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A Briefing Guide to

Sanctions - How We Help Business Avoid The Pitfalls

RAHMAN RAVELLI

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Sanctions place many and varied obligations on business. They may also be far from straightforward. A number of sanctions enforced by different agencies may relate to one or more aspects of business being conducted by a company or individual.

But nobody in business can afford to fail to comply with any trading or financial sanctions that relate to them.

What Sanctions Are

Sanctions can take many forms, relate to any part of the world and be subject to change. But you must be aware of all aspects of them as they apply to your activities.

Sanctions can be:

- Targeted asset freezes. These usually apply to named individuals or organisations and restrict their access to money and resources.
- Restrictions on financial markets and services. These can apply to individuals, organisations, groups or sectors. Such restrictions have taken the form of investment bans, restrictions on access to capital markets, orders to end banking relationships and activities, requirements to notify or seek

authorisation before payments are made or received and restrictions on providing finance, insurance, brokering or advice.

- Directions to cease all business of a specified type with a specific person, group, sector territory or country.

The Need To Be Aware of Sanctions

There is no excuse for those in business not being aware of all the possible ways that their activities could be affected by sanctions. This is something that may not always be immediately apparent, which is one reason why the right legal expertise can be so important.

A business may not be trading directly with a country, organisation or individual that is the subject of sanctions – but that does not mean that there may still be a sanctions issue that needs to be addressed. As an example, if a company exports goods to a country that is not sanctioned but that

country then re-exports those goods to a country that is sanctioned, that company is then in a chain that has breached sanctions. There may also be situations where the purchaser of a company's goods is actually controlled by an individual or organisation that is subject to sanctions.

Such circumstances outline the importance of conducting due diligence on all potential trading partners. Failure to carry out thorough, appropriate checks could lead to your business unwittingly becoming involved in attempts by others to avoid the effects of sanctions – and that can bring financial and legal difficulties. But such checks should not be limited to potential customers – they should relate to all aspects of a business.

The Importance of Due Diligence

Due diligence involves an ongoing commitment to being aware of all sanctions that may affect your business. Failure to be aware of them can be costly.

International sanctions can be complex, subject to change and can carry heavy penalties for those who breach them. This is why our sanctions specialists are on hand to help those we represent stay compliant with all the current and proposed sanctions that may affect their business. We advise on the legality of specific deals, help create compliance procedures for all aspects of business worldwide, ensure all legally-required permits and licences are obtained and manage all dealings with regulators.

Our expertise in evaluating the risks, helping clients manage those risks and, where necessary, making representations to those that enforce sanctions means that we offer those we represent the most thorough assessment and assistance regarding the sanctions issues they face.

Defending Sanctions Enforcement Actions

Any individual or company faced with allegations that they breached sanctions has to know how to respond. And that response needs to be quick and strategic.

As a firm with years of experience and internationally-recognised expertise in advising and representing those facing allegations of wrongdoing in relation to business around the world, we are ideally placed to assess the nature of the allegations, analyse the scope and precise detail of the relevant sanctions and identify the best strategy to achieve the best possible outcome.

We have access to the relevant experts around the world and are not restricted by office location or borders: we excel by going where the issues are and resolving them.

We are experts when it comes to conducting internal investigations to determine if there has been a breach of sanctions and, if there has, how it happened. This expertise helps our clients gain a fuller understanding of how they have come to face allegations. But it also ensures that all the facts are known. This is important in uncovering any mitigating factors.

Such factors can be vital in challenging or negotiating with the authorities that are enforcing the sanctions. Only by doing this will the best conclusion to a sanctions investigation be obtained.

For example, sanctions breaches in the UK can now be resolved by a deferred prosecution agreement (DPA), where a company escapes criminal prosecution providing it meets certain conditions. But DPAs are not commonplace. They require careful, shrewd negotiation. Our experience in such crucial negotiations is unrivalled.

Sanctions Around The World

United Nations

Sanctions imposed by the United Nations (UN) are the result of UN Security Council Resolutions. These place an obligation on nations to introduce their own legislation to comply with that Resolution. It is the nations that have the responsibility to comply with UN Security Council Resolutions rather than companies or individuals.

European Union

European Union (EU) sanctions can be created to implement UN Security Council Resolutions. They may be stricter than the terms of the UN's Resolution and include extra measures.

But the EU can also devise and implement its own sanctions that are independent of any created by the UN. They are imposed as part of its Common Foreign and

Security Policy. Unanimous consent from member states in the Council of the EU is needed for the proposed sanctions to become EU law.

Some EU sanctions can be implemented by EU Regulations which make them directly effective in individual EU member states; meaning those states do not have to introduce their own legislation for them to be binding on their companies and individuals. Some sanctions can be brought in independently of the EU by EU member states, who use their own national legislation to introduce them.

EU sanctions apply to:

- EU territory and airspace
- Any aircraft or vessel under an EU member state's jurisdiction
- Any person anywhere who is a national of an EU member state
- Any organisation incorporated in or constituted under the law of an EU Member State
- Any business done in whole or in part within the EU

UK Sanctions

The UK implements sanctions devised by the UN and EU and those introduced by the Organisation for Security and Cooperation in Europe (OSCE). But the UK government can implement its own sanctions autonomously. The UK, generally speaking, also extends the application of sanctions to its overseas territories.

The overview of UK sanctions policy is undertaken by the Foreign and Commonwealth Office. But a number of

government departments are responsible for the administration and enforcement of sanctions.

Since April 2017, the UK Office of Financial Sanctions Implementation (OFSI) has been able to impose civil monetary penalties for breaches of trade sanctions. These carry a lower burden of proof than is required for a criminal prosecution and can lead to fines of up to £1 million or 50% of the value of the breach.

US, Canadian and Australian sanctions

US sanctions are the result of statutes, regulations and presidential orders, although some may be based on UN Security Council Resolutions and other international mandates.

The Department of the Treasury's Office of Foreign Assets Control (OFAC) is the main regulator of US sanctions programmes. OFAC publicises and enforces the sanctions regulations; imposing fines for violations. Any criminal action for sanctions breaches is handled by the Department of Justice.

Generally, US sanctions apply to all US citizens and permanent residents (wherever they are located), companies and other organisations created under US law, any person or organisation in the US and all branches of US companies and organisations anywhere in the world.

Canada's United Nations Act allows for orders to be made to implement United Nations Security Council sanctions. Its

Special Economic Measures Act and the Freezing Assets of Corrupt Foreign Officials Act can be used to enact other sanctions which are enforced by Global Affairs Canada and the Canada Border Services Agency. Any Canadian business, national or permanent resident anywhere in the world and any person in Canada has to comply with Canadian sanctions.

Australia has one sanctions regime to reflect the scope of sanctions imposed by the UN and another to devise and enforce sanctions that are prompted by Australian foreign policy. The Department of Foreign Affairs and Trade and the Minister for Foreign Affairs are among those responsible for the regimes. Australian sanctions apply to Australian nationals, companies registered in Australia and their subsidiaries, regardless of where they are based.

Sanctions And Your Business

Sanctions can take a number of forms. They may be imposed and enforced by various organisations and governments and can, in theory, apply to any aspects of business. Which is why everyone in business has to be alert to the need to be compliant with them – at all times.

We see our job as helping the business world do just that. But, if there are companies or individuals who do find themselves under investigation for sanctions breaches, our dedication and expertise will ensure the situation is managed in your interests in the best way possible.

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