

ISSUE 01

SANCTIONS UNCOVERED

JUNE 2015

What are
sanctions?



The cost
of sanctions



Stay out of
the risk zone

IN THIS ISSUE

01 What are sanctions?

02 A changing sanction landscape

03 The cost of sanctions

04 Case in point

05 Stay out of the risk zone

06 How we can help?

WHAT ARE SANCTIONS?

Short of military action, there are a number of options for governments and international organisations wanting to limit the actions of regimes which have transgressed international law, behaved undemocratically or committed human rights abuses.

In many cases, sanctions are the only realistic tools available to rein in the rogue actions of states, increase global security and tackle terrorism or other crimes.

There are a wide variety of restrictive or coercive measures which all come under the generic title of sanctions: from arms embargoes to asset freezes, from the severing of diplomatic ties and sporting links to

flight bans and the withdrawal of aid. Sanctions lists are maintained and administered by a number of national, international and global organisations:

- **The United Nations – Security Council Sanctions Committees:** The Security Council is authorised by the UN Charter to use sanctions to maintain international security. It is able to implement political and economic sanctions using a range of measures up to authorising military deployments short of armed force.
- **The US Office of Foreign Assets Control (OFAC):** The arm of the American government which enforces sanctions that are authorised by the administration to further US foreign policy and national security.
- **European Union – Common Foreign and Security Policy:** The EU's administrative body which enforces sanctions agreed by its member states.

- **UK – HM Treasury:** The Treasury implements and enforces both financial and other sanctions which have been authorised and are in effect in the UK.

Why are sanctions important for companies?

Sanctions are now an important issue for businesses trading in every economic sector. Awareness of the issue facing major companies first started to grow before the second Iraq war when a number of oil and gas services, engineering and public works companies were found guilty of breaching the terms of UN sanctions implemented under the oil-for-food programme.

Being found guilty of a sanctions breach can be extremely serious for any company which trades across international boundaries. Several large corporates have, in recent years, been issued multi-million pound fines or reached very large settlements for breaching sanctions regimes.



A CHANGING SANCTION LANDSCAPE

- More recently, the
- US and EU sanctions
- imposed upon Russia
- over the war in Ukraine
- have introduced a
- series of restrictions
- on doing business with
- Russian companies
- and individuals.

The measures, which were primarily aimed at strangling Russian access to the capital markets, have been expanded to an arms embargo and an export ban on specialist energy equipment and other technology which can be used for both civilian and military use: computers and other machinery.

The global sanctions regime is a complex minefield presenting a significant risk of an unintentional breach to companies which trade internationally.

Is this not something that only financial institutions should worry about?

While banks and other financial institutions have been fined hundreds of millions of dollars over the last three years, there has been an increasing focus on the dealings of non-financial companies with countries under sanctions regimes.

While so-called 'virtual activities' like banking and finance remain under close scrutiny; commodities like oil,

gas and raw materials, engineering, pharmaceuticals and infrastructure are increasingly becoming subject to sanctions enforcement – particularly with regard to Russia.

The United States has gone further still, targeting sanctions against individuals or entities believed to have been behind a series of cyber-attacks that threaten America's security, foreign policy or economy. For businesses trading internationally, sanctions represent a very real and potentially ruinous area. Recent penalties meted out to companies that have breached various sanctions regimes have involved eye-watering sums with fines as high as \$300million.

How to keep pace with changing sanctions regimes

There are no grey areas when it comes to complying with sanctions, however the dynamic and constantly evolving nature of sanctions themselves means that without sufficient monitoring, resources and compliance expertise, any company can fall foul of the regulations, inadvertently putting it at risk of potentially ruinous civil or criminal liabilities.

Many of the largest multinationals have systems and experts in place to ensure they comply, but it is actually the smaller and medium-sized firms that face greater risk. Often, these companies lack the knowledge or the staff to ensure they stay within the law while trading across international boundaries.

Some rely on third parties for handling parts of their business without adequate due diligence or risk management, raising the danger of non-compliance with sanction regimes. Many businesses lack complementary resources with the necessary technical and operational expertise, whilst also not having sufficient staff who are familiar with the current regulatory environment in the right positions.

To make sure that a company's sanction screening tools remain effective and up to date, model risk management techniques must be used and these, along with any in-house sanctions programmes, must be subject to periodic independent review to ensure that they remain relevant.

“FINES AS HIGH AS \$300M”

THE COST OF SANCTIONS



\$7.7 Million

PayPal

PayPal to pay \$7.7 million in U.S. Treasury sanctions case
Reuters, March 25 2015



\$21 million

Fokker

Hit with \$21 million fine in sanctions case
The Washington Post, June 25, 2014



\$3.1 million

Maersk

Pays \$3.1 million Fine for Breaking U.S. Sanctions; Carrier broke embargo on Iran, Sudan over four-year period



\$4 Million

Epsilon

Epsilon Challenges \$4M Fine For Violating Iran Sanctions
Law360, January 2, 2015



\$619 Million

ING

ING to pay \$619 million over Cuba, Iran sanctions
Reuters, June 12, 2012



\$233 Million

Schlumberger

Unit to Pay \$233 Million in Iran-Sanctions Case



\$2 Million

Esco

Pays \$2 million for Cuba sanctions violations FCPA
Blog, November 13, 2014

CASE IN POINT



The potentially catastrophic consequences of non-financial institutions breaching sanctions rules are perfectly illustrated by the recent cases of Schlumberger and Fokker

Schlumberger

Schlumberger

Earlier in 2015, a unit of Schlumberger pleaded guilty to allegedly violating US sanctions by trading with Iran and Sudan and agreed to pay more than **\$232 million in fines** and costs. The fine itself - **\$155 million** - was the largest every criminal fine meted out in a sanctions case.

A unit of the company – Schlumberger Oilfield Holdings – provided services to Iran and Sudan and allegedly went to substantial lengths to hide its activities, according to officials at the US Department of Justice.

Schlumberger admitted that it hid prohibited transactions included masking capital expenditure requests for work in Iran and Sudan by entering a country code for a non-embargoed nation in its computers for processing.

The sanctions breaches happened between February 2004 and June 2010. In one incident, Schlumberger personnel based in the United States arranged for oilfield drilling equipment to be exported from Canada to Iran. In another violation, Schlumberger swapped new American-made drilling equipment with used equipment from a non-embargoed country and the new equipment was then sent on to Iran.

“ THIS IS A LANDMARK CASE THAT PUTS GLOBAL CORPORATIONS ON NOTICE ”

Extracts from Department of Justice Press Release March 25, 2015



Fokker

In 2014, the Dutch aeroplane maker was fined **\$21 million** for selling American-made goods to Iran, Burma and Sudan in alleged violation of US and international trade sanctions.

For more than five years, the company sold aircraft parts, technology and other services to the three countries allegedly in direct contravention of US sanctions. In court papers, Fokker admitted to more than 1,110 sales of banned parts to the three countries.

Fokker, a court in the US was told, used a series of elaborate workarounds to get past US sanctions, which were designed “specifically to continue the company’s profit earnings” in those markets.

Court documents detailed one such workaround: “On one occasion, Fokker Services provided a US aerospace company with a work order that falsely represented that the aircraft part belonged to an airplane owned by a Portuguese airline when, in reality, the part actually belonged to an Iran Air aircraft. The US aerospace company fixed the part and returned it to Fokker Services, who then shipped the part to Iran.” The US Department of Justice said that the fines would have been much higher but that “would have severely hurt the health of the company”.

STAY OUT OF THE RISK ZONE

Best practice to stay out of the risk zone

To prevent an inadvertent breach of sanctions, a company must adopt best compliance practices across all of its trading and financial activities.

First, senior management must make sure that it fully understands the company's sanctions obligations and sign up to the formation of compliance policy.

Staff then need to be trained in compliance. This means communicating the company's policy and procedures to employees, as well as the third parties that they have dealings with – for instance sales agents. Enhanced compliance management programmes should be used that include making employees aware of policies, training them and then carrying out testing.

Companies should institute screening processes appropriate to the nature and size of their business as well as to the risks that it faces. Those sanctions screening tools must be fundamental to the way that a business operates to ensure that the company is constantly abreast of what is a rapidly changing regulatory environment. Third parties should be included and a company's sanctions screening process should be aligned with suppliers' and agents'

due diligence procedures. Simply informing and training staff in sanctions compliance is not enough. Procedures should be put in place that allow for escalation when it comes to enquiries around sanctions to report violations of suspicions of them.

Continual auditing and review of compliance and screening should be carried out along with a company's ongoing training programme. Wherever possible, auditing should be reinforced with regular independent testing and audits.

With so much at stake, it is important to realise that resting on laurels is not an option. Making a breach inadvertently is rarely an adequate defence against prosecution and neither is a previously clean record – the rule must be that a company cannot wait for enforcement before implementing a sanctions compliance and screening procedure because, by then, a fine for transgression could put the entire business at risk.

What are Politically Exposed Persons (PEPs)?

Politically Exposed Persons (PEPs) fall into two categories: foreign and domestic PEPs who hold important positions within a government or executive like heads of state, members of a government or those who hold senior positions within a government, members

of parliament, senior members of the judiciary, senior staff at central banks, ambassadors and senior officers within the armed forces. The classification also includes these individuals' spouses and immediate families.

As well as covering those who currently hold these positions, it could also cover people who have held such positions in the past and those who become politically exposed after a business would have already commenced. Strictly speaking, an individual ceases to be PEP after one year of leaving government or their post but most companies continue to treat them as high risk where appropriate.

PEPs are considered to be such a high risk that additional procedures may need to be put in place above a company's standard compliance and due diligence processes. Financial institutions in particular should have enhanced due diligence procedures to cover people who present a higher customer risk.

Where can companies learn more?

Lexis Diligence Business Insight Solutions has a range of resources to help companies negotiate the international sanctions regimes, maintain compliance with them and continue to adapt to what is a constantly evolving area.

HOW CAN WE HELP ?



How Lexis Diligence can help you create and maintain best practice in PEP and sanctions management

Top FTSE 100 insurance, financial services and blue chip multinational companies use Lexis Diligence

for customer due diligence, client screening and corporate security. With the increased need for organisations to implement effective risk-based due diligence procedures, we offer a range of tools for finding information on people, companies and countries and for satisfying regulators that appropriate checks

have been carried out. Whether you are looking for information on clients, suppliers or partners or checking for further company information, legal histories or for ongoing monitoring purposes, our tools provide one convenient resource for timely access to global information.

Find out more:

+44 (0) 20 7400 2809 | risk@lexisnexis.co.uk | www.bis.lexisnexis.co.uk