STEPHENSON HARWOOD

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Sanctions

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Sanctions

Introduction

- As a consequence of Russia's recent illegal invasion of Ukraine, the international community has swiftly imposed wide-ranging sanctions on Russia. They are extremely complex and rapidly changing.

- We have been advising a broad range of clients on their impact to their businesses including shipowners, shipmanagers, charterers, traders, financiers, funds and asset managers, fiduciary service providers, and insurers.

Sanctions

Introduction

- The topics we will cover during today's session:
- Section 1: The Regimes
- Section 2: Consequences of breach
- Section 3: Common scenarios and practical advice
- Section 4: The future.

Section 1: The regimes

UK, EU, US and UN sanctions regimes

Introduction to the regimes

Section 1: The regimes

- Economic sanctions are a current favourite foreign policy tool and now the international community's de facto response conflicts or geopolitical.
- Sanctions are not a new issue – Iran, Russia/Crimea, Venezuela, Cuba. Familiar with sectoral sanctions particularly in the tanker trade (e.g. Rosneft, Gazprom).
- Since February 2022, sanctions imposed at a level not seen previously.
- The EU, US, UN, and now the UK, have independent regimes which increasingly work together (this wasn't always the case) albeit there are differences.

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The Regimes - The United Nations

- Previously, sanctions began at the UN level in the form of a UN Security Council Resolution.

- Forms the basis of the sanctions architecture, both because it has the widest coverage in term of the number of countries to which it applies and because it is cited as the legal basis for many of the other sanctions regimes.

- In recent years, we have seen the move to nationalised sanctions regimes, but most incorporate UN sanctions automatically e.g. EU and UK.

The Regimes - The European Union

- EU sanctions apply to:
  - nationals of EU Member States;
  - EU incorporated/constituted entities within the territory of the EU;
  - onboard any aircraft or any vessel under the jurisdiction of an EU Member State;
  - and to any person in respect of business conducted in whole or part within the EU.

NOTE: EU sanctions must be adhered to by a EU national wherever they are in the world. A non-EU corporate entity may still have to comply if it is "controlled" by an EU citizen.

The European Union cont.

- Key EU sanctions:
  - A number of Russian Banks removed from SWIFT.
  - Transactions from the Russian Central Bank prohibited.
  - Energy – export and import ban on specific goods e.g. crude oil, petroleum products, coal.
  - Transport – export, sale, supply of marine equipment, all aircraft parts.
  - Wide-ranging sanctions on individuals/asset freeze.
  - Fiduciary/trust services – ban on providing services to Russian nationals.
  - Oil price cap.

The Regimes - The United Kingdom

- UK sanctions apply to
  - British citizens and British overseas citizens;
  - UK incorporated/constituted entities; and
  - and any conduct by any persons that takes place wholly or partly in the UK or in UK territorial seas.

NOTE: As for EU sanctions, a non-UK corporate entity may still need to comply with UK sanctions where "controlled" by a UK national.

The United Kingdom cont.

- UK sanctions framework is similar to EU but there are key differences in their application/scope.
- Stronger enforcement powers of OFSI
- Key UK sanctions:
  - Sanctions against individuals/asset freeze;
  - Individual financial institutions;
  - Russian Central Bank;
  - New trade controls including crude oil/petroleum products **as well as LNG.**
  - Bans on Russian vessels in UK ports.
  - Oil price cap.

The Regimes - The United States

- US primary sanctions apply to:
  - US persons and businesses and transactions in the territory of the US (including transactions carried out in US dollars); AND
  - Non-US persons – recent action taken against non-US persons.

In recent years, OFAC has adopted a “sanction first, ask questions later” policy. Non-US shipowners sanctioned in relation to Venezuela, Cuba and more recently Russia.

NOTE: US purports to have jurisdiction by virtue of USD transactions – freight, hire, repayments etc.

The United States – cont.

- Similar structure to the EU/UK:
  - Asset freeze of individuals, entities and banks;
  - Financial services limitations;
  - Increased trade restrictions on exporting controlled goods;
- Comprehensive embargos;
- Increased scope of sanctions (including the use of USD in transactions);
- Significantly expanded controls on exports, reexports and transfers of goods, software and technology.
- Oil price cap.

Section 2: The consequences of breach

Money talks

Section 2: Consequences of breach

A long history of enforcement:

- Jun 2021 - ING Bank – Moving funds on behalf of sanctioned Cuban and Iranian entities - $**619 million fine from OFAC**
- Feb 2020 - Standard Chartered Bank - Making funds available to a designated person, without a licence - **£20.47m fine from OFSI**
- Dec 2012 - HSBC - conducting transactions for sanctioned entities - $**1.3 billion fine from OFAC**
- Dec 2009 – Credit Suisse - conducting transactions for sanctioned entities in Iran and Sudan - **$536 million fine from OFAC**
- Jan 2009 – Lloyds TSB - conducting transactions for sanctioned entities in Iran - **$350 million fine from OFAC**

Recent case law

Section 2: Consequences of breach

Havila Kystruten AS & Ors v STLC Europe Twenty-Three Leasing Ltd & Anor [2023] EWHC 3166 (Comm) – a dispute arising out of financing arrangements for 4 vessels commissioned by the Norwegian Havila Group. Financing was provided by subsidiaries of State Transport Leasing Company, a Russian state owned leasing company ("**GTLK**"), which was EU sanctioned on 8 April 2022 and US sanctioned in September 2022.

The GTLK subsidiaries said sanctions amounted to a termination event under the contract (a sale and lease-back arrangement) and demanded immediate payment of the termination sum. One of the sanctions issues was how payment of the termination sum could be paid to a sanctioned party and how it could be financed. The judge was also concerned about a party seeking to remove an asset (vessels) from the EU's jurisdiction by taking them to Turkey. The court held that payment of the termination sums to a frozen account would discharge the contractual obligations.

Recent case law

Section 2: Consequences of breach

Gravelor Shipping Limited v GTLK Asia M5 Limited [2023] EWHC 131 (Comm) - Gravelor, a Cypriot charterer, claimed specific performance of obligations owed to it under a bareboat charterparty by the vessel owners who were subsidiaries of the EU and US sanctioned GTLK.

The charterparties provided for Gravelor to make payments of hire for the vessels, and for title to the vessels to be transferred to them when the charterparty was terminated. But EU and US sanctions made it unlawful for Gravelor to pay the GTLK subsidiaries in US$, which the charterparties required. The Court found that tendering payment in Euros into a frozen account satisfied the contractual obligation to pay, and granted an order for specific performance to transfer title of the vessels to Gravelor, having considered in detail the impact of sanctions (including on the sanctioned party's inability to maintain the vessels).

Section 3: Common Scenarios and Practical Advice

The Oil Price Cap

- Ban on the maritime transport of Russian crude oil and refined oil products and the provision of related services.
- Came into force in December 2022 and February 2023.
- The oil price cap regime operates by way of exemption from the prohibitions to the maritime transport of Russian oil products from Russia to a **third country, or between third countries**.
- Russian crude: $60 price cap exception for crude.
- Petroleum products: $100 per barrel "petroleum to crude" e.g. diesel, kerosene etc; and $45 per barrel "Discount to crude" e.g. fuel oil, naphtha.

- **Absolute prohibition** on imports into the EU, UK and US.

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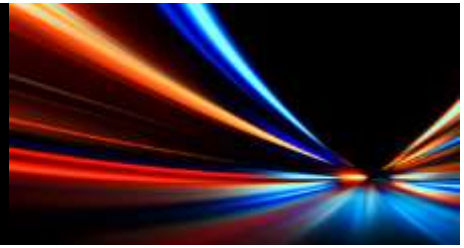
The Oil Price Cap



UNLESS products are brought in under the price cap:

- Prohibited for shippers/charterers to transport products;
- Financiers cannot finance transactions involving Russian petroleum products.
- No technical assistance (ship management services) to vessels carrying Russian petroleum products.
- No insurance to vessels carrying Russian petroleum products.

The Oil Price Cap

The Tiers:

- Tier 1: direct access to price information (commodities traders).
- Tier 2: operators that interact with those that have direct price information (charterers).
- Tier 3: operators with no direct access to price information (ship owners, managers, insurers, financiers).

Tier 3 operators need to be provided with details of the price or an attestation confirming compliance.

The Oil Price Cap - Issues

- Deceptive Shipping Practices

➢ STS;
➢ Flag hopping;
➢ Cargo origin.

- Obtaining attestations?

➢ Protection: sanctions wording, including presentation of documents/attestation on demand and right of termination.

UK Sanctions – Asset Freeze "Control"

Designation of entities. Issues with control e.g. Evraz PLC

- Designation of Roman Abramovich – Regulation 11 of The Russia (Sanctions) (EU Exit) Regulations 2019
- Shareholder in Evraz PLC

BUT

"Control" – not just legal control i.e. 50% shareholding or more.

"11 – (2) A person "controls" a right if, by virtue of ***any arrangement*** *between that person and others, the right is exercisable only –*

(a) By that person,

(b) In accordance with that person's directions or instructions, or

(c) With that person's consent or concurrence.

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The Answer - Increased Due Diligence

- **Checklist**:
  - Name of entity;
  - Shareholder, directors – de facto control.
  - Type of business/cargo – certification of origin.
  - Trading patterns.
  - Currency/banking chain.
  - Insurance.

  CONSIDER:
    - Force majeure clause
    - Sanctions clauses
      - **Do I have a right to terminate if I need**?

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Section 4: Future facing- what's to come?

In the news in the last week

Section 4: Future facing- what’s to come?

- **G7 to establish mechanism to coordinate enforcement of Russia sanctions.** The G7 is reported to be establishing an ‘Enforcement Coordination Mechanism’ for coordinating the enforcement of Russia sanctions. It seeks to improve information sharing and sanctions enforcement directed at countries and firms suspected of helping Russia in Ukraine through circumvention of sanctions.
- **Netherlands prepares for strengthening sanctions enforcement.** The Dutch government has published a ‘non-paper’ containing proposals to strengthen sanctions enforcement.
- **US DOJ & Commerce Department launch Disruptive Technology Strike Force for export control violations.** The Strike Force will operate in 12 regions of the US and focus on investigating and prosecuting criminal violations of export laws, enhancing administrative enforcement of US export controls.

Longer term

Section 4: Future facing- what’s to come?

THE IMPORTANCE OF DUE DILIGENCE

(And in case things go wrong, adequate protections in your contract to terminate – sanctions clauses etc).

Contact

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Kirsty is an experienced litigator specialising in a wide range of shipping matters, acting principally for major owners, charterers, P&I Clubs and banks located in Europe and worldwide.

Kirsty advises on all aspects of shipping disputes and sanctions including disputes arising under shipbuilding contracts, MoAs, charterparties including for LNG vessels, bills of lading, shipping investments and joint ventures and problem loans/work-outs. She has significant experience in handling large-scale litigation in the High Court and arbitration, including successfully taking cases to the Court of Appeal and Supreme Court.

On non-contentious shipping matters, Kirsty frequently advises clients on sanctions, drafting bills of lading and charterparty standard clauses, negotiating and drafting shipbuilding contracts and refund guarantees and drafting and advising on MoAs for the sale and purchase of second-hand tonnage.