due diligence more than ever.

The turbulence of the past few years is not over by any means – energy demand continues to boom and competition is increasing. In some regions, adverse weather has wreaked havoc, forcing many in the sector to shoulder additional costs. Meanwhile, a shake-up of policies and key markets is under way, creating new opportunities as others disappear or become restricted. Meanwhile, the economic crisis continues to bite and price volatility remains rampant.

For all players, "mitigation of risk must be considered very carefully at the contract stage", warns Andrew Williams, an Associate in the trade and energy group of Holman Fenwick Willan. Particular attention should be given to contract length, wording, pricing, and termination provisions, he says.

"Contracts must be drafted carefully. Long term fixed price contracts can pose significant risks to both buyers and sellers," Williams says. Greater vulnerability to market fluctuations means contracts should include provisions for adjusting prices by reference to prevailing conditions.

To weather potential storms, he says companies should "focus on their key sectors and build strong, long lasting business relationships so that they can ride out any economic uncertainty, pay close attention to market trends and prepare for the worst".

Shaping the future

The market is being shaped by a number of key events. Public confidence in the oil, gas and nuclear sectors is at an all-time low, rocked by three key disasters: the Montara and Deepwater Horizon oil spills, and Japan's Fukushima nuclear plant disaster.

"Mitigation of risk must be considered very carefully at the contract stage."

ANDREW WILLIAMS, HOLMAN FENWICK WILLAN

The industry as a whole is now "subject to greater operating costs and increased political and regulatory scrutiny", says Barry Stimpson, Partner at Holman Fenwick Willan.

Governments worldwide have instigated reviews of industry health and safety, and construction and operating procedures, tightening up regulations. In a few cases, as with Germany's decision to exit nuclear completely, national energy strategies have been completely rewritten, driving an additional demand for gas and renewables to fill potential shortfalls.

Add a political crisis that has swept across the pivotal Middle East oil region, uncertainty about post-2012 Kyoto climate change mitigation arrangements, and the case of stolen carbon credits in Europe – which undermined confidence in emission trading markets (a critical driver for renewable energy investment) – and the energy market is facing sweeping changes, tougher trading conditions, and a risk list greater than ever before.

The economic crisis, squeezing private and public financing, has exacerbated this, in turn affecting

• **Gail Rajgor** is a former senior editor of *Windpower Monthly* and writes for *Inside Energy*

Concerns over nuclear energy are driving fresh demand for gas

CORBIS

project development and operational supply chains across the board. "Project financing is generally harder to secure than before the downturn and, even where available, the terms of lending are not as favourable as they once were," says Williams.

Renewables hit

The renewable and green energy sector is suffering most, as is typically the case during an economic downturn, says Williams. Governments' enormous debts, particularly in the eurozone, compound this further, agrees Louis Blanchard, Associate Director of Taylor-DeJongh, an independent investment banking firm serving traditional and renewable energy sectors.

Renewables subsidies have been cut and policy support conditions revised as governments seek to reduce debt levels, explains Blanchard. The solar industry has been hit hardest, particularly in Europe, which had been the sector's leading market. Countries across the region, including Germany, France and the UK, have cut solar tariffs by up to 72%. He calls this "a disaster for the industry".

Williams concurs: "Compared to traditional energy sources such as coal, oil and gas, green energy is more expensive and riskier, particularly solar. Without government subsidies, these projects become more expensive and less attractive." The US Congress, he points out, recently voted to cut climate and green energy funding in a bid to reduce its vast debt.

The only reasonably safe part of the industry is wind power. As the most mature and cost-efficient of the renewables technologies, it is backed by strong policies and continues to attract investors. "That industry is now really taking shape and clearly the development is going to be huge," says Robert Follie, a Holman Fenwick Willan Partner.

"The major frontier is going to be offshore," says Blanchard. "We are seeing our clients from the oil and gas sector trying to take significant positions in wind." The big challenge for wind is to produce electricity at a non-subsidised price, which will come in the next few years through ongoing technological innovation, he suggests, particularly on the installation and operation and maintenance side.

Wind has suffered less than other renewables as it is a mature and cost-efficient industry

Some progress has been made, but "new tools still need to be created to install and maintain offshore wind parks," Blanchard says. The industry is learning significant lessons already from the oil and gas sectors; for instance, as much manufacturing as possible should be done on land, with only turbine assembly taking place offshore.

From a financier's point of view, Blanchard says, installation and operation needs to be more cost-effective because this part of the process can "significantly affect the profitability of the project". The perception of this technology as high risk is one of the reasons that companies can struggle to raise finance for offshore wind.

Improvements in installation and maintenance costs will help progress this situation significantly, Blanchard says. But the costs associated with grid connection must also be factored in sensibly by all renewable energy project developers. "Connection to the grid is always a big deal," he warns. "It's usually more expensive than expected, it's always more complicated, and grid capacity is still insufficient, so it's definitely something that needs to be taken into account when a project is negotiated."

Blanchard and Follie agree that over the longer term, the main limitation for offshore wind is the supply chain in terms of equipment and vessels to install and service the turbines. "We are going to see the same bottleneck that exists for offshore drilling in the oil and gas sector, where delays very often come because companies cannot get the contractors, equipment and rigs for a year or two years and sometimes more," says Follie.

A new gas and oil dash

Although far from recession proof and also facing increased cost challenges and supply chain bottlenecks, the traditional energy sector is once again buoyant. "Volatility in oil prices will assist some players but not all, depending on the nature of the company's trading position and contractual exposures," says Holman Fenwick Willan's Stimpson. Falling demand for oil in the West, largely due to the economic downturn in economic activity, will be offset by Asian regional demand.

Surging demand is driving a new wave of exploration for oil and gas, says Holman Fenwick Willan Partner Hazel Brewer, a litigator specialising in shipping and offshore operations. "Coal seam gas is really gaining momentum," she says, although it is already courting controversy.

Brewer cites the push-back due to environmental concerns as the main issue. New South Wales, for example, is tightening up its licensing programmes and making it more difficult for companies to continue with testing, while elsewhere around the world potential exploration has been brought to a halt pending further investigations. The anxiety is about

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> *Everybody is chasing the same specialist services, whether personnel, equipment or specialist vessels.*
>
> **HAZEL BREWER, HOLMAN FENWICK WILLAN**

the impact of the actual gas extraction method, known as hydraulic fracturing, or fracking.

"The concerns are about the toxic chemicals that are used as part of the drilling process and about the dislodgement and interference with aquifers, which could cause huge environmental changes," Brewer explains, noting that water is a precious resource in Australia. "These fundamental concerns about the long term effect on the environment are a very serious factor for any new energy."

Meanwhile LNG goes from strength to strength, with innovative technology being invested in the first floating liquefied natural gas (FLNG) facility to be used off Australia's northwest coast. If successful, this will give rise to the potential for opening up new gas fields offshore, which have previously been considered too costly or difficult to develop. FLNG could radically change the LNG exploration and production industry for good. Plans by other oil and gas players to expand existing gas sites and install new LNG trains in Western Australia continue unabated, as they do elsewhere, in the race to meet demand.

Active in Africa

Instability in the Middle East could take up to 20 years to settle, so Africa may become the new frontier for oil and gas, Follie suggests. "When you look at the situation around the world, things are not as bad in Africa as in other parts," he says. "The political situation has stabilised, which is not obvious at first, but when you look at the 10-year trend there is an improvement. The presence of China in Africa is also creating a stabilisation effect, while the rise of prices renders projects attractive and interesting for the majors."

He concedes that Africa is still relatively volatile and that risks relating to equipment supply and logistics, costs and potential casualties are significant, especially on inland projects and in landlocked countries. Africa is a vast continent and topographically can be a hostile environment. Even so, there is still likely to be a large number of projects. The increasing involvement of the World Bank and other relevant entities gives "a sense of proper check and balance for investors", Follie adds.

Most companies active in Africa are independent firms that are well equipped technically and financially, he says. However, he adds that Africa is also "attracting new entrants who are coming with a maverick attitude and a small company approach – this is not sufficient for the long term projects required for upstream operations".

People power and resourcing issues

"Getting qualified personnel in to service the mega-projects in Western Australia is putting pressure on all levels of the industry," says Brewer. There is a "lack of people power" and a skills shortage that is impacting the entire energy and resources industry in Australia.

"Everybody is chasing the same specialist services, whether personnel, equipment or specialist vessels," she adds, pointing out that, for example, a delay – for whatever reason – to a specialist transportation vessel or drillship can cause significant headaches for the immediate project it is servicing as well as those next in line. The vessels required for energy projects are often limited in number and availability.

There is simultaneously pressure on operators and contractors to perform and "potential for significant delays and cost blowouts" if programmes are disrupted by performance issues. Brewer warns: "Any ambiguity in contractual performance obligations or risk allocation clauses can cause problems."

Williams and Stimpson agree. "Whilst it is impossible to mitigate against every risk and eventuality, it is key that parties carefully consider contractual terms and conditions from the very outset to reduce the risk of potentially substantial liabilities," says Williams.

Insurers and policyholders need to ensure best practices are "not only adopted but enforced during the life of the project to reduce the likelihood of catastrophic failure", Stimpson advises. The current economic climate could, he notes, pressure some parties to adopt less stringent practices in an attempt to protect cash flow. The risk allocation regime in the underlying construction and operations contracts also need to be fully understood to ensure applicable risks are transferred to the appropriate insurance.

Companies should also spread their risk, says Williams: "Diversifying both the commodities in which a company invests and the companies with which it deals will help reduce the impact of damaging market developments."

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HEDGING COMMODITY RISK

Recent price volatility in the commodities markets, largely caused by the rapid development and industrialisation of emerging markets, and economic uncertainty impacting on price stability, can be counterbalanced by hedging strategies.

WORDS SOLOMON TEAGUE

Recent volatility means buyers and sellers have been unable to predict the cost of commodities, undermining efforts to plan for the future. For many, a solution has been to hedge their commodities exposures with derivatives.

"The essence of hedging is to offset risks arising out of fluctuations in raw material prices," explains Brian Perrott, Partner at Holman Fenwick Willan. If an airline was 'long' on jet fuel – anticipating a price rise – it could buy futures at the current price and sell when the price goes up, offsetting that appreciation. Conversely it can go 'short', selling jet fuel futures then buying them back cheaper if they fall.

Growing hedges

Consumers, producers, suppliers, financial institutions and investors use derivatives to hedge their exposures in commodity markets – it is a global phenomenon. A mine in Africa, for example, can hedge in much the same way as a fund manager in London, using over the counter (OTC) derivatives that are traded (and privately negotiated) directly between two parties, without an exchange or other intermediary.

But major regulatory changes under way will affect OTC trading because of a requirement that suitable OTC derivative contracts, traded between financial counterparties, be cleared and/or exchange traded.

Cleared iron ore swaps volumes, for example, reached 20,638,000 tonnes in 2010, the first full year of trading. By mid-August 2011 the volume was 22,235,500 tonnes, as reported by the Singapore Exchange and London Clearing House.

Any commodity exposure can theoretically be hedged, but less liquid commodities markets like containers and steel in specific forms, such as hot rolled coil, reinforcing bar and scrap, are more difficult. Efficient price discovery can be tricky and there can be problems closing out contracts if no counterparty to a trade is available. "Price risk exposure in these markets can be huge," says John Banaszkiewicz, Managing Director of Freight Investor Services.

"The essence of hedging is to offset risks arising out of fluctuations in raw material prices."

BRIAN PERROTT, HOLMAN FENWICK WILLAN

The instrument used will be determined by the precision of the hedge needed. Listed markets offer contracts with standardised lot sizes and durations, but OTC contracts are more appropriate for hedges over a specific duration and size, says Lauren Teigland-Hunt, Managing Partner at Teigland-Hunt LLP.

Perrott says most clients, particularly the investment institutions, make use of options, futures and swaps, and also synthetic combinations of options and futures, such as synthetic long and short and synthetic call and put, as a flexible means to hedge.

As markets mature, and as derivatives trading becomes more sophisticated, courts are adapting to keep up. "Recent, albeit relatively limited, case law indicates that the English courts are increasingly willing to allow the recovery of hedging losses when a litigant can demonstrate that the loss was caused by a counterparty's failure to perform the related physical contract," says Declan McKeever, an Associate at Holman Fenwick Willan. This arguably makes hedging more attractive, particularly to experienced traders who regularly hedge their physical positions in the commodity markets. However, in the event of non-performance of a physical contract, the defaulting party may be on the hook for related hedging losses.

In the case of *Choil Trading v Sahara Energy* Resource, which involved the sale of a cargo of naphtha, the seller (Sahara) was liable for, among other things, breach of warranty of quality.

The basic measure of loss was the value of the goods had they been sound, less whatever the buyer had sold them for. Due to a rise in the market, the buyer (Choil) managed to sell the goods on at a price in excess of the

• **Solomon Teague** has written for *International Financing Review*, *Hedge Funds Review* and *Risk*

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contract price and so apparently suffered no loss. However, Choil habitually hedged in order not to be caught with an open position in a volatile market; it was required to do so by its trade finance bank. When Choil's buyer rejected the naphtha, it was left with a long open position. Choil had hedged against its open position, so that if the market fell it would profit on the hedge, but lose on the physical side. If the market rose, Choil would lose on the hedge while gaining on the physical. The market having risen, the hedges made a loss.

The judge, on reviewing the contract, did not regard the hedging losses as consequential, indirect or special damages. Hedging was part and parcel of Choil's dealings in respect of goods unexpectedly left in its hands and was a reasonable step in mitigation of its losses under the contract with Sahara. In addition, hedging was regarded as a normal and necessary part of the trade. The hedging losses were therefore deemed as recoverable from Sahara.

Dangers

But there are dangers, particularly when speculating. The maximum loss on a long position is the price of the initial investment if its price crashes to zero. In a short futures position the maximum profit achievable is the initial investment, while potential losses are limitless. This asymmetric risk may dissuade investors, though it should not be a major problem when hedging.

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Cost is another factor. A position in the market carries a transactional cost, while an exchange traded derivative will be marked to market, with ongoing margin calls to cover any losses being incurred.

There is also an implicit cost of not hedging, making a hedge much like an insurance policy, adds Perrott. "If something goes wrong, it is likely that the cost of the hedge/insurance policy will seem insignificant compared to the losses which have been avoided."

Regulation

Cost remains a significant factor for investors, especially in the face of forthcoming regulation of the OTC derivatives and commodities markets, particularly with respect to the troubled US Dodd-Frank Act and Europe's introduction of the European Markets Infrastructure Regulation and the much maligned review of the Markets in Financial Instruments Directive.

An exception built into Dodd-Frank for end users using OTC derivatives specifically to hedge may shield such investors. "Non-financial entities that are party to a non-cleared swap with a CFTC-regulated swap dealer or major swap participant will not be subject to margin requirements," says Teigland-Hunt. The devil will be in the detail, but the desire is evident for protection of derivatives use for hedging purposes.

Yet there is likely to be a cost impact, even for non-financial counterparties, cautions Perrott. "Investment will be required in compliance and back office staff, not to mention the inevitable cost of legal and advisory fees."

The impact may not be as severe for everyone – some already comply with the latest reforms, says McKeever. Agricultural commodities traders largely exchange trade (and clear) derivatives in a highly liquid market already, for example. "While the costs may increase, they are unlikely to outweigh the benefits of any corresponding reduction in credit risk."

Freight and iron ore are ahead of some other commodities markets, being predominantly cleared, meaning regulation will have a limited impact in the shorter term. "I think we have to differentiate freight and commodities from very exotic derivatives – the kind that were blamed for the 2008 financial crisis – which are traded in huge multiples of their underlying commodities," stresses Banaszkiewicz.

The systemic risks inherent in the speculative misuse of credit default swaps and collateralised debt obligations are a world away from derivative strategies in hedging. The market is hoping that the regulators will remember that.

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TRADE WARS AND FORTRESS EUROPE

The business environment in Europe is changing on all fronts – regulatory, economic and political. But are fears about the global economy turning the European Union into 'Fortress Europe'?

WORDS GRANIA LANGDON-DOWN

From a world trade perspective, Europe is clearly fighting hard for its corner with the recent eurozone bailout, state aid for banks, tough anti-dumping measures and public procurement rules seeking reciprocity in countries whose companies want to compete for EU public contracts.

The EU is simultaneously challenging its international competitors to step up to its green agenda through its carbon tax schemes, which, from 2012, will include international aviation – a unilateral measure that has caused fury to non-EU airlines and their trade bodies (see case study, page 14). Add in changes to the political system that will strengthen the European Parliament's involvement in decision making on trade policy and it is no wonder some trading partners are crying foul.

Trade wars

Konstantinos Adamantopoulos, a Holman Fenwick Willan world trade and regulatory Partner, sees a definite shift in policy reflecting the economic situation and a determination to keep EU industries alive, come what may.

Trade wars are definitely on the agenda, he says, pointing to an increase in EU anti-dumping actions focused on unfairly low priced imports from outside the EU, which flood the market to put local firms out of business. "China is firmly in the EU's sights, with duties against pretty much everything it exports here in large amounts – textiles, steel and chemical products and recently high tech goods," Adamantopoulos says.

A product is considered dumped under World Trade Organization (WTO) rules when it is sold abroad at less than normal value. The EU, however, requires comparison with prices in a third "market economy country" for imports originating in China and other countries it deems non-market economies (NMEs).

A ruling by the WTO Appellate Body in July criticised as protectionist several laws and practices of the EU in this area. The case,

> *You have to weigh up 'Fortress Europe' against 'Fortress China' or 'Fortress US'... The EC would say it is trying to ensure businesses in Europe are not subject to unfair competition.*
>
> **SIMON BURDEN, HOLMAN FENWICK WILLAN**

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> *Ultimately, protection harms and hinders. Our idea is always to be open and reciprocal.*
> **ANTONIA MOCHAN, EUROPEAN COMMISSION**

which involved Chinese steel fasteners, is the first successful challenge to the EU's treatment of imports from NMEs in dumping investigations, and could have repercussions for orders in place against other Chinese imports. The European Commission (EC) is still analysing the ruling but has said that it is pleased the Appellate Body rejected a "great number" of China's claims.

When it comes to trade policy, the EC's rules are very clear, says Antonia Mochan, Head of Media at the EC's London office. If countries have concerns, they can take them to the WTO – they win some cases and the EC wins some, she says – so it is not a case of Fortress Europe.

"The last thing we need to be doing is retreating within ourselves," she adds. "As much as we see the single market as key to European recovery, we see open global trade as the key to the global recovery. Ultimately, protectionism harms and hinders. Our idea is always to be open and reciprocal."

However, Adamantopoulos believes defensive trade measures are likely to increase as a result of political changes and thus oddly become part of EU industrial policies. "There has been a shift in the decision making process which favours the European Commission, which has in mind more the interests of European jobs and industry rather than those of consumers."

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Procurement

Public procurement is also contentious. Although an internal market issue, Adamantopoulos notes that the EC has stated that it will only allow non-EU companies access to public contracts if their home countries grant similar rights of access to EU companies.

"Canada and the US will be sanguine about this level of intervention," he says. "The targets are more the BRIC countries – though Russia less so because they have natural gas resources that Europe needs and are good at playing that card in negotiations. However, European consumers will suffer if suppliers are kicked out of the market over reciprocity."

Case study – Airlines' emissions anger

Non-EU airlines flying to and from EU airports are up in arms over the EC's decision to include international aviation in its Emissions Trading Scheme (EU ETS) from 2012.

US airlines and the Air Transport Association of America are challenging the move in the Court of Justice of the European Union (CJ), arguing it contravenes the Kyoto Protocol, which gives the International Civil Aviation Organisation responsibility for managing aviation's international emissions.

In the US, the House of Representatives' Transportation Committee has criticised the scheme as a unilateral and extraterritorial act inconsistent with long established international aviation law, and introduced a bill that would bar the EU from requiring US airlines to participate in it.

The EU ETS has prompted the International Air Transport Association (IATA) to mention Europe on its 'wall of shame'. Giovanni Bisignani, IATA's former Director General and CEO, says Europe is expanding its taxing powers beyond its borders and trying to act as the 'global sheriff' on the environment.

Holman Fenwick Willan Partner Konstantinos Adamantopoulos says the row has escalated as aircraft spending a small percentage of their journey in European air space will be subject to the scheme for the entire flight, pushing up costs dramatically.

The opinion of Advocate General (AG) Kokott was issued on 6 October. The AG has proposed to the CJ that it should reject the arguments of the US airlines. The CJ's judgment is expected by late this year or in early 2012.

Chris Goater, IATA's European Spokesman, says: "There is a window of opportunity for the EC to come to its senses and rethink this scheme. The first set of carbon credits doesn't have to be cashed in until 2013 but airlines are already having to do a lot of preparatory work as it's a very complicated scheme to administer."

There is also the issue of 'equivalent measures'. "The EU says that countries applying an equivalent measure for capturing aviation emissions would be exempt from the scheme," says Goater, "but there is no definition of what an equivalent measure is."

The EC argues aviation should be included as change is happening too slowly. Goater counters that aviation is the only sector with an agreed set of global targets. "We are making environmental progress with or without the EU scheme."

He declines to speculate over what the measure will mean for ticket prices or if it will affect airlines' choice of routes. However, he points to the scheme's estimated cost to airlines in 2012 of nearly a billion euros at a time when margins are below 1%.

> *China is firmly in the EU's sights, with duties on pretty much everything it exports here.*
>
> **KONSTANTINOS ADAMANTOPOULOS, HOLMAN FENWICK WILLAN**

For Mochan, the EU is already very open. The key is encouraging others to follow suit. "In the rail sector, for example, European rail industry has a 50% share of the world market but only 0.3% of the Japanese market, which shows how closed some markets are."

"You have to weigh up 'Fortress Europe' against 'Fortress China' or 'Fortress US'," says Simon Burden, an Associate at Holman Fenwick Willan. "The EC would say it is trying to ensure businesses in Europe are not subject to unfair competition."

Merely enforcing existing rules, Burden points out, could cause significant changes. "In the realm of international shipping, companies get an easy ride as regards the enforcement of rules surrounding cartels. They have tended to set freight rates in agreement with each other to ensure price stability. The EC is flexing its muscles and recently launched an investigation into liner shipping rates and whether they were being agreed between companies. If it finds rates have been agreed, big companies could be fined millions of euros. Europe is the first jurisdiction taking this step, as international law traditionally permitted such practices in light of the important role liners play in the global economy – the EU is in the vanguard but the question is whether they are just the first or whether they will always be outliers."

Level playing field

Increasing environmental regulation is also likely to affect non-EU trading partners. The EU's emissions trading scheme, for instance, will include the European steel industry from next year.

"What about steel products imported from countries that do not operate similar systems?" asks Adamantopoulos. "European steel producers argue there must be a level playing field, so one idea being kicked around is whether there should be an extra import duty which would increase barriers to entry."

He notes that developing countries are threatening to take the EU to the WTO if the planned steel industry reforms go ahead, but while this smacks of Fortress Europe, there is a caveat: "This is being done for a good cause. It is a question of whether the measures are proportionate to the goals and if the EU can enforce domestic standards on a global basis."

Some trading partners argue the EU is using environmental protection as a smokescreen to protect its own industries. Not so, says Mochan."Steps need to be taken. We want to do things at a worldwide level but you cannot put things off forever while you wait for a global solution, so you do what you can at a European level."

Burden agrees that Europe could be seen as "leading the way and other parts of the world will catch up".

However, for Adamantopoulos, the problem is the unilateral nature of the measures. "The EC would do better to engage at an international level with other trading partners to encourage them to adopt similar measures, rather than go out on its own, which exposes it to charges of protectionism."

Overarching all the regulatory, economic and political change is the question of how to shore up the eurozone and how far member states should go in protecting their financial sectors. Europe has a special regime on state aid, which is highly centralised, says Holman Fenwick Willan London Partner Eliza Petritsi.

"Member states race to use state aid to favour their own champions, so the EC wants to keep control," she explains. "When the credit crunch hit and the banks started failing, the EC came under intense political pressure to approve measures to deal with the crisis through state aid, applying similar rules on an exceptional legal basis rarely used in the past, but being more flexible and approving rescue packages very quickly."

The EC took a pan-European stance, Petritsi says, after individual measures, such as the one adopted by Ireland for its banks, prompted a furious reaction from other member states. This was the main focus for the EC. There was no state aid race between member states within the EU. As regards outside the EU, the perception was probably different.

"In my opinion, the Commission overall did a good job," Petritsi says. "They may have overdone it, but it helped minimise the domino effect of the economic crisis and, because everyone was doing it, it was not seen as too protectionist.

"The focus now is on how to exit from state aid support and make the banking system viable again – that is as important as stepping in. It remains to be seen if Europe will be the first to exit and how quickly," she adds.

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• Grania Langdon-Down writes for *The Times and The Guardian*

WHO WOULD WANT TO BE A DIRECTOR?

Directors are under pressure from regulators, new legislation, shareholder class actions and even from their own boards. They need a risk strategy that combines good governance with good counsel, appropriate indemnities and suitable insurance.

WORDS POLLY BOTSFORD

The past decade has seen increased legislation put new pressures on directors across the globe. In the UK, the Companies Act 2006 "raised standards and specified duties for directors", says Nick Hutton, Partner at Holman Fenwick Willan. This was followed up by the 2010 Bribery Act, which has global reach and criminal penalties. Within the EU, there is a new Environmental Liability Directive – the pressure from environmental laws is particularly acute for directors – and in Australia there have been changes to the cartel rules that have brought in criminal sanctions for directors.

In the past 12 months, the US independent banking regulator, the Federal Deposit Insurance Corporation – a single regulator – has prepared negligence law suits involving 266 directors and officers. In July this year, two Directors of Australian stockbroking firm OPES Prime, which went under in 2008, were jailed for actions relating to its collapse.

More legislation is combined with greater enforcement of existing legislation: regulators have their claws out in most jurisdictions in Europe, Asia and in the US, stepping up the number of investigations and prosecutions against companies and directors on a whole range of breaches, such as a failure to meet continuing disclosure obligations, or to comply with duties of care.

As Ali Chaudhry, Managing Director of professional and executive risks at Jardine Lloyd Thompson (JLT) in Asia, says: "Here regulators have become far more aggressive, partly as a result of a much wider investor base. And globally the regulators are really starting to talk to each other which ramps up the pressure too."

"Directors must attain a certain level of financial literacy so that they are in a position properly to discharge their obligations."

AARON JORDAN, HOLMAN FENWICK WILLAN

Redefined responsibilities

The 'Centro case' brought by Australian regulator, the Australian Securities and Investments Commission, sharply illustrates how the boundaries of directors' responsibilities are being redefined. *ASIC v Healy & Ors* involved the Directors of Centro, who had approved financial reports that later turned out to be inaccurate – to the tune of billions of Australian dollars.

The Directors contended that they should have been able to rely on external experts and the company's internal management systems. But the court rejected this defence, as Aaron Jordan, a Partner at Holman Fenwick Willan, explains. "It decided that the directors could not rely on others and had to bring an inquiring mind to the board table. Directors must attain a certain level of financial literacy so that they are in a position properly to discharge their obligations. Although this is not new law, this case has arguably set higher standards for Directors."

Alongside new legislation and aggressive regulators, there has been growth in the number of class actions being brought by investors against Directors, both general derivative shareholder class actions and, in the US, specific securities class actions relating to various breaches of regulatory provisions, such as misrepresenting the position of a company in a prospectus.

"The availability of class action procedures across continental Europe has been coupled with more litigation funding being made available," says Costas Frangeskides, a Holman Fenwick Willan Partner. For example, the prominence of hedge funds and private

• **Polly Botsford** writes for *Legal Executive Journal* and the *Law Gazette*

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equity houses as investors means there are potential litigants who are less shy of bringing these actions.

Protection

Directors should be able to ride out this storm, however, as long as they protect themselves. First, a Director should look to the company. Where it is allowed under companies' legislation, Directors can now obtain indemnities from their company in certain circumstances.

Directors' and Officers' (D&O) liability insurance should also be considered: the market for D&O insurance has grown in depth and breadth – insurers are expanding the scope of the policies and covering more jurisdictions, as Directors may now have increased liabilities from foreign subsidiaries.

"The insurance market has responded to a growing demand from clients for this type of insurance," explains John Batch, Senior Vice President of FINPRO (Financial and Professional) Practice at insurance broker Marsh. "One recent trend is Directors wanting coverage for internal investigations, when companies investigate their own Directors, and this has been added to some policies."

There is an increasing need to develop D&O insurance products that respond more specifically to how the regulators are actually operating, as Chaudry explains. "For example in some jurisdictions Directors may initially be 'invited' by the regulator to assist with an investigation as opposed to being legally compelled to attend. Therefore, at JLT, we've recognised a need to develop new D&O insurance products that respond better in these situations."

The right D&O policy

Getting the right policy is critical, advises Adrian Jenner, also a Senior Vice President in the FINPRO Practice at Marsh. "Open and informed discussion with a broker about the level of cover required is an essential component in protecting a Director." Batch agrees, particularly when it comes to different jurisdictions. "An understanding of distinctions between territories is a must," he says. "You do need a multinational broker."

However, insurance has its limits. D&O insurance, for instance, will not cover criminal fines or penalties (as distinct from fines or penalties imposed for strict 'no fault' liabilities, which may be covered, or civil liabilities arising from negligence). Furthermore, defence costs paid by insurers prior to the imposition of criminal fines or penalties are often subject to a 'clawback' provision, whereby the insurer can reclaim them. It is worth remembering that the easiest way out of hot water is not to get into it in the first place.

Good corporate governance helps but a culture is required, warns Jordan. "It's one thing to have fancy, detailed governance policies, but there must be a commitment throughout the organisation to honour the policies. Compliance must be driven from the top down. Directorships are not just for status – they take time and commitment."

Concerns that boardrooms would empty as Directors feared operating under such conditions have not been borne out – yet – and a sound understanding of the rules should keep Directors at the board table.

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CHANGES TO A CHARGED INDUSTRY

David Simmonds, Director of group legal affairs at the Hong Kong-based utilities company CLP, has a valuable perspective on the energy industry in Asia and Australia. He says changes related to carbon emissions and climate change could cause upheaval.

WORDS JON ROBINS

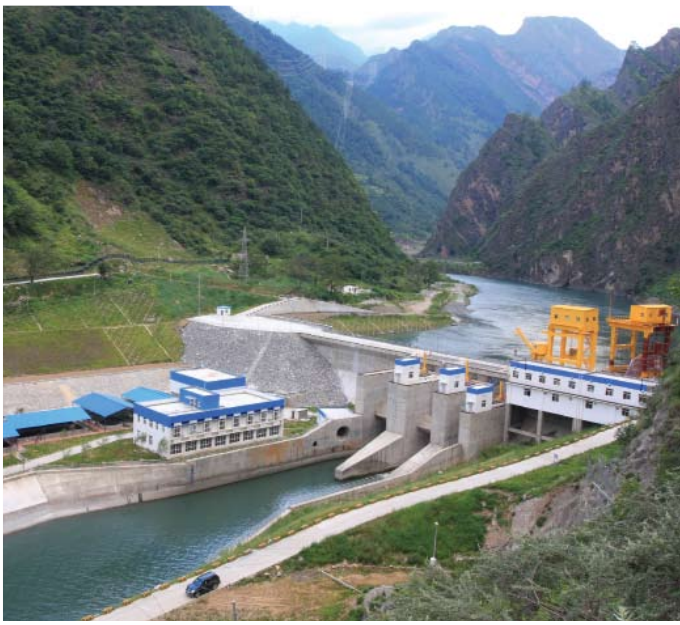
Simmonds heads a 27-strong legal department at an Asia-Pacific business with a 100-year history and a reputation, in his words, as "one of those mums' and dads' share investments on the Hong Kong exchange". CLP is "an institutional Hong Kong company: stable, secure, trusted and respected, with a strong emphasis on corporate responsibility", he says.

CLP began life as the China Light & Power Company Syndicate in January 1901 in Hong Kong. By 1919 it had established a power station and was supplying electricity for street lights in Kowloon. The business has gone through strong growth in its more recent history. "Over the last 15 years, as part of a strategy to diversify earnings away from Hong Kong, the company started to grow into what is today: a regional energy business and the only Asia-Pacific focused electricity company," says Simmonds.

"There is a desperate need for the infrastructure that we provide in a lot of countries that we operate





> *The challenge is to bring projects to the table which deliver electricity that people can afford and which are environmentally sustainable.*
>
> **DAVID SIMMONDS, CLP'S DIRECTOR OF GROUP LEGAL AFFAIRS**

in," he says. "The commercial challenge is to bring projects to the table which deliver electricity in a way that people in those countries can afford and which are environmentally sustainable."

Regional focus

CLP has, Simmonds says, "no interest and no ambition" to invest outside the region unlike, for example, its competitor Power Assets Holdings (Hong Kong Electric), which recently bought part of the electricity giant EDF's power networks.

He points out that CLP's strategy is borne out of recognition that there is a certain amount of "flux" in Hong Kong from "a regulatory standpoint" and "also from the point of view of integration with the mainland". He says there is a wealth of investment opportunities in the Asia Pacific region.

But, as Simmonds puts it, CLP is "very much an institutional Hong Kong business", with local operations remaining its "lifeblood". In Hong Kong, the company provides power to 2.7 million customers, representing 80% of Hong Kong's population, and its three plants have a combined total power generation capacity of 6.9GW.

What are the big regulatory and legal concerns for CLP? "In all of the jurisdictions the transition to lower carbon generation is a critical issue. It is more advanced in some of the jurisdictions where we operate, Australia and Hong Kong being the obvious ones, than in Vietnam or India for example. But it is only a matter of time until these issues are on the table for those countries as well."

Simmonds cites the Hong Kong government's recent consultation paper on climate change, which plans to increase the proportion of Hong Kong's electricity generation to about 50% nuclear (currently

CLP: a regional energy business

CLP has operations and a legal presence in Mainland China including wind farms, coal-fired, hydro, biomass and nuclear power stations (one of which supplies the Hong Kong consumer). In Australia, CLP is the third largest integrated energy business with over 2.5 million customers. CLP has a significant presence in the energy sector in India with coal and gas-fired power stations and is the largest investor in wind farms in the country. CLP also has operations in Taiwan and Southeast Asia, including solar farms in Thailand; and is developing (in conjunction with Mitsubishi) coal-fired power stations in Vietnam.

"We operate in a diverse range of countries and economic conditions within those countries," says Simmonds. Australia is the second largest part of the business after Hong Kong, followed by Mainland China, India and Southeast Asia, he adds. "We are looking to build our offshore businesses to a scale where they have an option to raise further local capital in the markets in which they operate. The objective in the long term is to have local investors alongside CLP sharing and helping to fund the growth of the business."

Simmonds explains that the business has in-house legal capability covering each of the lines of business with a total of 27 lawyers divided into five main legal teams reporting back to him. For the Hong Kong business there are six lawyers; three lawyers serving Mainland China (from Hong Kong); three lawyers focused on Group transactional work; five lawyers in Mumbai; and 10 in Melbourne.

David Simmonds:
CLP's Director of group legal affairs

The brief: Simmonds is responsible for the provision of legal services across the CLP Group and leads a team of 27 lawyers who provide strategic advice and counsel to CLP Holdings and its subsidiaries. He has extensive infrastructure experience, advising on strategic acquisitions and divestments, projects and construction, corporate structuring, regulatory issues and competition laws.

Experience: Simmonds joined CLP in August 2007 from Telstra Corporation in Australia, where he held the posts of General Counsel (technology, innovation and product) and General Counsel Telstra Asia/Telstra Mergers and Acquisitions. Before arriving at Telstra, Simmonds was a Senior Associate at the major Australian law firm Clayton Utz.

He joined CLP as General Counsel and Company Secretary of TRUenergy and was appointed to his current role as Director of group legal affairs of CLP Holdings at the beginning of 2009.

Simmonds is a member of the Australian Chamber of Commerce in Hong Kong and Macau and the Australian Corporate Lawyers Association.

He holds a Bachelor of Laws and a Bachelor of Commerce from the University of Melbourne.

about 23%) and to about 40% natural gas. "That requires enormous investment in new generating plants and retirement of some of the old coal-fired plants, which could be a very significant and potentially disruptive change to the business." He notes that the government is reviewing the proposals in the light of the Fukushima disaster in Japan.

More recently, Australia announced a carbon tax system that would transition into an emissions trading scheme. "That could also have a very substantial impact upon us because one of the generation stations we have in our portfolio is a brown coal power generator with relatively high carbon intensity," says Simmonds.

One consequence could be the closure of the company's Yallourn power station significantly earlier than planned. "One of the debates has been around the level of compensation to industry generally affected by the imposition of this carbon tax. This has been fairly protracted, having started in 2007, and we still do not have legislation."

The regulation around carbon and renewables is enormously significant to this business, Simmonds says. "Depending on the nature of emissions trading, carbon tax or whatever scheme is put in place, it could have very substantially negative connotations for the business if it is not done carefully," he reflects. "The same is true of renewable energy targets that we now see in almost all jurisdictions where we operate. They act as an incentive for us to invest in renewable generation in some markets but they can also operate to increase the cost of electricity, contributing to tariff pressures on consumers."

Climate vision

Simmonds stresses that CLP takes its commitment to corporate responsibility seriously and has its own carbon reduction programme. In March this year CLP reported that it met its 2010 carbon intensity reduction target of 0.8kg CO_2/kWh, in line with its 2007 Climate Vision 2050, which is described as the company's roadmap, detailing the nature of its own commitment to reducing the carbon intensity of its generation portfolio by 75% by 2050.

"CLP has been in business for over a century and our aim is still to be here for hundreds more years," explains Peter Greenwood, CLP's Group Executive Director (strategy). "To do so, our business must continue to evolve and anticipate changes, including those on environmental sustainability, as there are significant differences among the markets which we serve." Greenwood adds that CLP would continue "to find the balance among the economic, social and environmental dimensions of our business to create value for all stakeholders".

• **Jon Robins** writes for *The Observer*, *Financial Times* and *The Times*

THE GROWING IMPACT OF SANCTIONS ON GLOBAL COMMERCE

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Holman Fenwick Willan's Head of Shipping, George Eddings, says sanctions are increasingly used to exert political pressure on rogue states but create an environment of complexity for international businesses.

There is a long history of economic sanctions being imposed to achieve political aims, for example US sanctions against Cuba and EU sanctions against Myanmar (Burma).

International financial sanctions are now back 'in vogue' to exert pressure on 'rogue' governments and encourage them to change certain policies. They have been applied to curb Iran's nuclear ambitions and to help opponents of the previous government in Libya and President Al-Assad in Syria, following the Arab Spring.

Regulators in Brussels, Washington and elsewhere see two main attractions in financial sanctions. First, the burden (and therefore the cost) of compliance is transferred to commercial organisations, who must carefully review their operations and determine whether sanctions prohibit business that would otherwise be permitted. Second, the mere threat of investigation and/or enforcement by state entities may persuade some commercial organisations to withdraw from certain countries, thereby isolating the regime and depriving it of vital revenue from exports, as well as key imports.

Where governments see sanctions as an opportunity to use financial pressure to achieve political change, commercial enterprises carrying on legitimate business to or with the affected country are likely to see an additional layer of risk and complexity, for four main reasons.

First, legislation tends to use broad terms, with the precise scope of the prohibitions often left unclear.

Second, the relevant authorities have been stepping up enforcement activity, with the US Office of Foreign Asset Control taking a particularly proactive approach, with high profile enforcement activity. This follows a period of engagement, with US officials visiting a number of key stakeholders to seek to build an industry consensus in support of a package of sanctions.

Third, the list of designated persons and entities is being constantly updated, forcing companies to review their activities on a trade by trade basis.

Finally, there is the constant threat of future legislation, which may change the playing field once again.

"There is the constant threat of future legislation, which will change the playing field once again."

GEORGE EDDINGS, HOLMAN FENWICK WILLAN

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Businesses trading with a sanctioned country must be aware of the full raft of sanctions that may apply, whether because of their place of incorporation, the nationality of their directors, the place where they do business, the currency they transact in, or the sector they operate in.

They need to know which cargoes are prohibited (which may involve considering the end use of the product, as well as its nature), which persons and entities are designated, and even whether a company they trade with is owned or controlled, or acts on behalf of, an undisclosed designated person or entity.

They must consider the changing sanctions regimes at each stage of the transaction, so they do not inadvertently make a previously legitimate payment that now risks breaching the sanctions' terms.

And they need to review the terms of their contracts, to check that they are not exposed to the risk of the counterparty putting them in breach of sanctions, and that they have appropriate liberties to extricate themselves from any problems.

Sanctions pose shipping businesses particular problems, given the complexity of the underlying transaction, with numerous parties and intermediaries involved, international movements of goods and funds, and a host of ancillary transactions, including insurance, finance, brokering, management and so on.

Sanctions are a relatively blunt instrument, as they seek to apply political pressure via economic means. However, in the current economic and political climate, international financial sanctions are clearly here to stay.

Shipping businesses, and their advisers, must fully understand the complex web of sanctions, as well as the intricacies of each transaction and each cargo movement, to ensure they do not fall foul of the rules.

George Eddings works closely with Partner **Jonathan Webb** and Associate **Daniel Martin**, both leading experts on sanctions, to advise clients on the effect of sanctions on their businesses, as well as on practical steps that they can take to help them minimise the risk of non-compliance.

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HFW AROUND THE WORLD

A snapshot of developments involving Holman Fenwick Willan's lawyers in the firm's offices around the world.

1 São Paulo, London, Hong Kong, Singapore and Dubai Holman Fenwick Willan welcomes aviation and aerospace team

The firm is delighted to welcome the eight Partners and 16 Associates formerly making up Barlow Lyde & Gilbert's (BLG) respected global aviation and aerospace group. The team will work across five office locations – London, Hong Kong, Singapore, São Paulo and Dubai – offering clients a range of services covering insurance disputes, regulatory, corporate and commercial.

2 London Holman Fenwick Willan appointed to BP and Barclays niche legal panels

The firm has been reappointed to BP's niche panel for trading work and, for the first time, shipping work. The appointment, effective from 1 June, was announced by BP after a highly competitive selection process. The firm was also appointed to Barclays PLC UK Investment Banking and Markets Specialist Panel for freight work and shipping. The announcement was made on 1 July, following a three month review process.

3 Paris and London Holman Fenwick Willan advises Nordea Bank on 'forward start' facility

A team of Holman Fenwick Willan lawyers has advised Nordea Bank Norge ASA as facility agent on a $750 million forward start senior secured facility for Belgian listed tanker owner Euronav NV. The deal, which is the largest financing deal seen in the market since the financial crisis hit, was heavily oversubscribed and involves a syndicate of 14 lenders led by Nordea Bank Norge ASA and DnB NOR Bank ASA as lead arrangers and book runners.

4 Asia-Pacific Holman Fenwick Willan develops Asia-Pacific practice

Holman Fenwick Willan announced several developments in the region, which will strengthen its capabilities across core sectors of focus. Partner Paul Aston has relocated from Shanghai to Singapore, to lead its developing energy & offshore team (along with Partners Barry Stimpson and Chanaka Kumarasinghe) and also becomes the new office Head. Simon Davidson, who ran the Singapore office for 12 years, will focus full time on his practice. Partner Henry Fung has taken over from Paul Aston as the Office Head in Shanghai. He will continue to split his time between Hong Kong and Shanghai.

London Partner Guy Hardaker has relocated to Singapore to strengthen the trade and commodities practice. New Partner Jonathan Moult has joined the Hong Kong office as a Corporate Partner and will join the corporate team of Henry Fung and Patrick Cheung.

In Sydney, new Partner and Mariner David Coogans joins the shipping team.

5 Australia and Brazil Holman Fenwick Willan opens Perth & São Paulo offices

The firm's third office in Australia offers a range of transactional and dispute resolution services arising from oil and gas, commodities and shipping related matters. The firm's first South American office provides clients with core capabilities in aviation and insurance, as well as acting as a regional hub serving oil and gas, offshore, mining, commodities and shipping clients.

Holman Fenwick Willan has offices in São Paulo, London, Paris, Rouen, Brussels, Geneva, Piraeus, Dubai, Hong Kong, Shanghai, Singapore, Melbourne, Sydney, Perth.

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