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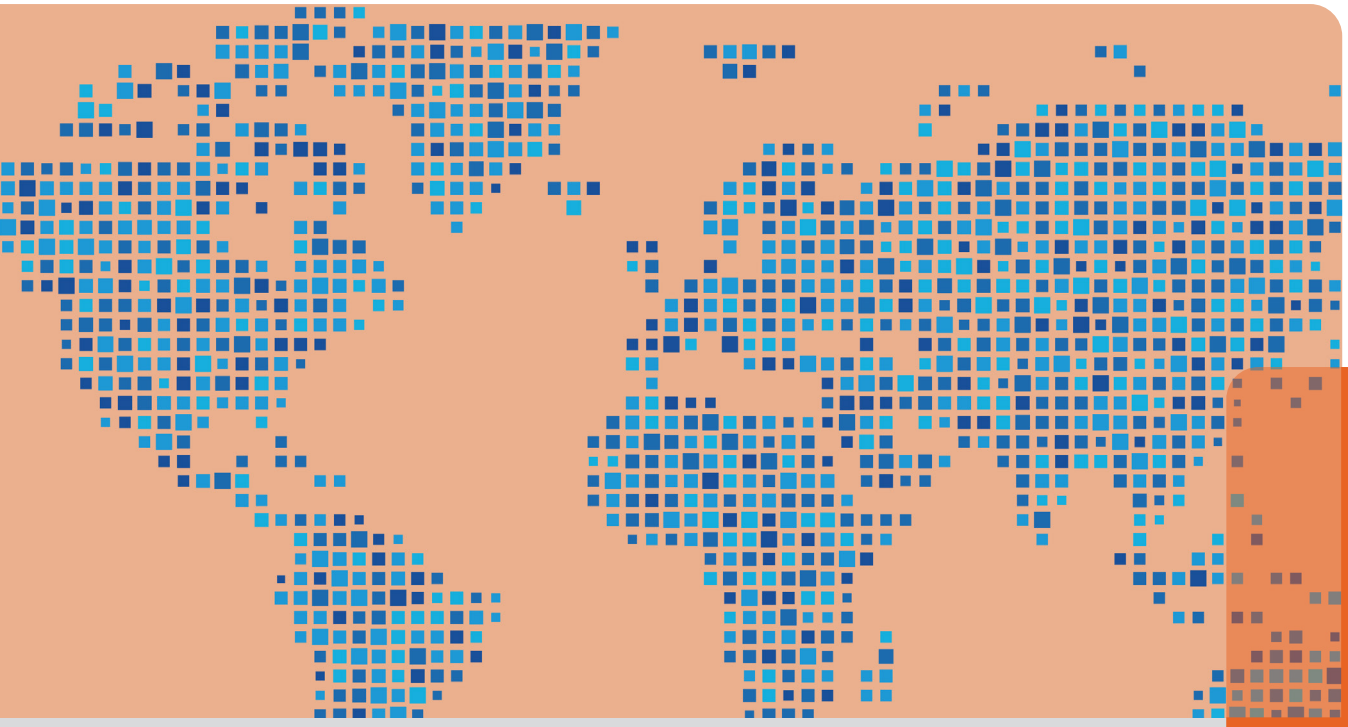

Sanctions

2024

Fifth Edition

Contributing Editors:
Roberto J. Gonzalez & Joshua R. Thompson
Paul, Weiss, Rifkind, Wharton & Garrison LLP

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Expert Analysis Chapters

Q&A Chapters

Preface

Dear Reader,

Welcome to the fifth edition of *ICLG – Sanctions*. Paul, Weiss, Rifkind, Wharton & Garrison LLP is delighted to serve as the *Guide*'s Contributing Editors and author of two chapters.

This edition covers the economic sanctions laws of 18 jurisdictions, and its opening chapters survey key regulatory and enforcement topics. The *Guide* brings together the expertise and perspectives of leading practitioners across the world. It is our belief that the *Guide* will serve as a valuable resource for those seeking to understand sanctions regimes across jurisdictions and a concise primer on the various forms of sanctions, types of sanctions enforcement, and compliance expectations.

Sanctions are increasingly used as an important (and sometimes the primary) tool of foreign policy, as the unprecedented imposition of sanctions targeting Russia as a result of its invasion of Ukraine has made clear, and a number of jurisdictions have increased their focus on the enforcement of sanctions requirements. Regulators have also increased their focus on applying sanctions principles to new frontiers, such as the digital asset space. As sanctions continue to expand and change at a rapid pace, those engaged in international trade are forced to navigate an increasingly complex – and sometimes conflicting – regulatory environment. We hope the *Guide* serves as a useful roadmap.

We encourage you to contact us with suggestions for future editions.

Roberto J. Gonzalez & Joshua R. Thompson
Paul, Weiss, Rifkind, Wharton & Garrison LLP

International Comparative Legal Guides

Recent Developments in U.S. Sanctions: Russia Sanctions, OFAC Enforcement Trends, and Compliance Lessons Learned


Roberto J. Gonzalez


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Introduction

The central theme of the last year in U.S. sanctions has been the U.S. government's continued deployment of sanctions authorities to forcefully respond to Russia's invasion of Ukraine in February 2022. Multiple rounds of far-reaching sanctions, including the designation of hundreds of individuals and entities both inside and outside of Russia and unprecedented prohibitions on the ability of U.S. persons to provide a range of services to Russia – on top of prior prohibitions on, among other things, U.S. person "new investment" in Russia – have compounded to make Russia effectively a quasi-comprehensively sanctioned jurisdiction. The U.S. government's unprecedented coordination with allied countries (including the United Kingdom, Member States of the European Union, Japan, Canada, and Australia) in imposing sanctions targeting Russia has only heightened the complexity and compliance risk of any transaction that may directly or indirectly involve Russia.

Throughout the last year, the U.S. government has made clear that civilly and criminally enforcing sanctions targeting Russia – and, where possible, seizing ill-gotten property – is a paramount priority. Additionally, since the beginning of 2023, a main focus of the U.S. government has been identifying, interdicting, and prosecuting attempts to evade Russia (and other) sanctions. In recent months, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the primary U.S. sanctions regulator, has added hundreds of individuals and entities located outside of Russia to its Specially Designated Nationals and Blocked Persons List (the "SDN List"; persons on the SDN List, "SDNs") for engaging in schemes to evade sanctions targeting Russia.

In addition to surveying the sanctions targeting Russia, this chapter focuses on OFAC's compliance expectations and enforcement trends generally. Since January 2020, OFAC has taken 61 public enforcement actions and assessed over $643 million in civil monetary penalties (a large portion of this total was the April 2023 settlement with British American Tobacco p.l.c. for over $508 million). Increasingly, OFAC has drawn explicit links in its public enforcement actions to the compliance expectations laid out in its landmark 2019 guidance on the "hallmarks of an effective compliance program" (the "Framework"). U.S. and non-U.S. companies alike would be well served to learn from the mistakes of similarly situated entities and incorporate the compliance guidance found in recent OFAC enforcement actions into their own sanctions risk assessments and compliance programmes.

Recent updates to U.S. sanctions targeting Russia

As a result of U.S. sanctions targeting Russia since its invasion of Ukraine in February 2022, over 1,000 individuals and entities in Russia and Belarus, including most major Russian and Belarussian financial institutions and a number of major Russian manufacturing and state-owned companies, have been added to the SDN List, broadly cutting off their U.S.-nexus transactions with limited exceptions. Blocking sanctions were also imposed on a number of prominent Russians and Belarussians and their family members, including, among others, various oligarchs and government officials.

The U.S. government has also made clear that it will rigorously enforce these sanctions. In March 2022, the U.S. Department of Justice ("DOJ") announced the creation of the KleptoCapture task force, which coordinates actions across DOJ's divisions and partners with other federal agencies to target the evasion, violation, or undermining of U.S. sanctions targeting Russia and to seize assets belonging to sanctioned individuals. Later in March 2022, DOJ and OFAC announced the Russian Elites, Proxies, and Oligarchs ("REPO") task force, an international task force among the sanctions and law enforcement authorities of a number of U.S. allies to share information regarding sanctions targets, sanctions evasion attempts, and asset seizures. In April 2022, Deputy U.S. Attorney General Lisa Monaco emphasised the centrality of national security to DOJ's white collar enforcement efforts, noting in particular the enforcement of sanctions evasion and export control violations as a key part of deterring corporate crime, stating "one way to think about this is as sanctions being the new [Foreign Corrupt Practices Act]".

On the one-year anniversary of Russia's invasion of Ukraine, OFAC designated dozens of additional Russian financial institutions and wealth management companies as SDNs and estimated that over 80% of the Russian banking sector's assets have now been targeted by U.S. sanctions. Beyond the financial sector, OFAC has also issued determinations during the last year that over a dozen other sectors of the Russian economy shall be the target of U.S. sanctions, recently including the architecture, engineering, construction, manufacturing, transportation, metals and mining, and quantum computing sectors of the Russian economy. While these determinations do not automatically make every company in these sectors an SDN, they provide notice that anyone active in these sectors could become an SDN (and they are also often accompanied by at least an initial tranche of newly sanctioned SDNs in the relevant sector). The U.S. government has also prohibited U.S. persons from providing various types of services (including, *e.g.*, accounting, management consulting, trust and corporate formation, architecture, and engineering, among others) or facilitating non-U.S. persons from doing so. Additionally, the U.S. government entered into an agreement with members of the G7, European Union, and Australia to impose restrictions on the import of Russian-origin oil and petroleum products and to impose a price cap on Russian crude oil and petroleum products.

The cumulative effect of these and earlier sanctions imposed after Russia's invasion of Ukraine in February 2022 has been to make Russia (and to a lesser extent Belarus) a quasi-comprehensively sanctioned country from a U.S. perspective. The U.S. government also threatens secondary sanctions on non-U.S. persons who engage in certain types of transactions with Russian companies or who directly or indirectly support Russia's war in Ukraine. Finally, a number of U.S. allies have issued sanctions that target many of the same individuals, entities, and/or activities that are targeted by U.S. sanctions, such that, depending on the facts and circumstances of any given transaction, there may be multiple countries' sanctions programmes applicable to a given transaction.

Given the broad targeting of the Russian financial and other sectors by U.S. sanctions since the start of Russia's invasion of Ukraine, in 2023 OFAC has been particularly focused on attempts to circumvent or evade existing U.S. sanctions targeting Russia and OFAC has added hundreds of individuals and entities located outside of Russia to the SDN List for their participation in or support of various Russia sanctions evasion schemes. In March 2023, DOJ also announced the formation of a dedicated team of dozens of prosecutors focusing on investigating potential criminal sanctions and export control evasion schemes (including, but not limited to, such schemes in the context of Russia sanctions).[1]

In March 2023, OFAC, DOJ, and the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") issued a joint compliance note focused on sanctions and export control evasion attempts, particularly with respect to attempts to evade U.S. sanctions targeting Russia and Belarus.[2] The guidance stressed the importance of companies maintaining a risk-based sanctions and export control compliance programme that "should include management commitment (including through appropriate compensation incentives), risk assessment, internal controls, testing, auditing, and training". The guidance also emphasised that OFAC, DOJ, and BIS will continue to aggressively crack down on sanctions evasion attempts and to pursue criminal prosecutions and civil enforcement actions as well as imposing additional sanctions or export control designations where warranted.

In July 2023, OFAC, DOJ, and BIS issued a second joint compliance note regarding voluntary self-disclosures ("VSDs") of potential violations of U.S. sanctions and export control laws.[3] While this guidance did not change the existing VSD policies of the three agencies, it highlighted the benefits to companies that promptly disclose and remediate potential violations of U.S. sanctions and export control laws. The guidance also highlighted a recent change in approach at BIS, which now considers a company's "deliberate non-disclosure of a significant possible violation" of export controls as an aggravating factor under its penalty guidelines. The guidance also emphasised that as a result of the AML Act of 2020 whistleblowers who provide information regarding anti-money laundering, sanctions, or export control violations to DOJ or the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") that lead to penalties of over $1 million can now be eligible to receive 10–30% of the collected penalty, depending upon the facts and circumstances. OFAC and other U.S. government officials have publicly noted that they are receiving an increase in high-quality tips and leads resulting from these enhanced whistleblower benefits.

OFAC's Compliance Framework

The 2019 Framework, and the related "compliance commitments" that are now a standard part of OFAC settlements, represent OFAC's effort to more clearly and comprehensively communicate its expectations about appropriate sanctions compliance practices. OFAC made clear that the guidance is intended not only for U.S. companies, but also for non-U.S. companies that conduct business in or with the U.S., with U.S. persons, or using U.S.-origin goods or services. U.S. and non-U.S. companies would be well advised to study the Framework carefully because, among other things, OFAC will consider a compliance programme that follows the Framework, a mitigating factor in the event of an enforcement action.[4]

The Framework describes five "essential components" of an effective sanctions compliance programme ("SCP"):[5]

- ***Management Commitment***. The Framework notes that Senior Management's[6] commitment to, and support of, a company's risk-based SCP is "one of the most important factors in determining its success". This commitment can be evidenced by management's: (1) review and approval of the SCP; (2) ensuring that the compliance function has sufficient authority and autonomy to deploy policies and procedures to effectively control OFAC risk (this includes the designation of a sanctions compliance officer); (3) ensuring the compliance function receives adequate resources; (4) promoting a "culture of compliance"; and (5) recognition of the seriousness of, and the implementation of necessary measures to reduce the occurrence of, sanctions violations.[7]
- ***Risk Assessment***. As is consistent with OFAC's past practice, the Framework recommends that SCPs be designed and updated pursuant to a "risk-based approach". OFAC officials have emphasised that not every company is expected to satisfy every element of the Framework, but rather companies should tailor their programmes to their unique risk profiles. One of the "central tenets" of a risk-based approach is for companies to "conduct a routine, and if appropriate, ongoing 'risk assessment' for the purposes of identifying potential OFAC issues they are likely to encounter".[8] OFAC identifies two core elements of a commitment to meet this compliance component: periodic risk assessments (including the conducting of due diligence during client and third-party onboarding and merger-and-acquisition activities); and the development of a methodology to analyze and address the particular risks identified by these risk assessments (which could include the root causes of any apparent violations or systemic deficiencies identified by the organisation during the routine course of business as well as through its testing and audit function).[9]
- ***Internal Controls***. Effective OFAC compliance programmes generally include internal controls to identify, interdict, escalate, report, and keep records pertaining to prohibited activity. Key elements include: (1) written policies and procedures tailored to the organisation's operations and risk profile and enforced through internal and/or external audits; (2) adequately addressing the results of a company's OFAC risk assessment; (3) implementation of immediate and effective remedial actions; (4) clear communication of policies and procedures to all relevant staff; and (5) identification of designated personnel responsible for integrating policies and procedures into daily operations.[10]
- ***Testing and Auditing***. A comprehensive and objective SCP audit function ensures the identification of programme weaknesses and deficiencies. OFAC notes that it is the company's responsibility to enhance its programme, including all programme-related software, systems, and other technology, to remediate any identified compliance gaps.
- ***Training***. The Framework describes training as "integral" and outlines OFAC's expectation that training

programmes be "provided to all appropriate employees and personnel on a periodic basis (and at a minimum, annually) and generally should accomplish the following: (i) provide job-specific knowledge based on need; (ii) communicate the sanctions compliance responsibilities for each employee; and (iii) hold employees accountable for sanctions compliance training through assessments".[11]

As an appendix to the Framework, OFAC also describes some of the common "root causes" of the violations that were the subject of its prior enforcement actions. These themes and others are addressed in the enforcement trends section below. Additionally, in October 2021, OFAC issued guidance that discusses and applies the Framework in the context of crypto exchanges and other digital asset companies.[12] In September 2022, OFAC issued similar guidance applying the Framework in the context of companies in the instant payments industry.[13]

Enforcement trends

OFAC's enforcement actions in recent years, together with the Framework's discussion of "root causes", highlight compliance deficiencies or breakdowns that are commonly responsible for sanctions violations. We describe the major areas of concern below.

Use of the U.S. financial system, including the use of U.S. dollar payments

OFAC has long viewed the use of the U.S. financial system for the benefit of sanctioned persons or jurisdictions as constituting a violation of U.S. sanctions.

Historically, OFAC and DOJ enforcement focused on banks – and not the banks' customers – that were conducting transactions with sanctioned jurisdictions or parties. However, in 2017, OFAC made clear through its enforcement action against Singaporean entity CSE Global Limited and its subsidiary CSE TransTel Pte. Ltd. that non-U.S. companies can violate U.S. sanctions by *causing* – through initiating U.S. dollar ("USD") payments – U.S.-based banks or branches to violate sanctions by engaging in the prohibited exportation of financial services from the U.S. for the benefit of sanctioned parties or jurisdictions.

On July 16, 2020, DOJ and OFAC extended this line of enforcement further, announcing parallel resolutions with Essentra FZE Company Limited ("Essentra"), a UAE-based supplier, for selling cigarette products it knew to be ultimately destined for North Korea.[14] The transactions involved documentation falsely naming China as the destination. OFAC concluded that Essentra's conduct of this business and its *receipt* of three payments into its bank accounts at the non-U.S. branch of a U.S. bank "caused" the branch (a U.S. person) to export, directly or indirectly, financial services to North Korea. Similarly, in DOJ and OFAC's January 14, 2021, resolutions with PT Bukit Muria Jaya ("BMJ"), a paper products manufacturer located in Indonesia, BMJ "directed" payments for its North Korean exports to its USD bank account at a non-U.S. bank, which caused U.S. banks to clear wire transfers related to these exports.[15] Non-U.S. companies are now on notice of the risk of *criminal* enforcement in addition to OFAC enforcement, depending on the circumstances, for the *initiation* or *receipt* of U.S. dollar or other currency transactions that flow through the U.S. financial system, including non-U.S. branches of U.S. banks, in connection with sanctioned-country or sanctioned party business.

More recently, in May 2023, OFAC and DOJ announced a $629 million combined resolution with British American Tobacco ("BAT") and its subsidiary British American Tobacco Marketing Singapore ("BATMS") relating to apparent violations of U.S. sanctions targeting North Korea.[16] According to OFAC, the apparent violations arose from BAT and BATMS's use of the U.S. financial to receive or process payments for its sales to the North Korean Embassy in Singapore. OFAC noted that the multistep process involved a North Korea company remitting funds via an SDN financial institution in North Korea through various accounts in China, and ultimately, BATMS. According to OFAC, this multiyear scheme involved 228 payments worth over $251 million processed by 12 U.S. banks and OFAC determined that BAT and BATMS took multiple steps to conceal the involvement of North Korean entities and the SDN bank from the U.S. banks that processed these payments. OFAC determined that this scheme caused U.S. financial institutions to violate U.S. sanctions. OFAC noted that this action was the largest-ever OFAC settlement with a non-financial institution.

In December 2022, OFAC announced a $4,379,810 settlement with Danfoss, A/S ("Danfoss"), a Danish manufacturer, for 225 apparent violations of multiple OFAC sanctions programmes between 2013 and 2017.[17] According to OFAC, Danfoss' wholly-owned subsidiary in the UAE, ("Danfoss FZCO"), had an account at a UAE branch of a U.S. financial institution. Danfoss FZCO directed customers located in Iran, Syria, and Sudan to make payments at this UAE branch. Those customers utilised third-party agents such as money exchangers in non-sanctioned jurisdictions to make the transfers. Likewise, OFAC found that Danfoss FZCO had used third-party agents to make transfers from its account at the U.S. financial institution to entities in Syria and Iran. OFAC observed that the "use of third-party payors disguised the originator or beneficiary of the transactions". As a result of these activities, Danfoss FZCO "caused the U.S. financial institution to facilitate prohibited transactions" totalling approximately $16.9 million.

In April 2022, OFAC entered into a $6,131,855 settlement with Toll Holding Limited ("Toll"), an Australian-headquartered freight forwarding and logistics company; based on OFAC's determination Toll originated in or caused the receipt of over 2,900 payments that flowed through the U.S. financial system in connection with sea, air, and rail shipments that involved Iran, North Korea, Syria, and/or SDNs.[18] OFAC determined that Toll, due to inadequate sanctions compliance procedures, had processed U.S.-dollar denominated payments through the U.S. financial system. OFAC noted that this settlement highlights that non-U.S. companies that make use of the U.S. financial system to engage in commercial activity must take care to avoid routing transactions that relate to sanctioned countries or SDNs through the U.S. financial system.

Additionally, OFAC has recently focused on money service businesses ("MSBs"), as evidenced by its 2021 actions against Payoneer Inc. ("Payoneer") and MoneyGram Payment Systems, Inc. ("MoneyGram"). OFAC stated that, like other financial services providers, MSBs, including, as applicable, virtual currency businesses are responsible for ensuring compliance with OFAC sanctions, including understanding their sanctions-related risks and taking steps to mitigate against such risks (OFAC has also recently taken the more drastic step of designating crypto exchanges and other companies, including Blender.io and Tornado Cash, onto the SDN List for allegedly processing illicit transactions).[19]

Utilising non-standard payment or commercial practices

The Framework notes that companies are best positioned to determine whether a particular dealing, transaction, or activity

is performed in a manner consistent with industry practice. Sometimes deviations from standard practice are driven by an effort to evade or circumvent sanctions. For example, on January 4, 2021, OFAC entered into a $8,572,500 settlement with *Union de Banques Arabes et Françaises* ("UBAF"), a French bank specialising in trade finance, for processing 127 payments on behalf of sanctioned Syrian financial institutions.[20] The majority of the apparent violations involved UBAF's processing of internal book-to-book transfers on behalf of Syrian entities that were followed by corresponding funds transfers through the U.S. financial system. The remaining violations were either "back-to-back" letter of credit transactions – where a sanctioned Syrian entity was the beneficiary of export letters of credit or the applicant for import letters of credit that did not involve USD clearing, but the intermediary entered into or received one or more corresponding USD letters of credit to purchase or sell the same goods – or other trade finance transactions involving sanctioned parties, all of which were processed through a U.S. bank. OFAC stated that UBAF's actions during this time period demonstrated knowledge of OFAC sanctions, but the bank incorrectly believed that avoiding direct USD clearing on behalf of sanctioned parties was sufficient for compliance.

In other instances, a customer may ask for an accommodation that results in a sanctions violation. This was the case in OFAC's April 2022 settlement with S&P Global, Inc. ("S&P Global").[21] In this case, OFAC determined that a U.S. subsidiary of S&P Global had reissued multiple invoices to Rosneft (an SSI that is the target of sanctions that prohibit dealings in its new debt of more than (during the relevant period of time) 90-day maturity) far beyond the 90-day restriction. According to OFAC, in one instance an invoice was reissued 749 days after the date that the initial invoice was issued. As a result, OFAC determined the U.S. subsidiary engaged in prohibited dealings in the debt of Rosneft.

Another scenario that can lead to potential sanctions violations is when a non-U.S. customer requests a U.S. company to build a platform that it may then use to deal with comprehensively sanctioned jurisdictions or sanctioned persons.[22] This was the cause of the apparent violations in the March 2023 OFAC $30 million settlement with Wells Fargo Bank, N.A. ("Wells Fargo"). According to OFAC, as a part of the acquisition of Wachovia Bank ("Wachovia") in 2008, Wells Fargo acquired Wachovia's trade insourcing relationships, including a relationship with an unnamed European Bank ("Bank A"). According to OFAC, at the direction of a mid-level manager, Wachovia developed a customised version of a trading platform that Bank A would then host and use on Bank A's own systems, with reason to know that that Bank A could use the platform to handle international trade finance with OFAC sanctioned jurisdictions and persons. OFAC noted that, as a part of the development of this system, the team at Wachovia developing this system sought to eliminate the involvement of Wachovia personnel in potential transactions with sanctioned jurisdictions and persons. However, OFAC determined that Bank A's use of this hosted platform to engage in dealings with comprehensively sanctioned jurisdictions and sanctioned persons continued to rely on Wachovia's (and then Wells Fargo's) technology infrastructure in the United States, which OFAC viewed as a sufficient U.S. nexus for violations of sanctions to occur.

Export or reexport of U.S.-origin goods

OFAC has regularly pursued enforcement actions against non-U.S. companies that sold U.S.-origin goods to sanctioned persons or jurisdictions. As noted in the Framework, some of OFAC's public enforcement actions in this area have focused on large or sophisticated entities that "engaged in a pattern or practice that lasted multiple years, ignored or failed to respond to numerous warning signs, utilised non-routine business practices, and – in several instances – concealed their activity in a wilful or reckless manner".[23]

For example, in April 2021, SAP SE ("SAP") entered into parallel resolutions with DOJ, OFAC, and BIS totalling around $8 million regarding U.S. sanctions and export violations involving the export of software and related services to Iran.[24] These resolutions involved, in part, SAP's release of U.S.-origin software to non-U.S. third parties who made the software available in Iran. OFAC determined that in some cases, SAP managers had direct knowledge and facilitated the purchase of this software. OFAC further determined that SAP had reason to know from IP address data that services were being downloaded in Iran. SAP was faulted for not adopting IP blocking technology to prevent such downloads. Additionally, several U.S.-based SAP subsidiaries allowed Iranian users to access U.S.-based cloud services. OFAC faulted SAP for allowing these subsidiaries to operate as standalone entities for years with respect to compliance, despite pre- and post-acquisition reports of significant compliance deficiencies.

More recently, in April 2023, OFAC and BIS settlements totalling approximately $3.3 million with Microsoft Corporation ("Microsoft") related to apparent violations of U.S. sanctions and export controls.[25] The apparent violations involved Microsoft's Ireland and Russia subsidiaries that were engaged in sales of U.S.-origin software. The apparent violations occurred in the context of Microsoft's engagement of third-party licensing solution partners ("LSPs") to sell Microsoft software products. The LSPs worked with Microsoft Russia to develop sales leads and negotiate sales terms and Microsoft Ireland would bill the LSPs annually for the licences it supplies and the LSPs would separately bill and collect payment from end customers. In addition to the software being sold being U.S. origin, the process of facilitating Microsoft software downloads and other related services through LSPs involved U.S.-based servers and systems managed by personnel in the United States. OFAC determined that Microsoft's LSPs sold software licences to end users located in several comprehensively sanctioned jurisdictions and also SDN end users and that Microsoft then provided the U.S.-origin software and/or U.S-based services to these end users.

U.S. parent liability for non-U.S. subsidiary business; facilitating activities of non-U.S. affiliates

Multiple recent OFAC enforcement actions highlight OFAC's increased willingness to hold U.S. parent companies liable for the Iranian or Cuban business conducted by their non-U.S. subsidiaries.

For example, in its October 20, 2020 approximately $4.1 million settlement with OFAC, Berkshire Hathaway, Inc.'s ("Berkshire") resolved its liability for its recently acquired Turkish subsidiaries' sales to two Turkish intermediary companies with knowledge that these goods would be resold to Iran. OFAC found that these violations occurred despite the fact that Berkshire and other Berkshire subsidiaries repeatedly communicated with and sent policies to the Turkish subsidiary regarding Iran sanctions. The Turkish subsidiaries nonetheless took steps to conceal their dealings with Iran, such as using private email addresses that bypassed the controls of the corporate email system, utilising false names and false invoices, and providing false responses to compliance inquiries. OFAC found that certain other Berkshire subsidiaries received information that could have revealed that orders might have been destined for Iranian end users – but only

one Berkshire subsidiary flagged that transactions with Iranian customers were prohibited. These actions highlight the importance of performing appropriate due diligence in connection with the acquisition of non-U.S. entities and ensuring that subsidiaries of U.S. companies, and other entities controlled by U.S. companies, understand their obligations to comply with U.S. sanctions on Iran and Cuba, including when they supply goods to other companies within their corporate organisation.

In April 2022, OFAC entered into a $141,442 settlement with Newmont Corporation ("Newmont"), a U.S. headquartered company, to resolve apparent violations of U.S. sanctions targeting Cuba. According to OFAC, a non-U.S. subsidiary of Newmont in Suriname purchased Cuban-origin items through a non-U.S. vendor. Under the Cuba sanctions programme, a non-U.S. subsidiary of a U.S. company generally cannot engage in any dealings relating to Cuba, including the purchase of Cuba-origin items. OFAC noted that the employee who engaged in these transactions had not received sanctions compliance training and therefore did not understand that the prohibitions of U.S. sanctions targeting Cuba applied to Newmont's Suriname subsidiary.

Relatedly, multiple OFAC enforcement actions have involved U.S. firms referring business to, approving, or otherwise facilitating dealings with sanctioned persons or jurisdictions by their non-U.S. affiliates. For example, on October 1, 2020, OFAC announced a $5.8 million settlement with New York travel services company Generali Global Assistance, Inc. ("GGA") for apparent violations of Cuba sanctions. GGA intentionally referred Cuba-related payments to its Canadian affiliate to avoid processing reimbursement payments directly to Cuban parties and to travellers while they were located in Cuba. GGA subsequently reimbursed its Canadian affiliate for those payments.

Relatedly, non-U.S. companies with U.S. operations should take steps to ensure that U.S. offices and employees are walled off or recused from any sanctioned business engaged in by non-U.S. parts of the company. In July 2021, OFAC penalised a U.S. subsidiary of Alfa Laval AB for its referral of an Iranian business opportunity to its non-U.S. affiliate.[26] This case demonstrates the importance of adopting training to ensure U.S. persons know they are prohibited from referring or participating in business opportunities involving sanctioned jurisdictions.

Similarly, in September 2021, OFAC entered into a settlement agreement with Cameron International Corporation ("Cameron"), a U.S. headquartered company, to resolve apparent violations of U.S. sectoral sanctions targeting Russia. Under Directive 4 of U.S. sectoral sanctions, U.S. persons cannot engage in the provision of goods and services (other than financial services) that support the exploration of deepwater, Arctic offshore, or shale oil exploration or production to projects located anywhere in the world if a listed Directive 4 SSI entity owns 33% or more of the project or has a majority of the voting interests in the project. OFAC determined that Cameron's Romanian subsidiary had entered into contracts with Gazprom-Neft Shelf, a Directive 4 SSI, relating to supplying materials to a Gazprom-Neft Shelf Arctic oil project. While the initial negotiations between Cameron's Romanian subsidiary and Gazprom-Neft Shelf did not violate sanctions, Cameron's contract approval process required review and approval by certain U.S. persons for contracts above a certain monetary threshold and these contracts were ultimately reviewed and approved by U.S. persons in apparent violation of U.S. sanctions.

Deficient due diligence

A fundamental element of sanctions compliance is conducting appropriate, risk-based due diligence on customers, supply chains, intermediaries, and counterparties. OFAC has recently brought several enforcement actions resulting from deficient due diligence.

As demonstrated by OFAC's September 20, 2020 settlement with Deutsche Bank Trust Company Americas ("DBTCA"), financial institutions are expected to conduct appropriate diligence on transactions that raise sanctions red flags prior to processing transactions.[27] Specifically, OFAC faulted DBTCA for not independently corroborating verbal representations it received from the U.S. counsel of a non-account holder party to the transaction at issue in order to confirm that there was no SDN interest in the transaction. OFAC stated that although the payment transactions associated with the transaction did not contain an explicit reference to the SDN, the payment was "related to a series of purchases of fuel oil that involved" the SDN and that, at the time of the transaction, "DBTCA had reason to know of [the SDN's] potential interest in the transaction underlying the payment, which closely coincided [with the SDN's designation]". OFAC and other regulators expect companies to fully review all the documentation they receive for potential indicia of a nexus to a sanctioned jurisdiction or person prior to sending, approving, or facilitating a payment.

Similarly, OFAC expects that companies implement measures, beyond contractual provisions, to monitor and minimise sanctions risk over the life of a contractual relationship, such as a leasing agreement. In its settlement with U.S.-based Apollo Aviation Group LLC ("Apollo Aviation"), OFAC determined that Apollo Aviation leased three aircraft engines to a UAE company that subleased them to an airline in Ukraine that, in turn, installed the engines on an aircraft wet leased to an SDN.[28] When the engines were returned, Apollo Aviation discovered that the engines had been installed on aircraft owned by or leased to an SDN and used in Sudan (which, at the time, was subject to comprehensive U.S. sanctions). Although Apollo Aviation's lease agreements with the UAE company included sanctions commitments, OFAC faulted Apollo Aviation for failing to take steps to monitor whether the engines were being used in a sanctions-compliant manner.

Misinterpreting, or failing to understand the applicability of, OFAC's regulations

Often companies will misunderstand the applicability or scope of OFAC's sanctions prohibitions either because they are not aware of sanctions regulations or because they are unaware that such regulations apply to them by virtue of their status as U.S. persons, U.S.-owned subsidiaries (with respect to Cuba and Iran sanctions), or non-U.S. persons engaged in activities with a U.S.-nexus (involving U.S. persons, U.S.-origin goods, or U.S. territory, including payments transiting the U.S. financial system).

For example, on July 28, 2020, U.S.-based Whitford Worldwide Company, LLC's ("Whitford"), settled with OFAC for conduct with Iran conducted by Whitford and its subsidiaries in Italy and Turkey.[29] Whitford's Regulatory Affairs Manager had incorrectly advised that Whitford's non-U.S. subsidiaries could continue selling to Iran legally as long as there were no direct connections between the subsidiaries and Iran. As a result of this advice, Whitford developed a plan to continue selling to Iran, which required that all sales be directed through third-party distributors and that documents related to those sales avoid referencing Iran.

Another area of recent enforcement focus is the failure of companies to identify an applicable general licence or adhere to a general licence's conditions, rendering the otherwise available authorisation inapplicable. For example, in OFAC's May

2020 settlement with BIOMIN America, Inc., BIOMIN incorrectly believed that it could structure transactions involving a Cuban counterparty that would be consistent with OFAC's Cuba sanctions.[30] BIOMIN coordinated and received commissions on sales to a Cuban counterparty as executed by BIOMIN's non-U.S. affiliates. In determining that BIOMIN's conduct resulted in violations, OFAC noted that the company could have availed itself of an existing general licence – if the exports had been licensed by the Commerce Department – or applied for a specific licence, and likely avoided the violations, but because the company appears not to have understood the scope of OFAC's Cuba sanctions, it was not in a position to take advantage of these potential licensing avenues. Likewise, in OFAC's July 2020 settlement with Amazon.com, Inc. ("Amazon"), OFAC determined that Amazon's failure to abide by the reporting requirements associated with a general licence under its Ukraine-related sanctions effectively nullified that authorisation with respect to the affected transactions.

These actions demonstrate how companies can benefit from seeking appropriate advice and guidance when contemplating business involving U.S. sanctioned parties or jurisdictions. Management and sales teams would be wise to consult with internal and/or external legal or compliance experts to ensure that cross-border transaction structures do not run afoul of U.S. sanctions requirements. Such experts are also well positioned to identify potential eligibility for authorisations from OFAC, including general and specific licences.

Screening software limitations; deficiencies in automated processes; failure to screen for sanctioned country indicia; and failure to implement IP blocking

Many companies screen their customers and other third parties, but such screening may be deficient due to a failure to adequately calibrate, update, or audit their screening software, lists, and procedures. A significant number of recent enforcement actions have involved sanctions screening deficiencies, making it clear that the utilisation of defective screening software or insufficient screening lists will not provide a shield against regulatory enforcement.

In November 2019, OFAC announced an approximately $467,000 settlement with Apple, Inc. ("Apple") related to apparent violations of sanctions where Apple dealt in the property interests of SIS, d.o.o. ("SIS"), a Slovenian software company designated onto the SDN List by OFAC as a significant foreign narcotics trafficker.[31] Specifically, OFAC found that from approximately February 2015 to May 2017, Apple engaged in apparent violations of sanctions when it "hosted, sold, and facilitated the transfer" of SIS's software application and associated content. According to OFAC, Apple initially entered into an app development agreement with SIS in 2008. OFAC noted that when OFAC added SIS and its director and majority owner, Savo Stjepanovic, to the SDN list on February 24, 2015, Apple failed to identify SIS as an SDN, because its sanctions screening tool failed to match the upper case name "SIS DOO" in Apple's system with the lower case name "SIS d.o.o." as it appears on the SDN List, even though the address for SIS in Apple's records matched the SIS address reflected on the SDN List. Further, according to OFAC, Apple only screened individuals listed as "developers" in its system, and therefore missed Stjepanovic, who was listed as an "account administrator" in SIS's App Store developer account. According to OFAC, on or about April 17, 2017 – approximately two months after the designations – Apple facilitated the transfer of a portion of SIS's apps to a second software company, which had been incorporated several days after the designations. And, OFAC noted, in September 2015, SIS entered into an agreement with a third software company, which obtained SIS's remained apps and took over SIS's App Store account and replaced SIS's banking information with its own. OFAC noted that "these actions were all conducted without personnel oversight or additional screening by Apple".

Another recent theme has been OFAC taking enforcement actions against companies that screen against the SDN List, but that don't conduct similar screenings against other information available to them in the normal course, including physical address information, phone number country codes, email address suffixes, IP addresses, and other similar information.

For example, in October 2022, OFAC entered into an approximately $24 million settlement with the U.S. headquartered cryptocurrency exchange, Bittrex, resolving 116,421 apparent violations of multiple sanctions programmes.[32] This represents the largest fine levied by the U.S. government against a crypto business for violating sanctions to date, and also is the first set of coordinated enforcement actions by OFAC and FinCEN in the crypto space. Bittrex was founded in March 2014 and OFAC determined that during its first three years of operation, Bittrex had failed to screen customers or transactions for a nexus to sanctioned jurisdictions, despite having collected sufficient IP and physical address information about each customer during their onboarding to be able to perform such screenings. OFAC viewed favourably a number of remedial measures undertaken by Bittrex, including implementing new sanctions screening and blockchain tracing software, conducting additional sanctions compliance training, and hiring additional compliance staff. OFAC noted this enforcement action "emphasizes the importance of new companies and those involved in emerging technologies incorporating sanctions compliance into their business functions at the outset, especially when the companies seek to offer financial services to a global customer base".

In November 2022, OFAC announced a settlement with Payward, Inc. (d/b/a Kraken; "Kraken") a U.S.-incorporated cryptocurrency exchange consisting of approximately $362,158 in direct civil penalties and an additional $100,000 to be invested by Kraken in sanctions compliance controls.[33] According to OFAC, he apparent violations involved Kraken's processing of 826 transactions totalling approximately $1,680,577 on behalf of individuals who appear to have been located in Iran at the time of the transactions. OFAC noted that although Kraken maintained controls intended to prevent users located in comprehensively sanctioned jurisdictions from opening accounts, at the time the apparent violations occurred, Kraken did not maintain IP address blocking on transactional activity across its platform. According to OFAC, this gap in Kraken's sanctions compliance procedures resulted in some customers who had established accounts while outside Iran engaging in transactional activity through those accounts while they were apparently located in Iran, despite the IP address data of such customers at the time of the transactions being available to Kraken. The Kraken settlement is unusual in that it explicitly notes Kraken's agreement to invest an additional $100,000 in its sanctions compliance controls, emphasising OFAC's focus on the importance of sufficient resources being dedicated to such controls.

In September 2022, OFAC announced a $116,048 settlement with Tango Card, Inc. ("Tango Card"), a U.S.-headquartered company that supplies and distributes electronic rewards to support client businesses' employee and customer incentive programmes.[34] The settlement resolved 27,720 transactions with persons with an internet protocol ("IP") address or email address associated with Cuba, Iran, Syria, North Korea, and the Crimea region that resulted in apparent violations of U.S. sanctions. OFAC determined that, although Tango Card maintained IP blocking and sanctions screening procedures for

its direct customers (*i.e.*, merchants), Tango Card did not maintain such procedures with regard to the recipients of rewards (*i.e.*, the merchant's customers and employees) despite collecting information, including such recipients' IP addresses and email addresses, during the normal course of its business.

More recently, in May 2023, OFAC announced an approximately $7.5 million settlement agreement with Poloniex, LLC ("Poloniex"), a U.S.-headquartered cryptocurrency trading platform to resolve 65,942 apparent violations of U.S. sanctions.[35] According to OFAC, over an almost six-year period, the Poloniex trading platform allowed customers apparently located in sanctioned jurisdictions to engage in online digital asset related transactions with a combined value of over $15 million. OFAC stated that these transactions occurred despite Poloniex having reason to know their location based on both Poloniex's KYC information as well as IP address data that was available to Poloniex.

Mergers and acquisitions

Multiple recent OFAC enforcement actions highlight the importance of performing adequate sanctions due diligence with regard to potential acquisition targets and to implementing strong sanctions compliance procedures following acquisition. Often, although these non-U.S. subsidiaries were required by their U.S. parents to cease their transactions with sanctioned jurisdictions, the non-U.S. subsidiaries failed to do so.

For example, in its September 24, 2020 settlement with OFAC, U.S.-based Keysight Technologies, Inc. ("Keysight") agreed to pay $473,157 to settle violations of Iran sanctions on behalf of its former Finnish subsidiary, Anite Finland Oy ("Anite").[36] Prior to Keysight's acquisition of Anite in 2015, Anite had committed to cease all existing and future business with certain sanctioned countries, including Iran. After the acquisition, Keysight reiterated to Anite that sales to these countries must cease. Nevertheless, Anite's Vice President for Europe, Middle East, and Africa and its Regional Director for the Middle East both expressed reluctance to comply. The Regional Director and two employees then took measures to obfuscate from Keysight their dealings with Iran, including omitting references to Iran in correspondence. Although Keysight conducted an internal investigation upon discovering the misconduct and voluntarily self-disclosed the violations, OFAC deemed Anite's violations an egregious case due to the wilful violations, active participation by senior managers, and attempts at concealment.

Individual liability

Historically, OFAC has generally not pursued enforcement actions against individuals outside of the Cuba-travel context. However, the Framework notes that "individual employees – particularly in supervisory, managerial, or executive-level positions – have played integral roles in causing or facilitating" sanctions violations, even in instances where "the U.S. entity had a fulsome sanctions compliance program in place" and in some cases these employees "made efforts to obfuscate and conceal their activities from others within the corporate organisation, including compliance personnel, as well as from regulators or law enforcement".[37] The Framework states that, in such instances, OFAC will consider enforcement actions not only against the entities, but against the individuals as well.[38] There have also been several recent enforcement actions in which OFAC has demonstrated a new emphasis on individual liability.

In 2019, OFAC took the unprecedented step of designating a former company manager as a foreign sanctions evader while concurrently announcing a settlement with the company's U.S. parent.[39] Specifically, OFAC designated the former managing director of the U.S. company's Turkish subsidiary whom OFAC determined to be primarily responsible for directing the apparent violations at issue and seeking to conceal them. This designation highlights increased personal risk for personnel who play a central role in causing violations of U.S. sanctions law.

In December 2021, OFAC entered into a $133,860 settlement with an unnamed U.S. person who OFAC determined to have arranged for and received four payments into his personal bank account in the U.S. on behalf of an Iranian cement company.[40] OFAC determined that this individual also worked with the Iranian cement company to make sales of certain equipment to a project in a third country and facilitated the shipment of the equipment. OFAC noted that this individual had previously applied for a specific licence to authorise other transactions with Iran and that this licence request had been denied such that this person understood the prohibitions of U.S. sanctions targeting Iran. OFAC noted that it took this enforcement action against the individual because this individual had harmed the objectives of the Iran sanctions programme by "wilfully or recklessly" ignoring U.S. sanctions and enabling the evasion of U.S. sanctions by an Iranian company.

In May 2023, OFAC entered into an approximately $3.3 million settlement with U.S. headquartered Murad, LLC ("Murad") and a separate $175,000 settlement with an individual, a U.S. person, who was a former senior manager of Murad.[41] According to OFAC, the U.S. person manager engaged in a scheme to indirectly sell Murad's products in Iran through a UAE-based distribution company and ultimately sold over $11 million of goods to Iran. OFAC stated that the U.S. person manager signed all agreements with the distributor on behalf of Murad and OFAC determined that the U.S. person should have known that these agreements contemplated the sale of Murad's products into Iran. Eventually, according to OFAC, the issue of Murad potentially needing an OFAC licence to sell indirectly to Iran was raised and Murad applied for, but did not receive, a specific licence from OFAC to sell its products in Iran. OFAC noted that despite this, and at the direction of the U.S. person manager, Murad continued to sell to the UAE distributor and the U.S. person manager provided support for the UAE distributor to open and operate a Murad-branded store in Tehran. OFAC noted that Murad was ultimately acquired by Unilever, which, when it discovered this arrangement, instructed the U.S. person manager to instruct the UAE distributor to cease all sales to Iran; however, the U.S. person manager continued to support the UAE distributor's sales of Murad products into Iran for a period of several years. According to OFAC, the scheme only ended after one of Unilever's banks inquired about certain transactions and whether they may involve Iran, after which a hold was placed on all of the UAE distributor's orders and an internal investigation was performed. OFAC stated that it took this action against the individual because the individual was a senior executive who oversaw the departments making these exports to Iran, despite knowing or having reason to know that sales to Iran were prohibited by U.S. sanctions.

Conclusion

U.S. sanctions targeting Russia are broad and will continue to evolve as long as the conflict remains unresolved. As a result, U.S. and non-U.S. companies, particularly those with remaining exposure to Russia or Belarus, would be well advised to review their sanctions compliance programme to ensure that it is taking account relevant risks, to continue to train and update relevant employees on the intricacies of these sanctions, and to monitor for further updates to the sanctions.

Although OFAC's regulations do not themselves require the implementation of a compliance programme, OFAC's Framework and the compliance guidance embedded in recent enforcement actions represent an effort by OFAC to more clearly and comprehensively communicate its expectations about appropriate sanctions compliance practices. U.S. and non-U.S. companies alike would be well advised to study this guidance and consider making appropriate enhancements to their compliance practices.

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Global Trade War Implications: The Role of Export Controls and Sanctions


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Introduction

The United States ("**US**") continues to pursue export controls and economic sanctions as the tools of choice for promoting a range of US national security and foreign policy goals. These "trade war" tools, largely administered in the US by the US Department of Commerce's Bureau of Industry and Security ("**BIS**") and the US Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), have the potential to degrade an adversary's military and financial capabilities by cutting the targeted country off from global financial markets or starving them of critical goods and technology. The use cases for imposing sanctions and export controls continue to expand as do the methods to implement them. This chapter will discuss recent developments in US sanctions and export controls, with a focus on measures aimed at Russia and China. The chapter will conclude with a discussion of enforcement trends and future considerations.

Background – Historical Application of US Sanctions and Export Controls

Historically, the US has imposed extensive sanctions restrictions on broad sets of targets. For example, blocking restrictions have been employed against entire countries, their governments, and their nationals, as in the case of Cuba. Frequently, these actions were taken unilaterally by the US government. In the 1990s, the US began to impose so-called "smart" sanctions: blocking restrictions against particular individuals and entities, whose names were added to a growing sanctions list. More recently, and particularly in relation to Russia's annexation of Crimea, the US began to impose less-than-blocking restrictions on particular listed persons. These restrictions prohibit US persons from engaging in certain types of transactions involving the listed individuals and entities, such as restrictions on certain transactions involving "new debt" or "new equity" of the listed person. Since Russia's full-scale invasion of Ukraine in February 2022, the US has acted in close coordination with the EU, G7 countries, and other allies to impose blocking restrictions on Russian banks, oligarchs, and other persons and entities connected with the Russian Government or defence industry, as well as limitations on investment in Russia and restrictions relating to the shipment of Russian oil and petroleum products.

US export controls are rooted in the Coordinating Committee for Multilateral Export Controls ("**COCOM**"), formed during the Cold-War Era to counteract the former Soviet Union, and its successor regime, the Wassenaar Arrangement.[1] The Wassenaar Arrangement, a list-based voluntary export control regime, was established in 1996 and currently counts 42 member countries.[2] Member countries independently implement a common control list at a national level and meet periodically to update the list. While fully implementing the multi-lateral Wassenaar Arrangement, the US also imposes additional unilateral controls. US export controls also seek to regulate reexports, exports from abroad, and transfers (within a foreign country) of items subject to US export control jurisdiction – typically consisting of items made in the US, containing more than a *de minimis* amount of US content, or produced abroad using certain US technology or software. These controls typically relate to items on the Commerce Control List ("**CCL**") and can be based on destination, end use, or end user.

Recent US Adaptations – Export Controls

(a) New restrictions on transactions with mainland China or Macau involving semiconductor manufacturing, advanced computing and supercomputing

On October 7, 2023, BIS announced significant new restrictions on exports, reexports, and transfers related to semiconductor manufacturing, advanced computing items, and items intended for supercomputing end uses to or within China.[3] Among the restrictions, BIS's new rules introduced additional licence requirements for certain advanced computing integrated circuits ("**ICs**"), such as Nvidia's A100 Graphics Processing Units ("**GPUs**") – which are crucial for artificial intelligence applications – and assemblies and components that contain such chips, when destined to mainland China or Macau.[4] The rules also require exporters, reexporters, and transferors to obtain a licence to ship an extensive range of electronics and computer related items – or in some cases any item subject to the EAR – when they are destined for supercomputing end uses in China or for use in semiconductor fabrication facilities in China that manufacture chips that meet certain performance parameters in the areas of logic ICs, NOT AND ("**NAND**") memory integrated circuits, and Dynamic Random-Access Memory

("**DRAM**") chips.[5] Other sections of the new rule are aimed at preventing (without a licence) the sale of specific US semiconductor manufacturing equipment to China, the development or production of semiconductor manufacturing equipment within China, the manufacture of certain chips designed in China at fabs outside of China, and the provision of support by US persons (including permanent residents) with respect to items *not subject to the EAR* in the development or production of specific types of ICs in mainland China or Macau.

While these new restrictions generally operate within the established framework of the EAR, they are notable for their breadth and reach. For example, as referenced above, the new rules restrict US persons from providing "support" to certain semiconductor fabs in mainland China or Macau with respect to items *not subject to the EAR*, where support may be broadly construed to include, for example, servicing an item or authorising a shipment. Prior to the October 7th rule, this form of restriction on US person activities had only been used to prohibit US person activities more directly related to advancing a foreign military, such as the development or production of nuclear or chemical weapons.

Taken together, and in combination with additional controls imposed in coordination with the US by Japan and the Netherlands, the new rules will likely make it difficult for China to obtain or manufacture advanced semiconductors.

(b) Expansion of extra-territorial jurisdiction for transactions involving Russia and China using the "Foreign Direct Product Rule"

As noted above, US export controls have typically applied to items that: (1) are located in the US; (2) are of US-origin; (3) contain greater than *de minimis* US-origin controlled content; or (4) are the foreign-produced direct product of certain US software or technology (the "**FDP Rule**").

Although a version of the FDP Rule has been a long-standing feature of the EAR, the rule has been adapted in recent years, greatly augmenting its role in the arsenal of controls available to BIS. Prior to the adaptations, the original FDP Rule exerted US jurisdiction on a fairly narrow set of products produced outside the US using US software or technology controlled for national security reasons, or by a plant that is itself the direct product of such US software or technology.[6]

Beginning in 2020, BIS expanded the FDP Rule in connection with Huawei entities designated on the Entity List ("**Footnote 1 Entities**").[7] Under the Entity List FDP Rule, the US asserts export control jurisdiction over foreign-made items that are the direct product of additional types of US software or technology that are not necessarily controlled for national security reasons, and where the transaction involves Footnote 1 Entities.

Pursuant to its October 7, 2022 rule discussed above, BIS added two new FDP Rules intended to assert jurisdiction over a range of foreign-made products (or associated software and technology) that are the direct product of specified US technology or software and meet certain advanced computing parameters or are useful in supercomputers and that are destined to mainland China or Macau.

BIS took the expansion of the FDP Rule a step further in the context of the Russia-Ukraine conflict. Under this further expanded version of the FDP Rule as amended over the past year, the US asserts export control jurisdiction over foreign-made items that are the direct product of *any* US software or technology identified on the CCL, or that are the direct product of a plant or a major component of plant that is itself the direct product of the same, regardless of the reason for control (i.e. national security or otherwise), if the foreign-made item would itself fall under an Export Control Classification Number ("**ECCN**") on the CCL or if it is described by HTS code or is otherwise enumerated in either of two supplements listing industrial sector goods and UAV-related EAR99 items and there is "knowledge" the item is destined for Russia, Belarus, or the temporarily occupied Crimea region of Ukraine. Further, for Russian/Belarusian Military End Users on the Entity List, all foreign-made EAR99 items are within scope, not only those that are enumerated in specific supplements as is the case for the rule described above.

In February 2023, BIS released the tenth iteration of the FDP rule, a new version intended to interrupt the supply of materials to Iran for the manufacture of UAVs for subsequent export to Russia. The rule exerts jurisdiction over foreign-made items that are the direct product of US technology or software, are destined to Iran, and appear in a list of HTS codes of items that are used in UAVs.[8]

In only a few short years, the FDP rule has evolved from an esoteric, narrowly tailored regulation to a cornerstone of US export controls. Based on the continued advance of the FDP Rule and associated licensing requirements, we expect BIS to continue to employ this rule in new situations.

(c) New list-based controls: industry sector sanctions and luxury goods controls

Typically, US export controls restrict the export of items controlled in the CCL. Fewer controls apply to items that are not specified under an ECCN in the CCL (i.e., EAR99) items – but a licence requirement may still apply, for example, based on the end-user (e.g., Entity List restrictions). Other than for transactions involving embargoed countries, controls on EAR99 items were generally limited and described at a high level (e.g., luxury goods controls on a list of items intended for North Korea, implemented in 2007).[9]

In 2014, BIS began to expand controls with "industry sector sanctions" against Russia, requiring a licence for the export, reexport, or in-country transfer of certain industrial items where there was "knowledge" the items were destined for certain oil and gas projects in the Russian Arctic.[10] In doing so, BIS introduced new controls on certain EAR99 items, described using Schedule B codes maintained by the US Census Bureau.

BIS further expanded the Russian industry sector sanctions in March and May of 2022. Unlike the previous industry sector sanctions, the expanded rule is not limited by the existence of "knowledge" that the items are destined for any particular purpose, but applies whenever the destination is to or within Russia.[11] Additionally, BIS expanded the scope beyond the oil and gas industry, requiring a licence for the export, reexport, or in-country transfer to Russia and Belarus of a large number of industrial and mechanical items useful for numerous industries and purposes.

BIS also introduced export controls on certain "luxury goods" destined to or within Russia or Belarus or that are destined to any individual designated on OFAC's specially designated nationals ("**SDN**") list under several of OFAC's Russia and Belarus related sanctions programmes. The luxury goods licence requirement for SDNs applies worldwide and in some ways exceeds even the reach of US sanctions in that no involvement of US persons is required. As with the industry sector sanctions list, the affected items are described by schedule B code. BIS continues to update these restrictions over time to align with controls imposed by US allies and partner countries.

Recent US Adaptations – Sanctions

(a) New investment ban

A significant expansion in US sanctions is the "new investment" prohibition implemented by OFAC under Executive Order ("**EO**") 14071 of April 6, 2022 (building on the prohibition on all "new investment" in the energy sector in Russia by a US person under EO 14066). Though other sanctions programmes have previously prohibited investment, the prohibitions have generally either been narrower (e.g., the former prohibition on "new investment" in Burma, subject to a narrow definition),[12] or subsumed by comprehensive sanctions measures (e.g., prohibitions on new investment in Iran and Syria).[13]

In particular, OFAC's prohibition on "new investment" in Russia relies on an expansive interpretation of what constitutes "new investment". In guidance, OFAC clarified that it views "investment" as "the commitment of capital or other assets for the purpose of generating returns or appreciation".[14] The term "investment" includes, among other things, "[t]he purchase of an equity interest in an entity located in" Russia, but does not include maintenance of a pre-existing investment or "[w]ind down or divestment of a pre-existing investment, such as a pre-existing investment in an entity, project or operation".[15] Notably, per OFAC's guidance, the new investment ban prohibits US persons from purchasing both new *and existing* debt and equity securities issued by an entity in Russia, unless "ordinarily incident and necessary to the divestment or transfer of the debt or equity securities to a non-U.S. person".[16]

However, the new investment prohibitions in these executive orders do not bar US persons from lending funds to, or purchasing a debt or equity interest in, entities located outside of Russia, provided that (1) "such funds are not specifically intended for new projects or operations" in Russia, and (2) the entity located outside of Russia "derives less than 50 percent of its revenues from its investments in" Russia.[17] OFAC has made clear that the export to Russia or import from Russia of goods, services, or technology are not prohibited under these particular provisions provided that the transaction is made pursuant to ordinary commercial sales terms.[18]

Although these prohibitions do not proscribe non-US investors from making new investments in Russia, they prohibit US persons from facilitating "new investment" by non-US persons. As a practical matter, this makes new investment in Russia more challenging for non-US investors seeking to engage in transactions with a US nexus (e.g., transactions involving payments in USD or involving US lenders).

These prohibitions do not prevent US investors from divesting from investments in Russia. However, as of December 2022, Russia began requiring payment of an "exit tax" in certain cases where non-Russians seek to divest from Russia. OFAC has clarified that US investors whose divestment from Russia will involve the payment of an exit tax require a specific licence from OFAC prior to the payment of such tax.[19]

(b) Import bans

Though OFAC has historically banned imports from certain comprehensively sanctioned jurisdictions, in the case of Russia, the import prohibitions are targeted and unique to the particular characteristics of the Russian economy. In 2022, OFAC has (so far) banned the import of the following Russian-origin items into the US:

- Crude oil, petroleum, petroleum fuels, oils, products resulting from the distillation of petroleum fuels and oils, liquefied natural gas, coal, and other coal products.[20]
- Non-industrial diamonds.[21]
- Fish, seafood, and preparations thereof.[22]
- Alcoholic beverages.[23]
- Gold[24] (unless located outside of Russian borders prior to June 28, 2022).[25]

These measures are further enhanced, as with the export controls, by the coordinated action taken by allies. For example, Australia, the EU, Switzerland and the UK have adopted measures to prohibit the import of Russian coal and oil. Additionally, Canada, the EU, Japan and the UK have taken action to ban the import of certain Russian gold products.[26]

(c) Prohibition on certain services

Though OFAC has broadly prohibited the exportation of services in the past, the Russia sanctions programme has triggered the creation of new prohibitions on specific services not previously targeted by OFAC. Specifically, OFAC issued new prohibitions on May 8, 2022 on the export, reexport, sale or supply, directly or indirectly, of accounting, trust and corporate formation services, or management consulting services by US persons to any person located in Russia.[27] OFAC expanded these prohibitions to include quantum computing services on September 15, 2022, and architecture and engineering services on May 19, 2023. OFAC interprets "person located in" Russia to include persons present, ordinarily resident, incorporated, or organised under the laws of Russia or any jurisdiction within Russia.[28]

OFAC has clarified that for the purposes of the May 8, 2022 prohibition, the prohibited services include:

- Providing tax preparation and filing services.[29]
- Serving as a voting trustee on behalf of, or for shares of, persons located in Russia.[30]
- Providing executive search and vetting services, and services related to: strategic business advice; organisational and systems planning, evaluation, and selection; developing or evaluating marketing programmes or implementation; mergers, acquisitions, and organisational structure; staff augmentation and human resources policies and practices; and brand management.[31]

In contrast, OFAC clarified that the prohibited services do not include:

- The export, reexport, sale, or supply of tax-preparation software or the provision of services associated with the export of such software, including software design and engineering, provided that the services do not constitute management consulting, accounting, or trust and corporate formation.[32]
- A prohibition of US Persons serving as directors of Russian companies, so long as such a US Person director does not provide any of the prohibited services.[33]
- A prohibition on US Persons providing accounting, trust and corporate formation services, and management consulting services to persons outside of Russia that are owned or controlled by persons located in Russia, on condition that the provision of such services is not an indirect export of prohibited services to a person located in Russia.[34]
- OFAC has also released guidance defining "quantum computing services",[35] "architecture services," and "engineering services".[36]

The prohibitions make exceptions for any service to an entity located in Russia that is owned or controlled, directly or indirectly, by a US person, and any service in connection with the wind down or divestiture of an entity located in Russia that is not owned or controlled, directly or indirectly, by a Russian person.[37] While the prohibitions do not necessarily prohibit US

Persons from working as employees of Russian entities, they limit the ability of US Persons (including US-person directors, officers, affiliates and subsidiaries of Russian entities) to provide the prohibited services.[38]

The broad scope of these prohibitions, combined with their unusual application to any person "located" in Russia, make these new prohibitions particularly challenging to address from a compliance standpoint.

(d) Price cap on oil and petroleum products of Russian origin

In late 2022, OFAC, in coordination with other international partners including the EU, UK, other G7 countries, and Australia, took measures to reduce Russia's ability to finance its war in Ukraine using revenue from Russian oil and petroleum products. On November 21, 2022, OFAC issued regulations prohibiting US persons from directly or indirectly supplying certain "covered services" as they relate to the maritime transport of Russian-origin crude oil that is sold above a certain price.[39] OFAC extended this prohibition to Russian-origin petroleum products on February 3, 2023.[40] The "covered services" include trading and commodities brokering, financing, shipping, insurance (including reinsurance and protection and indemnity), flagging, and customs brokering.

OFAC has set the price cap at $60 per barrel for crude oil, $45 per barrel for discount to crude petroleum products, and $100 per barrel for premium to crude petroleum products.[41] These prices do not include shipping, freight, customs, and insurance costs, which must be invoiced separately at commercially reasonable rates.[42]

In guidance, OFAC clarified that the price cap applies from when the oil or petroleum products are sold by a Russian entity for maritime transport, through the first landed sale in a jurisdiction other than Russia (i.e., through customs clearance).[43] OFAC has also stated that once the oil or petroleum products are substantially transformed (e.g., refined or transformed into a new product having a new name, character, and use) outside of Russia, they are no longer considered to be of Russian origin.[44]

OFAC has outlined a "safe harbor" from enforcement for service providers that comply in good faith with a record-keeping and attestation process enabling them to confirm that the Russian-origin oil or petroleum products in question have been purchased at a price at or below the price cap.[45] OFAC also released general licences that authorise services related to the continued maritime transport of Russian oil and petroleum products at any price into certain EU countries, along with transactions related to emergency services for vessels.[46]

Conclusion

Export controls and sanctions regulations are becoming increasingly complex. At the same time, US agencies are raising the stakes for compliance as they ratchet up enforcement. BIS has made Russian export controls enforcement a priority and has been reviewing export transactions in real time.

The focus on enforcement is not limited to regulations targeting Russia either. In a memo to export enforcement employees on June 30, 2022, Mr. Axelrod highlighted four policy changes that ultimately raise the risk profile for companies engaged in exports by 1) imposing significantly higher penalties for serious cases, 2) increasing the use of settlement agreements requiring remedial compliance measures and suspended denial orders, 3) eliminating use of "no admit, no deny" settlements and publishing charging letters when they are filed rather than at the resolution of the matter, and 4) using a dual-track for voluntary self-disclosures, to resolve minor cases quickly and scrutinise more serious cases closely, including referral to the Department of Justice for criminal prosecution, as appropriate.

Similarly, OFAC has prioritised new designations and sanctions enforcement, issuing over 1,500 new Russia-related sanctions listings since February 2022. OFAC has stated in a joint press release with BIS and the Department of Justice that, going forward, it will emphasise enforcement against actors attempting to evade Russia-related sanctions.[47]

Looking ahead, we expect that BIS and OFAC will continue to focus enforcement resources on Russia while partnering with the Department of Justice ("**DOJ**"), other US law enforcement agencies, and international partners. For example, in March 2022 the DOJ launched Task Force KleptoCapture to marshal law enforcement resources from numerous US agencies for the express purpose of enforcing the sanctions, export restrictions, and economic countermeasures imposed on Russia following its invasion of Ukraine.[48] Similarly, DOJ and the Commerce Department organised the Disruptive Technology Strike Force in early 2023 to prosecute and deter the export and diversion of sensitive US technologies to nation-state adversaries.[49] Given the rapidly evolving restrictions and the high-stakes enforcement environment, exporters and reexporters, both in the US and abroad, will need to remain vigilant to stay abreast of the changing regulations, should evaluate existing compliance programmes, and make any necessary improvements to remain compliant.

Note

Any views expressed in this publication are strictly those of the authors and should not be attributed in any way to White & Case LLP.

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Investigations and Enforcement Across the Main Sanctions Jurisdictions – and the Right Response to Them


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The 2022 Russian invasion of Ukraine has brought the issue of sanctions to the top of the legal and political agenda. The sanctions regimes imposed as a result of Russia's actions dwarf previous regimes, which is why they are the primary focus of this chapter.

This chapter gives an overview of enforcement regimes, with a specific focus on the UK while also looking at the European Union and United States. It also provides guidance on the correct response for an individual or company that is – or believes they may be – caught up in a sanctions investigation. There is no one-size-fits-all approach, and this chapter seeks to deal with the complex practical issues when considering sanctions enforcement.

This is particularly important for a number of reasons. The sanctions landscape is shifting, with an increase in enforcement activity. The UK's autonomy from the EU has meant that it can more broadly interpret matters that may constitute a sanctions breach. The UK is actually moving towards a US-style enforcement model, with greater cooperation between authorities, more emphasis on the use of intelligence sources and increasing numbers of investigations.

In short, it is a more aggressive approach to sanctions enforcement. This was highlighted last year when the UK's Office of Financial Sanctions Implementation (OFSI) took enforcement action against Hong Kong International Wine and Spirits Competition Ltd for violating UK asset freezing restrictions by making intangible economic resources available to a sanctioned entity, as well as through increased enforcement activity by the UK's National Crime Agency (NCA) in seeking to tackle potential sanctions evasion. The intangible economic resources at the centre of the Hong Kong International action was publicity![1] OFSI's investigations and enforcement teams have doubled in size since last year and it has entered into closer working relations with its US equivalent, the Office of Foreign Assets Control (OFAC).

All these factors have significant legal and financial implications for financial institutions, corporates and other entities and individuals. Sanctions breaches can lead to financial and commercial harm, damage to reputations and professional standing and the possible revocation of banking and other commercial facilities.

The United Kingdom

Legal framework

The UK sanctions regime applies to persons and entities on which the UK government has imposed sanctions unilaterally or implemented sanctions imposed by the United Nations (the UN).[2] These are known as designated persons and entities. The sanctions regimes can be either thematic (built around a particular issue, such as chemical weapons, domestic and international counter terrorism, global anti-corruption or global human rights) or geographical (targeted at individual countries or regions, such as Russia, Iran or Belarus).

The type of sanctions the UK can impose are financial sanctions, trade sanctions (including arms embargoes and other trade restrictions), immigration sanctions (including travel bans), aircraft sanctions and shipping sanctions.

Trade sanctions are controls on the acquisition and movement of goods and technology and the provision and procurement of services related to this and other non-financial services. The Department for Business and Trade (DBT) implements trade sanctions and other trade restrictions and has overall responsibility for trade sanctions licensing. HM Revenue and Customs (HMRC) enforces trade sanctions.

Financial sanctions – which this chapter focuses on – can take the form of targeted asset freezes, restrictions on financial markets and services (this can include investment bans, restrictions on access to capital markets or directions to cease banking relationships and activities), or directions to cease all business.[3] In the UK, targeted asset freezes will apply to individuals and entities designated by the relevant minister and named in a consolidated list maintained by HM Treasury.[4] It should also be noted that an entity not explicitly named but owned or controlled by a designated person is also deemed to be a sanctioned entity – meaning that financial sanctions also apply to that entity in its entirety.

The Sanctions and Anti-Money laundering Act 2018 (SAMLA)[5] provides the main legal framework for the UK sanctions regime. It was implemented to ensure that the UK would be able to impose and enforce its own sanctions and replace existing EU sanctions post-Brexit.

Other significant pieces of legislation relevant to the UK sanctions regime are as follows:

- Counter-Terrorism Act 2008.
- Anti-terrorism, Crime and Security Act 2001.
- The Terrorist Asset-Freezing etc. Act 2010.
- Immigration Act 1971.

Country-specific regimes have also been carried into domestic law following the UK's departure from the EU. For example, following the annexation of Crimea in 2014, the UK adopted sanctions regulations targeted at relevant Russian individuals and the Russian economy, which were then carried into domestic law by the Russian (Sanctions) (EU Exit) Regulations 2019.[6] Following Russia's military invasion of Ukraine, subsequent secondary amendment regulations have been introduced in 2022 and 2023, the latest of which came into force on 30 June 2023. Other examples of this are the Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 and the Myanmar (Sanctions) Regulations 2021.

The relevant sanctions guidance is available on the UK government's website, including the latest general guidance from OFSI and guidance specific to particular countries or sectors of industry. Civil breaches of financial sanctions are investigated and punished by OFSI by way of monetary penalties. OFSI's Enforcement Guidance,[7] last updated in March 2023, is an important tool for understanding the process of dealing with such breaches.

Civil enforcement (financial sanctions)

The monetary penalties regime created by the Policing and Crime Act 2017, which was amended by SAMLA, provides an alternative to criminal prosecution for breaches of sanctions legislation. OFSI is the part of the Treasury that imposes these monetary penalties.

The power to impose a monetary penalty and the limits on the amount of the monetary penalty are created by section 146 of the 2017 Act. The latter stipulates that the Treasury may impose a monetary penalty on a person if it is satisfied, on the balance of probabilities, that the person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation. Where the failure relates to particular funds or economic resources, the permitted maximum amount is the greater of £1,000,000 and 50% of the estimated value of the funds or resources.

Strict liability

On 15 March 2022, the Economic Crime (Transparency and Enforcement) Act 2022 amended the powers in the 2017 Act to include clause 1A. This made a breach of sanctions a strict liability offence – bringing the UK into line with the US. As a result, OFSI no longer must prove that a person had knowledge or reasonable cause to suspect they were in breach of a financial sanction to issue a monetary penalty. This amendment applies only to consideration of civil liability. While no cases have yet been reported, this change will by its very nature potentially lead to more enforcement activity.

Offences

In relation to financial sanctions, there are two types of offences: breaching a prohibition; and failure to comply with an obligation.

Breaching a prohibition: Taking the 2019 Russia Regulations, there are five principal financial prohibitions (regulations 11–15).

In the case of an asset freeze, it is generally prohibited to:

- Deal with the funds or economic resources belonging to or owned, held or controlled by a designated person.
- Make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person.

As stated above, OFSI is no longer required to demonstrate that the person knew or has reasonable cause to suspect they were in breach.

Circumvention: In addition, regulation 19 provides a circumvention offence of intentionally participating in activities knowing the object or effect is to circumvent the prohibitions or to enable/facilitate their contravention. This circumvention offence may apply where enablers are seeking to obstruct other parties from carrying out necessary due diligence to meet their own sanctions obligations. This could include misrepresenting entities that are owned/controlled by the designated person or by adopting overtly aggressive and litigious strategies to deflect from the designated person's underlying ownership and control.

Failure to comply with an obligation: SAMLA creates a number of obligations that must be complied with.

Obligation to report: Relevant firms are obliged to inform OFSI as soon as possible if they know or reasonably suspect a person is a designated person or has committed offences under financial sanctions regulations, and where that information is received in the course of carrying on their business. If the designated person is a customer and they hold frozen assets for them, they are required to disclose the nature and amount of those assets. The definition of 'relevant firm' can be found in each of the sanctions regulations concerning a specific regime. It will include firms or sole practitioners that provide accountancy or legal services and, as of 30 August 2022, also includes crypto asset exchange providers and custodian wallet providers. The report to OFSI should include the information on which the knowledge or suspicion is based and any information by which the person can be identified (name, address, date of birth, etc.). Information which is protected by legal professional privilege does not have to be disclosed.

Obligation to abide by the conditions and reporting requirements of a licence issued by OFSI: In certain situations, OFSI will issue a licence which will allow the designated person to engage in certain activities prohibited by their sanctioned status. Failure to comply with the restrictions and requirements of this licence will be an offence, as will providing false information or documents when applying for that licence.

Obligation to comply with a requirement to provide information: As OFSI has statutory powers to request information in order to establish the exact nature of a designated person's assets or activities; it is an offence to fail to comply with such a request, knowingly or recklessly provide false information or destroy documents to avoid complying with the request.

The OFSI enforcement guidance states that pursuant to section 148(1) of the 2017 Act, OFSI is entitled to impose separate penalties on the legal entity and the officers who run it. The imposition and level of monetary penalty will be considered separately from that of the body. They will also have separate appeal rights under sections 147 and 148(3) of the 2017 Act. It is also possible for OFSI to impose a monetary penalty on one person involved in a case and for another to be prosecuted criminally.[8]

OFSI's approach

OFSI will consider that the threshold for a penalty has been reached if one or more of the following factors exist:

- The breach involved funds or economic resources made available to the designated person.
- The breach involved a person dealing with such funds or economic resources.
- There is evidence of circumvention.
- A person has not complied with the requirement to give information.
- OFSI considers that a monetary penalty is appropriate and proportionate.

OFSI will take a number of factors into account when determining how seriously it considers a case to be. These include how the sanctions were breached – including whether there were persistent, repeated breaches – the value of the assets involved, the harm done to the objectives of the sanctions regime that was breached and the level of sanctions and compliance systems knowledge possessed by those committing the breach. OFSI will seek to establish whether the breach appears to be deliberate, whether there is evidence of a failure to take reasonable care and if there has been a systems or control failure. Any voluntary disclosures of breaches, the amount of due diligence carried out before conducting business with the sanctioned party and the exact nature of a person's contractual or commercial relationship with the sanctioned entity will also be considered.

The emphasis placed on the amount of due diligence conducted and the level of knowledge is illustrated by paragraph 3.29 of the OFSI Guidance, which requires that enquiries are made in terms of formal ownership and/or control of any company that may have links with a sanctioned party. This may include looking into share percentages, distribution and ownership, as well as company documents or any agreements between shareholders with regard to indirect or *de facto* control. This also includes any indications of the continued influence of the designated person; the presence or involvement of proxies or the holding of shares or control by trusts associated with the designated person. OFSI emphasises that ownership and control is not static and regular checks and monitoring are expected where the relationship or activity is ongoing.

A UK nexus

A breach does not have to occur within UK borders for OFSl to become involved. However, there does have to be a connection to the UK – which is referred to as a UK nexus. In paragraph 3.8 of the OFSI Guidance, a few examples are given on how a UK nexus might be created. These include a UK company working overseas, transactions using clearing services in the UK, actions by a local subsidiary of a UK company (depending on the governance), action taking place overseas but directed from within the UK, or financial products or insurance bought on UK markets but held or used overseas. The issue of whether there is a UK nexus will ultimately be considered on a case-by-case basis. In cases of breaches of financial sanctions in another jurisdiction, OFSI may use its information-sharing powers to pass details to relevant authorities where this is appropriate and permissible under UK law.[9]

OFSI's response

OFSI can respond to a potential breach of financial sanctions in several ways, depending on the case. These responses include:

- issuing a warning;
- referring regulated professionals or bodies to their relevant professional body or regulator;
- publishing information about a breach if this is in the public interest;
- imposing a monetary penalty; and
- referring the case to law enforcement agencies for criminal investigation and potential prosecution.

The right to review

Representations: Under Section 147 of the 2017 Act, OFSI must inform a person that it intends to impose a monetary penalty on them. It must detail its reasons for this, specify the amount and how it has been calculated and explain the person's right to make representations and how long they have to do such representations. Representations must be made in writing within 28 days from the initial letter. They must summarise each point that the person wishes OFSI to take into account, explain why these points are relevant and provide any relevant evidence. If no representations are made, the monetary penalty is finalised and becomes payable.

Ministerial review: Subsections 3 to 8 of Section 147 of the 2017 Act give a person the right to seek a review by HM Treasury of OFSI's final decision to impose a monetary penalty. HM Treasury will aim to conclude the review within two months. The review may lead to both the original decision and the penalty being upheld, the decision upheld but the size of the penalty changed or the decision (and the penalty) being cancelled.

Upper Tribunal: After a ministerial review, a person is entitled, under Section 147(6) of the 2017 Act, to appeal (for any reason) to the Upper Tribunal. As with the HM Treasury review, the Upper Tribunal may uphold the original decision and penalty, uphold the decision but amend the penalty or quash the original decision (and penalty).

Criminal enforcement

While OFSI is the authority responsible for implementing the UK's financial sanctions on behalf of HM Treasury, it does not have the power to criminally investigate or prosecute individuals or entities for the more egregious – meaning the worst or most shocking – sanctions breaches.

OFSI works closely with the National Crime Agency's (NCA's) International Corruption Unit. It usually refers the most serious sanctions breaches to the NCA for criminal investigation. The NCA will refer cases for prosecution to the Crown Prosecution Service (CPS).

The NCA established the Combating Kleptocracy Cell (CKC) in July 2022, with dedicated teams investigating criminal sanctions evasion and high-end money laundering. In the same month, it arrested at least 10 individuals – described as enablers across a variety of sectors – suspected of helping "corrupt elites" to evade sanctions, and announced its intention to arrest more enablers in the coming months.[10] The arrests coincided with The Red Alert issued by the NCA (see below) which states that the key professions that are at risk of committing enabling or facilitation offences include (but are not limited to) legal (barristers and solicitors), financial (relationship managers, accountants, investment advisors, wealth managers, payment processors, private equity, trust and company service providers), estate agents, auction houses, company directors, intermediaries/agents and private family offices.

OFSI may also refer a case to the Serious Fraud Office (SFO). The SFO will deal with a sanctions case if it meets its criteria for taking on a case, such as the involvement of bribery or corruption, or serious or complex fraud.

HMRC can also pursue a criminal prosecution. The CPS may also prosecute for breaches of trade sanctions pursuant to

the Crown and Excise Management Act 1979. The Financial Conduct Authority (FCA) can bring enforcement action against regulated entities for failure to maintain effective systems and controls to address the risk of sanctions violation, financial crime and money laundering. Since May 2022, the FCA has invited the public to provide any information regarding sanctions evasion issues or weaknesses where they relate to regulated entities or persons, or a listed security.[11]

In the case of criminal enforcement, financial sanctions offences are punishable upon conviction by up to seven years' imprisonment and/or an unlimited fine. The Policing and Crime Act 2017 also brings financial sanctions into the scope of Deferred Prosecution Agreements (DPAs) (and Serious Crime Prevention Orders), which allows a prosecution to be suspended for a defined period provided an organisation meets certain specified conditions. Reporting and information offences are punishable upon summary conviction by a fine and/or imprisonment for up to 12 months (or up to six months for offences committed before 2 May 2022). Trade sanctions penalties can be punished by up to 10 years' imprisonment and/or an unlimited fine.

Money laundering implications

Criminal breaches of sanctions may also have consequences in relation to money laundering. Provisions of the Proceeds of Crime Act 2002 (POCA) prohibit the handling of criminal property and have extraterritorial application. Payments received in the UK as part of a transaction that would constitute a sanctions breach could, therefore, fall within the definition of 'criminal property' under POCA. Handling those funds would be a money laundering offence for which the maximum penalty is an unlimited fine and up to 14 years' imprisonment.

Account Freezing Orders

Where POCA is involved, the NCA has various other tools at its disposal to deal with criminal property. While the agency's main focus is seeking criminal justice, it also has civil tools that it can use to freeze and recover suspected criminal finances. These include Account Freezing Orders (AFOs), account forfeiture orders, unexplained wealth orders (UWOs) and wider civil recovery powers.

AFOs are used by enforcement agencies to freeze funds held in a bank or building society that are suspected to be derived from unlawful conduct, with a view to establishing whether the funds should be forfeited. AFOs have been popular with law enforcement agencies since their introduction in 2017 by the Criminal Finances Act. This is partly because they establish a low threshold for courts to freeze accounts when there are 'reasonable grounds to suspect' that the money being held is the proceeds of crime or is intended to be used for unlawful conduct. This is relevant to sanctions cases as sanctions breaches and circumvention are criminal offences, with any resulting transfers of funds or assets are likely to become the proceeds of crime, therefore, recoverable property under POCA.

In such cases there is an overlap between the sanctions regime and the POCA regime. This was illustrated in the case of the oligarch Petr Aven, the former head of Russia's largest private bank, Alfa-Bank JSC. He was sanctioned by the EU in February 2022 and by the UK the following month. Although OFSI had granted Aven licences to use frozen funds for what were considered his basic needs, the NCA successfully applied for nine AFOs for a combined £1.5 million. This followed concerns raised by two banks about possible sanctions breaches detected through transactions in two company accounts connected to Aven. The companies then applied to have the AFOs varied or set aside. When the court granted variation regarding the sums to be used for basic needs, both the companies and the NCA appealed and were partly successful on appeal, with the decision to vary the AFOs being quashed.[12]

The ruling was the first significant judicial decision arising from the tsunami of sanctions against Russian companies and individuals but it also highlighted the challenges of detecting and disrupting sanctions evasion, raised questions about the robustness of OFSI's licensing regime and indicated a lack of co-ordination between the NCA and OFSI. If the sanctions regime is to be fully effective, such issues need to be resolved quickly.

NCA Red Alert

In July 2022, the NCA in collaboration with OFSI and other agencies issued a Red Alert[13] on the evasion of financial sanctions targeting Russian elites and enablers. While this alert is not obviously law, it is wise when considering ownership and control issues to take note of the indicators it lists as examples of the ways by which sanctions can be evaded. For example, changes to the ownership of a corporate holding to reduce the ownership stake to below the 50% threshold, shortly before or after a sanctions designation has been made.

Lawyers' liability

The Solicitors Regulation Authority (SRA) published guidance in November 2022 on complying with the UK sanctions regime.[14] It has made clear what the red flags are when it comes to ownership and control, as it covers everything from the nature and location of transactions, through to many aspects of client conduct. The SRA has also made it clear that it will take enforcement action where appropriate if it believes any of its members have been involved in sanctions breaches. It is an indicator that all companies are subject to the sanctions regime, regardless of the types of services they offer. And, in the case of lawyers, the limits on the services they are permitted to provide in relation to sanctioned parties has been subject to a number of changes since early 2022, the most recent change being the introduction in June 2023 of a ban on providing 'legal advisory services' (as defined in the applicable Regulations) to a client in non-contentious matters, subject to certain exemptions.

The European Union

Legal framework

The European Commission ensures that the European Union (EU) Member States implement rules on enforcement and penalties and take appropriate action to apply and enforce these regulations. The Commission oversees the implementation of sanctions by Member States under the Treaty on the Functioning of the European Union (TFEU).

In March 2022, it announced the introduction of the EU Sanctions Whistleblower Tool,[15] designed to be used to report on 'part, ongoing or planned' EU sanctions violations as well as attempts to circumvent sanctions. If the Commission considers information provided by a whistleblower to be credible, it will share the anonymised report and any additional information gathered with the national authorities in the relevant Member State or States.

As enforcement of the EU's financial and economic sanctions takes place predominantly in the Member States themselves, there is a limited role for the EU supranational courts in this area.

The European Union's (EU's) sanctions (also known as restrictive measures) regime is set out within the EU's Common Foreign and Security Policy (CFSP). According to the European Commission, the CFSP's aim is to 'preserve peace and strengthen international security in accordance with the principles of the United Nations Charter'.[16]

One of the CFSP's roles is to respond to unforeseen geopolitical events and developments, such as, for example, the Russian invasion of Ukraine. At the time of writing this chapter, the EU has collectively implemented over 40 sets of various sanctions in over 35 jurisdictions. EU Member States also adopt UN sanctions, with the EU adopting UN resolutions into EU law which are then implemented in EU Member States through EU regulations. In addition, some EU Member States implement their own national sanctions beyond those implemented by the EU. This is the case for Italy, France and a number of other states. There are also some non-EU members, such as Switzerland, who implement sanctions regimes similar to that of the EU.

Just as the UK requires a UK nexus to take action regarding sanctions breaches, the EU requires an EU nexus.

An EU nexus arises in activities:

- Carried out within the territory of EU Member States, including airspace.
- Concerning a national of an EU Member State, even in circumstances where they are located outside of the EU.
- Undertaken by entities incorporated or constituted under the law of an EU Member State, whether or not they are in the EU.
- Undertaken by entities in respect of any business operating or undertaken within the EU.
- Involving an aircraft or vessel travelling within or under an EU Member State's jurisdiction.

EU sanctions

The most common forms in which sanctions are imposed are through asset freezes, trade sanctions and travel bans.

Asset freezes: There are two key elements to an asset freeze. Firstly, the 'financial assets' of an EU designated individual or entity are owned, held or controlled by that party are required to be frozen. Secondly, it is prohibited to make such assets available, directly or indirectly to, or for the benefit of any person listed as a designated person.

As of June 2023, the EU and G7 had blocked 300 billion euros of Russian central bank assets in the wake of the invasion of Ukraine.[17] There have been proposals put forward by the leaders of the European Union to utilise such frozen assets in aid of Ukraine's war efforts, but as of June 2023 nothing final has been agreed on within the EU as numerous legal and practical questions are still unresolved.

Trade sanctions: These are broadly categorised into two sectors: import trade restrictions; and export trade restrictions. Export trade restrictions are defined as being a ban on the export, supply and delivery, and making available of the various categories of goods to certain countries. Conversely, import trade restrictions are a ban on the import or acquisition of various goods or technology from a particular country. There are also wider restrictions on the provision of various services. Regarding Russia, these include restrictions on maritime transport and ship insurance, the carrying of crude and petroleum oil and refined oil products, architectural and engineering services, IT consultancy services, legal advisory services, accounting, auditing, bookkeeping or tax consultancy services and business and management consultancy.

Trade sanctions are enforced on a national level. Yet some law enforcement and judicial authorities currently lack the right tools and resources to prevent, investigate and prosecute the violation of EU restrictive measures, although they may be aided by cross-border cooperation facilitated by EU agencies.

Travel bans: The EU also maintains what is called a consolidated list of individuals who are subject to travel bans, which prevent those listed people from entering or travelling through EU territory by either land, air or sea.[18] Those who are subject to asset freezes are likely find themselves subject to travel bans.

Enforcement

EU restrictive measures are enforced on a national level by the relevant authorities in each Member State. However, with some EU states having more than 300 supervisory bodies, this can lead to a patchwork, sometimes inconsistent, approach to enforcement.

One reason for this lack of EU-wide consistency is that sanctions violations have not been considered a serious EU crime. At the time of writing, however, there are proposals that have been drafted for a directive which, if enacted, would add sanctions evasion to the list of serious EU crimes.[19]

The directive sets out the minimum rules which would need to be transposed into national law and states that Member States may implement stricter rules when it comes to enforcement action over breaches of EU sanctions. It would require Member States to ensure that a broad range of intentional breaches of EU sanctions constitute a criminal offence. This range would include breaches relating to the freezing of funds and economic resources, making funds and economic resources available to a designated person or entity, enabling the entry of a designated person into or through the territory of a Member State, and the failure to comply with sectoral economic and financial measures and arms embargoes.

The future directive would also establish common basic standards for penalties for legal persons across Member States. These would include:

- Fines of up to 5% of a company's annual worldwide turnover.
- Exclusion from access to public funding.
- Withdrawal of permits and authorisations to pursue activities that resulted in the offence being committed.
- Being placed under judicial supervision.
- Judicial winding-up.
- The closure of establishments used for committing the offence.

At present, however, it remains the case that law enforcement and other relevant authorities in some EU Member States lack adequate resources, manpower and tools to enable them to adequately prevent, detect, investigate and prosecute sanctions violations. This is compounded by the differing level of penalties imposed by each Member State, which can affect both their investigation procedures and their ability or willingness to cooperate with authorities in other countries in cross-border investigations.

Recent enforcement action has seen a focus on the evasion of (or general lack of compliance with) trade restrictions, with such activity often taking place via third-party countries. This was illustrated at the G7 Foreign Ministers meeting on 18 April 2023, where calls were made for Kyrgyzstan, Kazakhstan, Armenia and Azerbaijan to prevent Russia from evading sanctions.[20]

Offences and penalties

The absence of any uniform, harmonised EU-wide approach to taking action against sanctions breaches means that nations

differ greatly regarding their own treatment of sanctions breaches and the penalties that can be imposed.

While some Member States treat the violation of EU sanctions as solely a criminal offence, others treat it as either an administrative or a criminal offence, depending on factors such as how serious the breach was, the effect it had and the degree of intention to commit it. In two Member States – Slovakia and Spain – the breach of EU sanctions can currently only lead to administrative penalties for an organisation.

France has historically favoured adopting administrative penalties over criminal penalties. As an example, the French Presidential Supervision and Resolution Authority (*Autorité de contrôle prudentiel et de resolution*) (ACPR) deals with and exercises its powers through the imposition of administrative penalties in the financial, banking and insurance sectors. Conversely, in Germany, intentional violations constitute criminal offences. According to the Foreign Trade and Payments Act (AWG),[21] for example, a violation of an arms embargo constitutes a criminal offence and is punishable by imprisonment of up to 10 years. Furthermore, a fine may be imposed and determined according to the offender's individual financial situation, their income and the nature of offence. In Switzerland, both intentional and negligent violations constitute criminal offences. A breach of sanctions there may result in imprisonment for up to five years, which may be combined with a fine. Furthermore, any refusal to cooperate with the supervisory authorities and other misdemeanours may lead to a fine of up to CFH 100,000.[22]

The United States

While this chapter is primarily focused on the UK and EU, the cross-border nature of sanctions necessitates some consideration of the US sanctions regime. Not least because the US is the leading country in worldwide sanctions enforcement. This was further emphasised in March 2023, when US Deputy Attorney General Lisa Monaco used a keynote speech at the American Bar Association's annual White Collar Crime National Institute to announce that significant new resources would be devoted to addressing 'a troubling trend: the intersection of corporate crime and national security'.[23]

The Department of Justice (DOJ) and the US Attorney may pursue criminal investigations and enforcement action for wilful violations of US sanctions laws. A person can be held criminally liable if they wilfully commit, attempt to commit or conspire to commit an unlawful act pursuant to the International Emergency Economic Powers Act (IEEPA) – the Act under which most sanctions regulations are issued. Criminal liability under the IEEPA can lead to a fine of not more than US$1 million, a prison term of not more than 20 years, or both.[24]

In the US, the Office of Foreign Assets Control (OFAC) administers and enforces most of the economic and trade sanctions and is responsible for the civil enforcement of US sanctions laws. As is the case now with OFSI, it enforces these on a strict liability basis. The Financial Crimes Enforcement Network (FinCEN) and the New York State Department of Financial Services may impose additional penalties for failure to maintain specific controls to help ensure compliance with OFAC regulations.

Factors that OFAC will consider to be aggravating or mitigating in a sanctions investigation include:[25]

- Wilful or reckless violation of the law and any attempts at concealment of the wrongdoing.
- Whether the breach resulted from a particular pattern of conduct or was an isolated incident.
- Any management involvement.
- The harm done to the objectives of the sanctions programme that has been breached.
- The level of commercial sophistication involved in the sanctions breach and whether those involved have breached sanctions previously.
- The nature and adequacy of a company's compliance programme that was in place at the time of the sanctions violation – and any response taken once the company became aware of the violation. OFAC has made it clear that an effective compliance programme requires commitment from management, an emphasis on risk assessment, internal controls, testing and auditing and training of employees.
- Any cooperation with investigators and/or self-reporting of the wrongdoing.

For any sanctions violation considered non-egregious, the base penalty amount would be approximately the value of the transaction – determined specifically by a schedule in OFAC's enforcement guidelines. If a company voluntarily discloses an apparent violation to OFAC, the base amount of the proposed civil penalty is one-half of the transaction value.[26]

From the start of 2023 until the end of June 2023, OFAC had imposed civil penalties totalling $556,529,304.[27] However, OFAC may refer a case to the appropriate law enforcement agency if it believes it warrants a criminal investigation or prosecution.

The most appropriate response

As mentioned at the start of this chapter, a one-size-fits-all approach is not appropriate in cases of sanctions breaches. The individual factors in each case, the variations in approach taken by the authorities in different countries and any changes in legislation make it necessary to tailor a response to each investigation.

As any such investigation can differ significantly and involve a variety of issues, it is important to seek informed legal advice as soon as possible in order to navigate events as they unfold – and even help steer them in a particular direction.

There are, however, a number of actions and strategies that can – and probably should – be adopted when responding to any sanctions-related investigation.

In the UK, agencies such as OFSI, FCA and SFO have emphasised the importance of voluntary disclosure and ongoing co-operation when it comes to receiving the most lenient treatment for a sanctions breach. In general terms, such a response can also be expected in other jurisdictions.

With this in mind, any company will have to move quickly when discovering (or even just suspecting) a sanctions breach. It is essential for any corporate to have a robust response strategy in place for such circumstances so they can, if needed, act proactively. Such a strategy must address issues such as:

- The people who should be notified when an issue arises – both internally (such as directors) and externally (such as legal counsel).
- How to identify who was involved in, or responsible for, the alleged breach.
- Ensuring all relevant information is preserved.
- How an internal investigation into the alleged breach should be conducted, so as to identify how it happened.
- The remedial action that needs to be taken to put right what has gone wrong – and the best way to carry this out.
- Determining what, if any, disciplinary measures need to be taken.
- How to deal with auditors, regulators, investors and any other outside bodies, including devising a planned external communications strategy.

Co-operation

Co-operation may be obligatory when an authority has exercised its investigative powers regarding a suspected sanctions breach; however, even in circumstances where it has not, it may be beneficial for a company to be co-operative. Co-operation can help ensure the most positive outcome, such as a civil rather than a criminal penalty. It may also enable the company to work with investigators in relation to any public announcements that need to be made about the investigation. The tipping point between resolution via the civil or criminal route could very well be determined by the level of co-operation. Co-operation must, therefore, be viewed as a possible means of obtaining the most favourable – and often the quickest – outcome to an investigation.

Self-reporting

OFSI's enforcement guidance states that breaches of financial sanctions must be reported. OFSI will take this factor into consideration when assessing the seriousness of a case as well as when imposing a monetary penalty, although self-reporting does not guarantee lenient treatment. It should be noted that OFSI will consider it reasonable for a person to take time to consider the extent and nature of the breach and to seek legal advice, as long as it does not delay an effective response to the breach. However, the risk related to self-reporting – in any country – is that it may lead to the authority conducting further investigations into the company's activities, which could expose new issues.

It is important that considering self-reporting should be done once the basic facts have been established and appropriate legal advice sought. Any delay to self-reporting may lead to the authorities hearing about the sanctions breach from a third party first, which may well reduce any chances of lenient treatment. Similarly, investigators will not look favourably on what they may view as an unnecessary delay in self-reporting. There is also the issue of whether a sanctions breach must be reported to more than one regulator, especially if the company trades in more than one jurisdiction. Any self-reporting must be tailored to the jurisdiction and the authorities involved.

It is important to note that reporting obligations do not apply to information to which legal professional privilege is attached. However, legal professionals should carefully ascertain whether legal privilege applies and which information it applies to. Regulators may challenge a blanket assertion of legal privilege where it is not satisfied that such careful consideration has been made.

Internal investigations

An internal investigation can be of huge importance in identifying if a sanctions breach has occurred, how it has happened and what needs to be done next.

To be of value, any internal investigation must:

- Have its scope clearly defined, so those conducting it know exactly what they need to examine.
- Be coordinated so that the right people are available for interview at the right time and all relevant documentation is retained.
- Be conducted by individuals who are fully aware of the legal issues involved and the matters that need to be assessed.
- Have an emphasis on confidentiality, otherwise leaks or rumours may damage the company's reputation and even lead to some people looking to evade detection and/or destroy or conceal evidence.
- Involve legal experts who are familiar with the relevant legislation and used to dealing with the authorities who may be involved in investigating any alleged sanctions breach.

Consideration must also be given as to whether legal professional privilege over documentation generated through an internal investigation, such as witness accounts, should be waived when engaging with and disclosing material to regulators. This may have a bearing on potential resolutions, for example with DPAs. The SFO's guidance on corporate co-operation states that an organisation that does not waive privilege and provide witness accounts does not attain the corresponding factor against prosecution that is found in the DPA Code but will not be penalised by the SFO.

A well-planned and properly conducted internal investigation is the best way to determine the true extent of any wrongdoing which, in turn, will help shape a company's approach to self-reporting and any subsequent co-operation.

The cross-border nature of many sanctions investigations

It is worth emphasising that the very nature of sanctions means they involve at last two parties. These parties may be individuals, companies or organisations based anywhere in the world – or whole countries. For this reason, many investigations of alleged sanctions breaches are cross-border in nature. This must be considered when devising and conducting any response to an ongoing or imminent sanctions investigation, as tackling an issue in isolation may have unintended consequences elsewhere.

An agency investigating a suspected sanctions breach will often feel the need to work with other agencies in their country or their counterparts in other countries, depending on the exact nature of the alleged wrongdoing. As a result, any subject of such an investigation needs to assess which agencies in which countries they need to open a dialogue with regarding any suspected sanctions breach.

If some or all of those agencies have already begun their investigations into a suspected breach, consideration also needs to be given to how best to schedule and coordinate any dealings with them. Ensuring this is planned and conducted appropriately may require seeking legal advice from those with in-depth expertise of dealing with all the agencies that are involved or set to be involved. It may also require the creation of some form of a centralised response team. This can ensure any communication with the various agencies is not contradictory and also provide consistent factual and legal analysis and consideration of the differences in applicable laws and regulations.

To put it simply, those who face a multi-agency and/or multinational investigation must ensure they are at least as coordinated as those conducting the investigation.

Best practice

There is a strong and obvious argument to be made that there would be no need for an appropriate response to a sanctions investigation if nothing untoward had actually happened. Adopting certain best practice procedures can be the best way of ensuring this is the case.

Such activities do not have to be complex or labour intensive. But they do need to address a number of issues.

Risk assessment: A company that takes the time to methodically assess the sanctions situation in relation to its products, business sectors, geographical trading areas, trading partners and third parties will be able to identify the risk of sanctions breaches. Such assessment requires ongoing analysis of all aspects of a company's activities and the sanctions regimes that may affect them.

Risk reduction: Assessing all aspects of a company's activities in terms of possible risks of sanctions breaches may not be something that can be done swiftly. However, if done properly, it will establish which areas are at most danger of becoming embroiled in such breaches. Introducing carefully devised preventative measures will ensure that any identified risk is reduced, if not removed entirely. Fostering a workplace culture that emphasises the reporting of any suspicions of wrongdoing – accompanied by a clear procedure for the making and subsequent investigation of such reports – will also go some way to eradicating those risks.

Regulators: It is important to identify which regulators in which jurisdictions would expect to be notified of any potential sanctions issue – and precisely how and when such a matter should be reported to them. Dialogue and communication with the relevant authorities is massively important, both before and during any investigation. It can also be worth contacting the authorities before it is clear whether it will be necessary to make a report to them. This can help shape the course of any future action that needs to be taken.

Legal representation: Sanctions investigations can lead to a company and its employees having differing legal interests if the conduct of employees is a central issue in the suspected sanctions breach. A company should be aware that the issue of whether separate, independent legal representation will be needed for the company and the employees in question will need to be addressed at some point.

Disciplinary measures: When an investigation is underway, it is important to assess whether employees can or should be suspended or dismissed. A company should ensure it has appropriate procedures in place if and when such a situation arises.

Conclusion

At present, the sanctions imposed on Russia are having a significant effect on many in business. That is the nature and intention of any sanctions imposed. Sanctions compliance is a far-reaching and complex issue that requires guidance and support from those with in-depth expertise and experience in what is a rapidly-evolving area of law. It should also not be overlooked that current enforcement measures are targeting legitimate businesses.

Those faced with the challenge of responding in the best and strongest way possible to allegations of sanctions breaches have to do so to protect their interests. With differing penalties, sanctions regimes and procedures in place in various jurisdictions, the authorities often have the difficult task of co-ordinating their efforts to ensure they reach their goals. Both sides in any sanctions breach investigation, therefore, face challenges. For those who face such an investigation, however, the right strategy that is properly executed can pay dividends.

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Annual Developments in EU Sanctions Litigation


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More than one out of 10 cases before the European Court of Justice ("**CJEU**") currently relate to the sanctions imposed by the European Union ("**EU**") against the Russian Federation ("**Russia**") and Belarus in the context of the war in Ukraine.[1] This is not surprising, with the unprecedented amount of sanctions with which the EU has condemned the Russian full-scale invasion of Ukraine and Belarus' involvement. The restrictive measures against Russia affect almost all sectors of the Russian economy, with the result that the impact of sanctions is greater than ever. Over the years, the restrictive measures that are an essential part of the EU's Common Foreign and Security Policy ("**CFSP**") evolved from simple asset freezes measures to more sophisticated restrictions, encompassing trade, finance, technology, investments and currently even legal services.

The year 2023 has been marked by the further expansion of the already existing sanctions regime against Russia and Belarus, with an extension of the scope and adopting measures that allow the sanctions to be better enforced and implemented, based on the lessons learned. Countering circumvention is high on the agenda of EU policymakers, in order to ensure the imposed restrictive measures have the desired effect. In this context, the Council of the EU ("**Council**") unanimously decided on 28 November 2022 to add the violation and circumvention of restrictive measures to the list of EU crimes.[2] At the time of writing this chapter, under the EU Russia sanctions regime, 1,572 individuals and 244 legal entities are targeted by an asset freeze and a prohibition to make funds or economic resources available. Since restrictive measures have far-reaching implications, affecting not only the targeted individuals or entities but also their business partners, customers, and financial institutions, targeted individuals and entities are actively challenging their listing with the CJEU. Although with limited success, the constant challenging of sanctions by those affected by the measures keeps the institutions of the EU imposing the sanctions on their toes.

This year, most of the cases currently pending before the CJEU are delisting cases where targeted individuals and entities seek to annul their listing on the relevant sanctions list. However, other cases with different substantive or procedural questions have also been brought before the General Court (the "**General Court**") or the Court of Justice (the "**ECJ**"). In this chapter, we will be discussing the cases over the past year before the CJEU that have caught our eye. These cases range from an application for annulment of an exemption under the EU Blocking Regulation; a case which provides a clear warning to EU operators who have applied for an authorisation but are waiting a decision. Furthermore, we will discuss three "delisting" cases that address the reasoning and evidence the Council must provide when deciding to list individuals on the EU's sanctions list. We will then discuss an interesting case regarding a claim for damages, following the annulment of the listing of the former Ukrainian Minister of Revenues and Duties. Last, we will discuss two procedural cases that once again show that the bar for admissibility of a request for interim relief measures is set high by the General Court.

Annulment of an Exemption Under the EU Blocking Statute

In the 2023 edition of this chapter, we discussed the first-ever judgment of the ECJ on the EU Blocking Statute.[3] One year ahead, there is a new ruling from the General Court on the EU Blocking Statute that is worthy of discussion.

The withdrawal of the United States ("**US**") from the Joint Comprehensive Plan of Action in 2018 and the following reimposition of the US sanctions against Iran have resulted in discrepancies between opportunities to conduct business from the US and EU respectively with Iran. In order to protect its interests and to provide protection against the extraterritorial application of the US sanctions against Iran, the EU swiftly responded by updating Regulation No 2271/96 ("**EU Blocking Statute**").[4] Following that amendment, EU companies are prohibited from complying with the US sanctions against Iran, unless an authorisation is applied for and granted by the European Commission ("**Commission**"). Such an exemption can be granted by the Commission on the basis of Article 5, in circumstances where non-compliance with the US sanctions against Iran would seriously damage the interests of the persons covered by the EU Blocking Statute or those of the EU.[5]

In the case at hand, IFIC Holding AG ("**IFIC**"), a German company whose shares are indirectly held by Iran with shareholdings in various German undertakings, sought the annulment of an authorisation granted by the Commission to Clearstream Banking AG ("**Clearstream Banking**") on the basis of Article 5 of the EU Blocking Statute.[6] Clearstream Banking, as the only bank in Germany where securities may be deposited,

was responsible for paying IFIC's dividends from its shareholdings in the German undertakings. Acting in line with the granted authorisation, Clearstream Banking withheld payment of dividend to IFIC. This was necessary for Clearstream banking in order to ensure compliance with the US sanctions against Iran, now that IFIC was listed on the Specially Designated Nationals and Blocked Persons List (the "**SDN List**"). While the proceedings were unsuccessful for IFIC, resulting in the dismissal of IFIC's action, the General Court provides important new insights concerning the EU Blocking Statute.

By arguing that due to the authorisation granted to Clearstream Banking, IFIC was unable to carry out its business activities in full, IFIC plead that the Commission made an error of assessment by not taking into account IFIC's situation and interest, nor the impact that the decision had on IFIC. In addition, IFIC argued that the European Commission did not take into account the possibility of less onerous alternatives or the possibility for the applicant to claim compensation.[7] The General Court ruled, taking into account the wording of Article 5 of the EU Blocking Regulation and the non-cumulative criteria as laid down in Implementing Regulation 2018/1101, which seek to give effect to Article 5, that the Commission has no obligation to take into account the interests of third parties affected by the restrictive measures, such as (legal) persons listed on the SDN list. Both legal frameworks only make reference to the interests of the applicant and of the Union, to determine whether they will be seriously harmed in case of non-compliance with the "blocked sanctions". According to the General Court, this indicates that there was no intention of the EU legislator that other interests should be taken into account.[8] Moreover, the General Court ruled that when the Commission concludes that there is sufficient evidence that serious damage to the interests of the applicant or the Union have occurred, the legal framework does not oblige the Commission to examine whether there are less onerous alternatives to the authorisation.[9]

In principle, under the Charter of Fundamental Rights of the EU ("**Charter**"), parties against whom an adverse decision has been taken, have the right to be heard.[10] IFIC claimed that by not being heard by the Commission during the procedure that led to the authorisation, there was a violation of this fundamental principle of EU law, now that IFIC claimed to be indirectly harmed by the decision.[11] While the General Court acknowledges the importance of the principle to be heard by devoting a substantial assessment to it, it finds that the EU legislator chose to establish a regime in which the interests of third parties are not to be taken into account and those third parties are not to be involved in the procedure. The adoption of an authorisation decision on the basis of Article 5 of the EU Blocking Statute, meets the general interests objectives of protection the interests of the Union or of persons exercising rights under the TFEU against the serious damage which can result from non-compliance with the "blocked sanctions". It even follows by stating that the exercise of the right to be heard is not only inconsistent with the general interest objectives of the EU Blocking Statute, but that it also risks jeopardising, through the uncontrolled circulation of information that can be brought to the attention of the authorities in the third country that has enacted the "blocked sanctions", the achievement of these objectives. As a result, the General Court concluded that the limitation of the right to be heard of third parties that are targeted by the "blocked sanctions" in the procedure of the authorisation decision, does not appear to be disproportionate and to fail the essential content of that right.[12]

Finally, and most importantly, the General Court considers that decisions from the Commission authorising EU companies to comply with the "blocked" sanctions, under Article 5 of the EU Blocking Statute do not have retroactive effect.[13] As such, a granted authorisation does not cover any conduct that took place before the date on which the authorisation took effect, but only conduct which has taken place after that date. While irrelevant in the context of this case, being that only the legality of the decision was in dispute, it provides a clear warning to EU operators who have applied for an authorisation under the EU Blocking Statute but not yet received. Until an authorisation decision has been received from the Commission, the applicants will not be permitted to comply with the "blocked" sanctions. Given the long period of time that can elapse between the application and final decision, in the case at hand a year and-a-half, this can cause difficulties in practice.

Challenging a Listing Based on Family Ties

On 8 March 2022, the General Court annulled the inclusion of Violetta Prigozhina, the mother of Yevgeniy Prigozhin, on Annex I to Council Regulation (EU) 269/2014.[14] The General Court ruled that the family relationship as mother and son was in itself insufficient to justify Ms. Prigozhina's inclusion on the contested list.[15] Before discussing the ground that led to the annulment by the General Court, we will first shortly discuss the facts of this case.

This case concerns Council Decision (CFSP) 2022/265[16] and Council Implementing Regulation (EU) 2022/260,[17] both adopted on 23 February 2022, which imposed restrictive measures on individuals and entities linked to actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine. Violetta Prigozhina was listed as one of the individuals subject to these sanctions. The Council included Ms. Prigozhina on the grounds of her status as the mother of Yevgeniy Prigozhin (the head of the Wagner Group) and her ownership of Concord Management and Consulting LLC, part of the Concord Group, previously founded and owned by her son.[18] Additionally, the Council stated Violetta Prigozhina indirectly benefitted through her son from major public contracts with the Russian Ministry of Defence following the illegal annexation of Crimea and the occupation of eastern Ukraine by Russian-backed separatists. Under these findings, the Council argued that she supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.

As a result, Violetta Prigozhina sought annulment of her listing and argued that the Council failed to explain how she exercised influence over the decision of the Russian President to undermine Ukraine's territorial integrity. In addition, she argued that the Council provided no other ground for her listing other than being an immediate family member of Yevgeniy Prigozhin.[19] Furthermore, Violetta Prigozhina argued that her listing lacked a sufficient factual basis and consisted of errors of assessment by the Council, considering her role in Concord Management and Consulting LLC had ceased in 2017.[20]

The General Court ruled that, under the applicable sanctions regime, *a sole family relationship is not sufficient to justify an individual's listing.*[21] According to the General Court, the Council had failed to provide adequate evidence showing that Violetta Prigozhina still held shares in the companies linked to her son at the time of the contested acts.[22] As a result, the Court ruled in favour of Violetta Prigozhina and annulled the listing of Violetta Prigozhina from the EU's sanctions list, now that her family relationship with Yevgeniy Prigozhin was not sufficient to justify her inclusion on the contested list, and there was an absence of a solid factual basis to support her inclusion.[23] This ruling emphasises the obligation for the Council to state reasons and include sufficient evidence when imposing sanctions on individuals and entities.

Interestingly, rather than accepting the removal of Violetta Prigozhina from the EU's sanctions list following her successful appeal with the General Court, the Council chose to take the two following actions. First, on 5 June 2023, the Council amended the grounds under which it can target individuals with sanctions to also include family members, now reading "leading businesspersons operating in Russia and their immediate family members, or other natural persons benefiting from them, as well as businesspersons, legal persons, entities, or bodies involved in economic sectors providing substantial revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine".[24] Secondly, the Council arguably fulfilled its obligation to provide a statement of reasons and simply revised the justifications for imposing EU sanctions on Violetta Prigozhina to better align with the factual circumstances.[25] Consequently, despite her successful efforts in challenging her listing, Violetta Prigozhina currently remains on the EU's sanctions list.

This case shows the tension between the ECJ's duty to review the legality of a sanctions measure and the Council's discretion to amend the legal basis for these listing measures as it deems necessary. It remains to be seen if these amendments to the rules will hold up when these are challenged in future applications.

Modified Sanctions to Continue as a Racing Driver

On 9 March 2022, the Council added Nikita Dmitrievich Mazepin to the EU's sanctions list. Nikita Mazepin had been a driver at Haas Formula One Team until March 2022, when he was dismissed by Haas. The reasons for his dismissal included poor performance and the impact of the Russian invasion of Ukraine. The invasion and the subsequent inclusion as a sanctioned individual under the EU Russia sanctions regime affected the ability of Nikita's father, Dmitry Mazepin, to continue sponsoring his son's career at Haas through Russian company UralKali.

On 25 November 2022, Nikita Mazepin filed an action for annulment of the contested measure including him on the EU's sanctions list.[26] Additionally, on 9 December 2022, Nikita Mazepin brought an application for interim measures to suspend the effects of the sanctions, particularly to enable him to negotiate his recruitment as a professional Formula One driver or as a driver in other motor sport championships active within the EU.[27] His request also aimed to allow his participation in various motor sport events, such as Formula One Grand Prix, tests, training sessions, and free sessions taking place in the EU.

In order to establish the urgency for interim measures, Nikita Mazepin needed to demonstrate that waiting for the final decision could lead to serious and irreparable damage. In that regard, Nikita Mazepin argued that as a result of the restrictive measures imposed against him, he was and is unable to negotiate his recruitment in the 2023 season to a team as a full-time or reserve Formula 1 driver or as a driver of any other motor sport competition taking place in Europe.

By order of 1 March 2023, the President of the General Court held that the merits of Nikita Mazepin's listing were to be discussed in further detail in the *prima facie* case that was already pending by virtue of Nikita Mazepin's appeal on 25 November 2022.[28] However, the President held that in awaiting the *prima facie* case, Nikita Mazepin successfully demonstrated that there is a justified discussion surrounding the arguments for listing him on the EU's sanctions list. According to the President of the General Court, the operation of the contested measures were to be suspended in so far as the name of Nikita Mazepin was maintained on the EU's sanctions list. The suspension was limited to situations where it was necessary to facilitate his negotiations for potential recruitment as a professional Formula One driver or for participation in other motor sport championships held within the EU or in events solely occurring in the EU. Additionally, the suspension allowed him to take part in Formula One Grand Prix, tests, training sessions, and free sessions within the EU, as well as participate in other motor sport championships, races, tests, training sessions, and free sessions held in the EU.[29]

Despite this order from the President of the General Court partially suspending the effect of the listing of Nikita Mazepin, the Council decided to maintain Nikita Mazepin's name on the EU's sanctions list. The Council simply amended the "identifying information" and the "reasons" for Nikita Mazepin's inclusion on the list.[30]

Consequently, on 4 May 2023, Nikita Mazepin modified his application for interim measures, so the President of the General Court had to decide again.[31] In essence, Nikita Mazepin claimed that the Council has not shown that he unduly benefitted from his father to obtain the role as a Formula One racing driver for Haas Formula One.[32] In order to demonstrate the serious and irreparable nature of the damage alleged to demonstrate the urgency for interim proceedings, Nikita Mazepin further argued that, as a result of the restrictive measures taken against him, he was and is unable to negotiate his recruitment for the 2023 season, to a team as a full-time or reserve Formula One driver or as a driver of any other motor sport competition taking place in Europe, such as Formula Two or the Deutsche Tourenwagen Masters.[33]

Interestingly, the Council tried to rebut these arguments by providing negative assessments concerning Nikita Mazepin's results as a Formula One driver by substantiating that he would never have been offered a role as a Formula One driver without his father's involvement. As such, the Council concludes that Nikita Mazepin has unduly benefitted from his father.[34] Nikita Mazepin responded to these claims by indicating that he finished fifth in the overall standings in the Formula Two season the year before, meaning that he has shown potential in the lower classes before moving to the big stage.

Notwithstanding the discussion on the merits of Nikita Mazepin's listing, the President of the General Court held on 19 July 2023 that there are sufficient reasons to doubt that the restrictive measures concerning Nikita Mazepin are founded on a sufficiently solid factual basis.[35] In light of the discussion surrounding the merits of Nikita Mazepin's inclusion on the EU's sanctions list, the President of the General Court upheld his earlier decision of 1 March 2023 to suspend the operation of the contested measures, to allow Nikita Mazepin to do what is strictly necessary to enable him to negotiate his recruitment as a professional Formula One driver or as a driver in other motor sport championships taking place also or only in the EU, as well as to participate in Formula One Grand Prix, tests, training sessions and free sessions and in other motor sport championships, races, tests, training sessions and free sessions taking place in the EU.[36]

This case sets a precedent that sanctions can be suspended via interim proceedings once the applicant sufficiently demonstrates that there is discussion surrounding the merits, or the evidence of the listing, and when the applicant demonstrates that suspension of the sanctions is strictly necessary to negotiate recruitment to work within the EU. However, it remains to be seen whether this judgement is limited to high-profile sportsmen, such as Nikita Mazepin, or could also apply to other individuals listed on the EU's sanctions list.

The Obligation for Up-To-Date Evidence

On 20 April 2023, the ECJ delivered a ruling in the case of *Council v El-Qadhafi*.[37] The ECJ dismissed the appeal brought by the Council against the judgment of the General Court and

upheld the General Court's decision that the Council had no factual basis to justify the retention of Ms Aisha El-Qadhafi's name on the contested acts of 2017 and 2020. The judgment reiterated a crucial principle that the Council must diligently review and provide up-to-date justifications when subjecting an individual to EU sanctions.[38] This diligent review is essential to verify whether changes in the behaviour or circumstances of targeted individuals have occurred after imposing sanctions, being the overall purpose of the imposition of EU sanctions.

Ms Qadhafi's was designated in 2011 when the United Nations Security Council (the "**UNSC**") adopted UN Resolution 1970 (2011), which imposed sanctions on Libya and individuals linked to severe human rights abuses and attacks on civilians.[39] The Council adopted EU decisions and regulations to implement this UN Resolution, including travel bans and asset freezes on listed individuals.[40] When designating Ms Qadhafi, the Council relied on statements by Ms Qaddafi dating from 2011 and 2013. Even when extending her listing in 2017 (and 2020), the Council still made use of these statements.

On 27 May 2019, Ms Qadhafi had already brought an action before the General Court to have her name removed from the list.[41] By the judgment under appeal, the General Court annulled the acts at issue in so far as they maintained Ms Qadhafi's name on the list. Subsequently, the Council filed an appeal with the ECJ to set aside the judgment under appeal.

On appeal, the ECJ concluded as follows. The ECJ noted that the issue of the statement of reasons, which concerns an essential procedural requirement, is separate from that of the evidence of the alleged conduct, which concerns the substantive legality of the act in question and involves assessing the truth of the facts set out in that act and the classification of those facts as evidence justifying the use of restrictive measures against the person concerned.[42] Consequently, the ECJ emphasised the need for up-to-date information and evidence when justifying listings. In that light, the Court held that the considerable time gap between the statements and the challenged acts and changes in Ms Qadhafi's circumstances rendered the Council's decision insufficiently motivated.[43] The Council needed to demonstrate how the information from 2011 and 2013 was still relevant when upholding her listing in 2017 and 2020 or how Ms Qadhafi threatened international peace and security in the region during those years.

The ECJ's judgment showcases its commitment to conduct judicial reviews of listings based on UNSC resolutions. This ensures that individual listings are supported by accurate, relevant, and up-to-date evidence. Notably, ECJ has become an important place for challenging UN listings since the landmark case of Kadi I, where the ECJ held that EU instruments implementing UN measures must respect the fundamental rights of targeted individuals, including judicial protection.[44] While Ms Qadhafi cannot directly challenge her UN listing before an independent judicial mechanism, the ECJ's review of EU sanctions measures implemented under UN obligations provides an indirect route to judicial review.

The ruling in *El-Qadhafi v Council* moreover underlines the importance of an effective delisting procedure through the ECJ. However, despite the ECJ's ruling, Ms Qadhafi remains on the EU's sanctions list at of the time of writing. It remains to be seen whether the Council will renew her listing based on an up-to-date assessment supported by new evidence or whether they will finally decide to delist her after 12 years.

The Rejected Claim for Damages of Oleksandr Klymenko

On 1 February 2023, the General Court issued a ruling in which it has rejected the claim of Oleksandr Klymenko, the former Ukrainian Minister of Revenues and Duties.[45] In the case at hand, Mr Klymenko sought compensation for damages arising from his listings on the EU's sanctions list. The case saw Mr Klymenko pursuing EUR 50,000 in reputational damages and EUR 2,000,000, plus EUR 500 per month in damages for the period he was listed (from 2015 to 2021). The General Court's ruling rejected the claims made by Mr Klymenko based on three grounds. Before discussing these grounds of rejection, it is crucial to note that Mr Klymenko has a history of success in having his listings annulled. His designation was eventually annulled by the ECJ. Nonetheless, the General Court's decision to reject Mr Klymenko's claim for damages indicates that a successful annulment procedure does not automatically lead to financial compensation.

Firstly, the General Court determined that the damages claim for acts carried out in 2015 and 2016 was brought too late.[46] The limitation period for these actions commenced on the dates when the acts were published in the Official Journal of the European Union (6 March 2015 and 5 March 2016, respectively) and ended after five years.[47] However, Mr Klymenko did not initiate the action for damages until 30 July 2021, well beyond the five-year limitation period.[48] Consequently, the General Court deemed these claims relation to Mr Klymenko's listing in 2015 and 2016 to be inadmissible since the five-year period had exceeded.[49]

Secondly, Mr Klymenko argued that the General Court had committed errors when designating him on the EU's sanctions list.[50] Subsequently, the General Court assessed the alleged errors committed by the EU in relation to the designation of Mr Klymenko from 2017 to 2020.[51] The General Court refers to case-law in which it was stated that only a manifest and serious breach by the institution concerned of the limits imposed on its discretion is capable of giving rise to non-contractual liability.[52] Further, the factors to be taken into consideration in that regard being, in particular, the complexity of the situations to be regulated, the difficulties in applying or interpreting the provisions and the extent of the discretion which the rule infringes leaves it to the EU institution.[53] Upon this assessment, the General Court concluded that the errors were not serious enough to warrant a payment of damages and did not meet the threshold necessary to justify financial compensation for Mr Klymenko.[54]

Lastly, the damages claim regarding the listing of Mr Klymenko in 2021 was also rejected. In principle, the General Court found that the Council did not have sufficient evidence to establish that Mr Klymenko's rights of defence and right to effective judicial protection had been respected.[55] In essence, the General Court held that the Council committed a serious breach in relation to the listing of Mr Klymenko in 2021, opening the Council to liability for damages.[56] However, even though the Council committed a serious breach, the General Court found that Mr Klymenko had failed to sufficiently establish the extent of the damages suffered and to demonstrate a direct causal link between his designation and the damage he had incurred as a result thereof.[57]

This case highlights the responsibility of the Council to exercise due diligence and ensure the restrictive measures are imposed based on accurate information, but also sets a precedent for individuals seeking a payment for damages arising from designation on the EU's sanctions list. The General Court's ruling expresses the need for a claimant to file for damages timely first, to prove that the Council has committed a serious breach in their judgement, and present evidence to establish the causal connection between the damages suffered and the designation on the EU's sanctions list.

Lessons Learned From Interim Relief Proceedings

Although exceptionally successful, the General Court in 2023 was also occupied with a variety of interim relief proceedings in the field of sanctions. Since an action for annulment brought before the Court does not have suspensive effect, the General Court may, on the basis of Articles 278 and 279 TFEU, order a suspension of the execution of the contested act or prescribe any necessary interim relief measures. The court hearing an application for interim measures may only grant a suspension of operation, or other interim measures, if it is established that (i) such measures appear *prima facie* justified in fact and law, and (ii) are urgent in order to prevent serious and irreparable damage to the interests of the applicant. These conditions are cumulative, which means that the application must be dismissed if any of them is not met.[58] Two recent 2023 cases demonstrate again that interim relief proceedings before the General Court do not simply succeed. Without extensive reasoning on the aforementioned criteria, an application for interim relief measures makes little sense.

The first case was brought by a businessperson and former director of the African Gold Refinery Limited, who is listed under the EU sanctions regime against the Democratic Republic of Congo since 2022.[59] The General Court dismissed the application for interim measures of the applicant, by arguing that the applicant had failed to meet the criteria for interim measures pending the annulment application. In this case, the criterion of urgency was specifically at issue. One of the applicants' pleas was that the freezing of his assets and funds held in the Union constitutes a far-reaching interference with the enjoyment of his property, the consequences of which could be disastrous, and adversely affects his activity as manager and shareholder in three companies in Belgium, of which he also is a national.[60] Although the General Court recalls that, according to settled case-law, an interim measure is justified if it appears that the applicant will find itself in a situation it cannot meet its basic needs or if the financial damage will be irreparable, it finds that the applicant did not provide any evidence of the harm allegedly suffered by him or his companies, or of the causal link between the contested acts and that harm, nor does it comment on the irreparable nature of any financial damage.[61] The General Court rejected the request without assessing the criterion of whether the measures requested were justified in fact and in law, now that the applicant failed to demonstrate that the urgency criterion was met. The case at hand shows that for an application for interim measures to be successful, the applicant must at least provide concrete and precise evidence supported by detailed and certified documentary evidence, showing the situation in which the applicant finds itself and on the basis of which it is possible to assess what the likely consequences would be if the requested measures are not granted. Without proper substantiation of the two cumulative conditions, an application may be better left behind.

The second case was lodged by Cogebi, an EU manufacturer of industrial products based on mica.[62] As part of the eight EU sanctions package against Russia, goods falling under CN code 6815, namely worked mica and articles of mica, were added to the import ban. Following this addition, Cogebi brought an action for annulment, in so far as it includes CN code 6814.[63] In addition, Cogebi made a request for interim measures, in order to suspend the operation of the addition of CN code 6814 to the import ban. The General Court's reasoning for rejecting the applicant's request was very brief. Taking into account that in the application for interim measures, the applicants did not make any argument in respect of the *prima facie* case requirement or the balancing of competing interests, the General Court ruled that the application was not intelligible in itself without referring to the application in the main proceedings.[64] It follows, however, from the Rules of Procedure from the General Court that an application for interim measures must be sufficient in itself, in order for the defendant to prepare it defence and the judge hearing the application to rule on it, where necessary, without other supporting information.[65] A sole reference to the application on the main proceedings is not sufficient in this context. This case highlights that in case of applying for interim measures at the General Court, the application itself must contain a separate document arguing why the two cumulative conditions for the interim measures are met.

Endnotes

1. This was already the case in 2022, as confirmed by press release No 42/23 of the Court of Justice of the European Union https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-03/cp230042en.pdf
2. Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty of the Functioning of the European Union (*OJ* L308/18).
3. Case C-124/20, *Bank Melli Iran v Telekom Deutschland GmbH*, ECLI:EU:C:2021:1035, 21 December 2021.
4. Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, *OJ* 2018, L 199 I/1.
5. The criteria application for an authorisation under Article 5 can be found in the second paragraph of that article, as well as in Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018 laying down the criteria for the application of the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, *OJ* 2018, L 199 I/7.
6. Case T-8/21, *IFIC Holding AG v Commission*, ECLI:EU:T:2023:387, 12 July 2023.
7. *Id.*, paragraph 62.
8. *Id.*, paragraphs 68–72.
9. *Id.*, paragraphs 78–80.
10. Article 41 Charter of Fundamental Rights of the European Union.
11. Case T-8/21, *IFIC Holding AG v Commission*, ECLI:EU:T:2023:387, 12 July 2023, paragraph 94.
12. *Id.*, paragraphs 100–22.
13. *Id.*, paragraph 57.
14. Case T-212/22, *Violetta Prigozhina v Council*, ECLI:EU:T:2023:104, 8 March 2023.
15. *Id.*, paragraph 95.
16. Council Decision (CFSP) 2022/265 of 23 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
17. Council Implementing Regulation (EU) 2022/260 of 23 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

18. *Supra* n 11 and 12, under listing name: 223.
19. *Supra* n 9, paras 88 and 89.
20. *Ibid.*
21. *Id.*, paras 94 and 95.
22. *Ibid.*
23. Id., para 98.
24. Council Regulation (EU) 2023/1089 of 5 June 2023 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
25. The statements of reasons now reads: "*Violetta Prigozhina is the mother of Yevgeny Prigozhin and former owner of Concord Management and Consulting LLC, which is linked to other 'Concord family' businesses, including Combinat Pitaniiya. The 'Concord family' businesses are closely associated with Yevgeny Prigozhin. She is the former co-owner of other companies with links to her son, including 'NOVYI VEK' Restaurant Equestrian Sport Complex LLC. She is associated with Yevgeny Prigozhin, who is responsible for the deployment of Wagner Group mercenaries in Ukraine and for benefitting from large public contracts with the Russian Ministry of Defence following the illegal annexation of Crimea by Russia and occupation of Eastern Ukraine by Russia-backed separatists.*
She has therefore supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine."
26. Action brought on 25 November 2022 – *Mazepin v Council* (Case T-743/22).
27. Separate document lodged at the Court Registry on 9 December 2022.
28. Case T743/22 R, *Mazepin v Council*, (not published), EU:T:2023:102, 1 March 2023, para 52.
29. *Id.*, para 101.
30. Council Implementing Regulation (EU) 2023/571 of 13 March 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
31. Case T743/22 R II, *Mazepin v Council*, ECLI:EU:T:2023:406, 19 July 2023.
32. *Id.*, paras 44 to 48.
33. *Id.*, paras 86 and 87.
34. *Id.*, para 67.
35. *Ibid.*
36. *Id.*, para 124.
37. Case C-413/21, *Council v El-Qadhafi*, ECLI:EU:C:2023:306, 20 April 2023.
38. *Id.*, paras 75 to 76.
39. United Nations Resolution 1970 (2011) Adopted by the Security Council at its 6491st meeting, on 26 February 2011.
40. Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya.
41. The decision was rendered in Case T322/19, *El-Qadhafi v Council*, ECLI:EU:T:2021:206, 21 April 2021.
42. *Supra* n 34, para 45.
43. *Id.*, para 69.
44. Case C–402/05 P and C–415/05 P, *Kadi and Al Barakaat International Foundation v. Council and Commission*, ECLI:EU:C:2008:461, 3 September 2008.
45. Case T-470/21, *Klymenko v Council*, ECLI:EU:T:2023:26, 1 February 2023.
46. *Id.*, paras 48 to 57.
47. *Id.*, para 55.
48. *Id.*, para 56.
49. *Id.*, para 57.
50. *Id.*, para 60.
51. *Id.*, paras 58 to 98.
52. *Id.*, para 78. The General Court refers to, *inter alia*, Case C-123/18 P, *HTTS v Council*, EU:C:2019:694, 10 September 2019, paras 33 and 42.
53. *Ibid.*
54. *Id.*, para 98.
55. *Id.*, paras 99 to 103.
56. *Ibid.*
57. *Id.*, paras 105 to 129.
58. Case C-162/15 P-R, EU:C:2016:142, paragraph 21 and the case-law cited.
59. Case T-6/23 R, *UC v Council*, ECLI:EU:T:2023:205.
60. *Id.*, paragraph 24.
61. *Id.*, paragraphs 29–32.
62. Case T-782/22 R, *Cogebi v Council*, ECLI:EU:T:162.
63. By Council Regulation (EU) 2022/1904 of 6 October 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine goods falling under CN code 6814 were added to Annex XXI, as a result of which it became prohibited to import goods falling under CN code 6814 into the European Union from the Russian Federation.
64. *Id.*, para 16.
65. *Id.*, para 13.

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Australia implements sanctions under the United Nations Security Council ('**UNSC**') sanctions regimes and under the autonomous sanctions regimes.

UNSC sanctions regime

As a member of the United Nations, Australia implements the UNSC sanctions. The *Charter of the United Nations Act 1945* (Cth) is an Act that approves the Charter of the United Nations and enables Australia to apply sanctions in accordance with decisions of the Security Council.

Contravention of a UN sanction enforcement law or a condition of a licence, permission, consent, authorisation or approval under a UN sanction enforcement law is an offence carrying a maximum term of imprisonment of 10 years pursuant to subsections 27(1)–(3) of the *Charter of the United Nations Act 1945* (Cth). The court may also impose a fine where the contravention involves one or more transactions, in the amount greater of the following: (i) three times the value of the transaction(s); or (ii) 2,500 penalty units. Where the contravention does not involve a transaction, a fine of 2,500 penalty units applies.

Corporations are also subject to UNSC sanctions. Conduct that contravenes a UN sanction enforcement law or a condition of a licence, permission, consent, authorisation or approval under a UN sanction enforcement law are offences of strict liability and punishable by a fine of an amount greater of the following: (i) three times the value of any transaction(s); or (ii) 10,000 penalty units. Where the contravention does not involve a transaction, a fine of 10,000 penalty units applies.

Australian autonomous sanctions regimes

The Australian autonomous sanctions regimes are imposed by the Australian Government pursuant to foreign policy objectives and administered under the *Autonomous Sanctions Act 2011* (Cth) ('the ***Sanctions Act***'), and the *Autonomous Sanctions Regulations 2011* (Cth) ('the ***Sanctions Regulations***').

Under section 10 of the *Sanctions Act*, the regulations may make provision relating to a number of prohibitions, including:

(a) proscription of persons or entities;
(b) restriction or prevention of uses of, dealings with, and making available of, assets;
(c) restriction or prevention of the supply, sale or transfer of goods or services; and
(d) restriction or prevention of the procurement of goods or services.

Sanctions regulations may be expressed to have extraterritorial effect, pursuant to section 11 of the *Sanctions Act*. Therefore, the sanctions law apply:

(a) in Australia;
(b) to Australian citizens living abroad and Australian-registered bodies corporates abroad;
(c) to bodies corporates incorporated by or under a law of the Commonwealth or of a State or Territory; or
(d) on board an Australian aircraft or Australian ship.

Australian nationals living abroad may therefore be caught by offence provisions if in contravention of the autonomous sanctions regime in Australia.

Contravention of sanctions law under the autonomous regimes or a condition of authorisation under sanctions law are criminal offences that attract a maximum term of imprisonment of 10 years, a fine or both. The fine is calculated as 2,500 penalty units or where a transaction(s) is involved, the greater of three times the value of the transaction or 2,500 penalty units.

For corporations, a contravention of sanctions law under the autonomous regimes or contravention of a condition of an authorisation are offences of strict liability and attract a fine of 10,000 penalty units, or where a transaction(s) is involved, the greater of three times the value of the transaction or 10,000 penalty units.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Department of Foreign Affairs and Trade ('**DFAT**') is responsible for administering and enforcing the *Charter of the United Nations Act 1945* (Cth) as well as the *Sanctions Act* and *Sanctions Regulations*.

The Minister for Foreign Affairs ('the **Minister**') is responsible for sanctions and under section 6 of the *Sanctions Act*, may by legislative instrument, specify a provision of a law of the Commonwealth as sanction law. Similarly, and for the purposes of UNSC sanctions, the Minister, under section 2B of the *Charter*

of the United Nations Act 1945 (Cth), may by legislative instrument, specify a provision of a law of the Commonwealth as a UN sanction enforcement law.

The Minister also has powers to 'designate' a person or entity for targeted financial sanctions and/or impose a travel ban of a declared person if satisfied of certain conditions. Pursuant to regulation 18 of the *Sanctions Regulations*, the Minister may also grant permits authorising a sanctioned activity to a person or entity when satisfied of certain matters including if satisfied it would be in the national interest to grant the permit.

Persons or entities designated by the Minister under regulation 6 of the *Sanctions Regulations* are listed in the Australian Sanctions Office ('**ASO**') Consolidated List. The ASO is the Australian Government's sanctions regulator and was established by the DFAT on 1 January 2022. The ASO sits within the DFAT's Regulatory Legal Division in the Security, Legal and Consular Group.

The Consolidated List is managed and updated by the ASO and contains all persons and entities sanctioned under Australian sanctions law. Under the autonomous regime, the Minister is empowered to designate a person or entity depending on the conditions that must be met per sanctioned country. For example, and with respect to the autonomous sanctions against Russia, recent amendments under regulation 6(6A) of the *Sanctions Regulations* enable the Minister to designate a person or entity for targeted financial sanctions and/or impose a travel ban on a declared person if they are:

(a) A person or entity that the Minister is satisfied is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia.
(b) A current or former Minister or senior official of the Russian Government.
(c) An immediate family member of a person mentioned in paragraphs (a) or (b).

As the sanctions regulator, the ASO:

- provides guidance to regulated entities, including government agencies, individuals, business and other organisations on Australian sanctions law;
- processes applications for, and issues, sanctions permits;
- works with individuals, business and other organisations to promote compliance and help prevent breaches of the law;
- works in partnership with other government agencies to monitor compliance with sanctions legislation; and
- supports corrective and enforcement action by law enforcement agencies in cases of suspected non-compliance.

The ASO also works with a network of federal partners, including the Department of Defence, Australian Transaction Reports and Analysis Centre, Department of Home Affairs, Australian Border Force and the Australia Federal Police, to promote compliance with Australian sanctions law and respond to possible breaches.

Prosecution of contraventions of sanctions law are undertaken by the Commonwealth Director of Public Prosecutions ('**CDPP**').

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

As part of its autonomous sanctions regime, Australia has imposed sanctions against Russia in response to Russia's threat to the sovereignty and territorial integrity of Ukraine. While these sanctions were first imposed in 2014, they were extended in 2015 and further extended in 2022 following the invasion of Ukraine by Russia in February 2022.

As of May 2023, the Australian Government has imposed sanctions on over 1,000 individuals and entities in response to Russia's invasion. Pursuant to a joint media release published on 19 May 2023 by Australia's Prime Minister and the Minister of Foreign Affairs, new sanctions will be imposed targeting 21 entities and three individuals including Russia's largest petroleum company and Russia's largest gold company.

In February 2023, the DFAT, led by the ASO, commenced a review of Australia's Sanctions Framework that was informed by a consultation process with key stakeholders. The consultation process invited stakeholders to make submissions in response to an Issues Paper and how the sanctions framework could be improved. The ASO's review is scheduled to be completed by 30 June 2023.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Please refer to question 1.2 above.

The Minister is conferred powers under the *Charter of the United Nations Act 1945* (Cth) and the *Sanctions Act*, to specify a provision of a law of the Commonwealth as sanctions law.

The DFAT and the ASO regulate the administration and enforcement of sanctions.

The Department of Home Affairs is responsible for the implementation of visa restrictions relating to sanctioned imposed travel bans.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Please refer to question 1.1.

Australia implements United Nations sanctions under the *Charter of the United Nations Act 1945* (Cth) and the *Charter of the United Nations (Dealing with Assets) Regulations* (Cth) and other regulations implementing UNSC sanctions resolutions targeting particular countries or issues. The Minister may only specify a provision of a law of the Commonwealth as a UN sanction enforcement law to the extent that it gives effect to a decision that the Security Council has made and Australia is required to carry it out pursuant to Article 25 of the *Charter of the United Nations*.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

There are presently no regional bodies that impose sanctions. Sanctions are imposed in Australia by way of domestic Australian law reflecting UNSC decisions relating to sanctions and foreign policy objectives under the autonomous regime.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Please refer to question 1.2.

The ASO maintains a Consolidated List of designated entities and persons. Under regulation 10 of the *Sanctions Regulations*, the Minister has powers to revoke the designation of a person or entity by legislative instrument and may do so on the Minister's own initiative.

Pursuant to regulation 11 of the *Sanctions Regulations*, applications can also be made for the revocation of designations. These include by a designated person or entity to revoke the designation of the person or entity and by the owner of a sanctioned vessel to revoke the designation of the vessel.

The application must be in writing and set out the circumstances relied upon to justify the application.

For the purposes of the UNSC sanctions regime, the DFAT will provide a listed person or entity with a statement of reasons for the listing upon written request by the person or entity.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Designated persons or entities can make a request to be removed from a sanctioned list. To whom the request should be made is dependant on the person or entity who was designated.

For UNSC listings, requests should be made to the Focal Point for De-listing or through the country of citizenship or residence.

For UNSC listings related to ISIL (Da'esh) and Al-Qaida, requests for removal should be made to the UN Office of the Ombudsperson or through the person or entities country of citizenship or residence.

For listings under the counter-terrorism (UNSCR 1373) sanctions regime or Australian autonomous sanctions, requests should be made through the DFAT sanctions contact page online at https://dfat.gov.au/international-relations/security/sanctions/Pages/contacts-and-links

2.6 How does the public access those lists?

The Consolidated List can be accessed online through the DFAT website (https://dfat.gov.au/international-relations/security/sanctions/consolidated-list). The Consolidated List was most recently updated on 10 June 2023.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

The UNSC sanctions currently implemented under Australian sanctions law are imposed on the following countries: Central African Republic; Democratic Republic of the Congo; Guinea-Bissau; Iraq; Lebanon; Mali; Somalia; South Sudan; Sudan; and Yemen. Australia also implements UNSC sanctions against Counter Terrorism, ISIL (Da'esh), Al-Qaida, and the Taliban.

Under the autonomous sanctions regime, Australia has further implemented sanctions against countries including: Myanmar; the Former Federal Republic of Yugoslavia; Ukraine; and Zimbabwe.

Australia has imposed sanctions autonomously and through the UNSC on the following countries: DPRK; Iran; Libya; and Syria.

2.8 Does your jurisdiction maintain any other sanctions?

Please refer to question 1.2 above.

2.9 What is the process for lifting sanctions?

Please refer to questions 2.4 and 2.5 above.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Australia maintains an export control regime distinct from sanctions that is comprehensive and in place to ensure the control of goods imported and exported to and from Australia and are carried out consistent with Australia's national interest and international obligations.

Australia's export control system is primarily implemented by Defence Export Controls ('**DEC**'), a unit within the Department of Defence. The agency is responsible for controlling the export of Australian goods, software and technologies and is accountable to the Minister of Defence. There are a number of federal legislation and regulations that collectively form Australia's export control system including:

(a) *Customs Act 1901* (Cth) and *Customs (Prohibited Exports) Regulations 1958* (Cth), which primarily deal with controls for export of tangible defence and dual-use goods and technologies;

(b) *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (Cth), an Act to control goods and technologies that are believed or suspected to be used in the weapons of mass destruction programme; and

(c) *Defence Trade Controls Act 2012* (Cth), an Act that controls the transfer of defence and strategic goods technologies.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

No. There are presently no blocking statutes or other restrictions prohibiting adherence to other jurisdictions' sanctions or embargoes.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Australia does not presently impose secondary sanctions. As referred to in question 1.1 above, sanctions regulations have extraterritorial effect. Therefore, sanctions law apply in Australia, to Australian citizens and Australian-registered bodies corporates abroad or on board an Australian aircraft or vessel. There are primary offences for the contravention of sanctions for individuals and corporations.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Please refer to question 1.1 above.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

A person or entity that holds the asset has the responsibility of freezing an asset subject to targeted financial sanctions, for example, the financial institution that holds the funds of a designated person or entity.

The Australian Government can also seek to freeze the assets of a party that is alleged to hold or deal with an asset controlled or owned by a designated person or entity. The Minister may also 'freeze' certain funds or other assets, the consequence of which is that persons and entities are prohibited from dealing with it, as doing so would constitute an offence.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

In some circumstances, it may be possible to obtain a sanctions permit to allow an activity related to a person or entity on the Consolidated List that would otherwise be prohibited by an Australian sanctions law.

The Minister may grant a sanctions permit provided the activity meets specific criteria. The criteria for a permit will depend on the specific regime. Permits under UNSC sanctions require approval from the UNSC.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Under section 19 of the *Sanctions Act*, a designated CEO may require a person to give information or documents for the purpose of determining whether a sanction law has been or is being complied with.

The person must provide the information or documents by the time and in any manner or form as specified in the CEO's notice. The time specified in the notice must be reasonable.

The CEO may require the information to be verified by, or given on, oath or affirmation that the information is true.

It is not possible to use the privilege of self-incrimination to justify not providing information or documents. However, neither the information given, nor the giving of the document is admissible in evidence against the individual in any criminal proceedings, or in any proceedings that would expose the individual to a penalty, other than proceedings for an offence against:

- section 17 (false or misleading information given in connection with a sanction law); or
- section 21 (failure to comply with requirement to give information or document).

Failing to comply with the requirement is a criminal offence with a penalty of up to 12 months' imprisonment.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

Australian businesses and individuals are required to conduct due diligence to ensure that they do not deal with sanctioned persons or entities. Beyond this, there is no explicit reporting requirement for a sanctions compliance programme for entities.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Please refer to question 1.1 above.

The violation of economic sanction laws and regulations attract serious criminal offences with strict liability.

Other offences under the *Sanctions Act* include:

(a) Giving false or misleading information given in connection with a sanction law.

(b) Giving information to a second person who then provides false or misleading information in connection with a UN sanction enforcement law.

(c) Failure to comply with notice to give information by CEO of a Commonwealth entity.

These offences are expressed in a similar language under the UN Act, in sections 28 and 29.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

Please refer to questions 1.2 and 2.1 above.

4.3 Is there both corporate and personal criminal liability?

Yes, an individual or a body corporate can be criminally liable for breaching sanction laws.

The *Criminal Code Act 1995* (Cth) at Part 2.5 sets out the methods by which criminal offences can be attributed to corporations. Under section 12.2, the physical element of an offence may be attributed to a corporation using traditional agency principles, with physical acts of "*an employee, agent or officer acting within his or her actual or apparent authority*" attributable to a corporation.

Section 12.3 of the Code provides that when an offence requires fault elements of intention, knowledge or recklessness, this state of mind is imputed to a corporation if it "*expressly, tacitly or impliedly authorised or permitted the commission of the offence*".

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

Please refer to questions 1.1 and 4.1 above.

4.5 Are there other potential consequences from a criminal law perspective?

An individual or body corporate may face a variety of consequences from a criminal law perspective; the consequences of which will depend on the sanctions regime that has been breached. A breach of sanctions law may open an individual or body corporate to offences in breach of terrorism financing laws, anti-money laundering or anti-fraud laws, customs law or other offences set out in the *Criminal Code*.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

No, there are currently no civil penalties for violating economic sanctions laws.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

Please refer to questions 1.2 and 2.1 above.

4.8 Is there both corporate and personal civil liability?

Yes, please refer to questions 1.1 and 4.3 above.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

Please refer to questions 1.1 and 4.1 above.

4.10 Are there other potential consequences from a civil law perspective?

There are limited civil consequences beyond director duties and officer duty principles.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

There is no civil enforcement process of sanctions in Australia, there is only a criminal enforcement process.

The criminal enforcement process involves the DFAT, the Australian Federal Police ('**AFP**') and the Commonwealth Department of Public Prosecutions. The AFP and DFAT are involved in investigation and will refer matters to the CDPP for prosecution.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

The appeal process for an individual or company convicted for a sanctions offence accords with the general criminal appeals process. The individual or corporation will be required to lodge the appeal against the conviction or sentence to the relevant court within a specific timeframe.

An appeal can be submitted to the Federal Court of Australia or the relevant State's Court of Appeal if the original trial was held in a state court (exercising Commonwealth jurisdiction). Appellate proceedings are governed by the relevant Rules of Court applicable to the State or Federal Court.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Australia's sanction laws and offences are legislated at a national level, and therefore, enforced only at the national level by the AFP and CDPP.

4.14 What is the statute of limitations for economic sanctions violations?

There is no statute of limitation for economic sanctions violations.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

The Australian Government is currently not considering the implementation of new economic sanctions regimes. Any new economic sanctions-related measures are likely to be related to the current Russian and Ukraine sanctions regimes.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

- DFAT Website – 'Australia and sanctions' (https://dfat.gov.au/).
- DFAT Consolidated List (https://dfat.gov.au/international-relations/security/sanctions/consolidated-list).
- Central African Republic and Democratic Republic of the Congo sanctions regimes (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/central-african-republic-and-democratic-republic-congo-sanctions-regimes-sanctions-regime).
- Counter-Terrorism (UNSC 1373) sanctions regime (https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/counter-terrorism-unsc-1373-sanctions-regime).
- Specified Ukraine regions sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/specified-ukraine-regions-sanctions-regime#:~:text=These%20sanctions%20measures%20target%20exports,Ukraine%20from%2028%20March%202022).
- Democratic People's Republic of Korea (North Korea) sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/democratic-peoples-republic-korea-sanctions-regime).
- Former Federal Republic of Yugoslavia sanctions regime (https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/former-federal-republic -yugoslavia-sanctions-regime).
- Guinea-Bissau sanctions regime (https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/guinea-bissau-sanctions-regime).
- Iran sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/iran-sanctions-regime).
- Iraq sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/iraq-sanctions-regime).
- ISIL (Da'esh) and Al-Qaida sanctions regimes (https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/isil-daesh-and-al-qaida-sanctions-regime).
- Lebanon sanctions regime (https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/lebanon-sanctions-regime).
- Libya sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/libya-sanctions-regime).
- Mali sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/mali-sanctions-regime).

- Myanmar sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/myanmar-sanctions-regime).
- Russia sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/russia-sanctions-regime).
- Serious corruption sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/serious-corruption-sanctions-regime).
- Serious violation or serious abuses of human rights sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/serious-violations-or-serious-abuses-human-rights-sanctions-regime).
- Significant cyber incidents sanctions regime (https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/significant-cyber-incidents -sanctions-regime).
- Somalia sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/somalia.aspx).
- Sudan and South Sudan sanctions regimes (https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/sudan-and-south-sudan -sanctions-regime).
- Syria sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/syria.aspx).
- The Taliban sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/the-taliban.aspx).
- Ukraine sanctions regime (https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/ukraine-sanctions-regime).
- Yemen sanctions regime (https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/yemen-sanctions-regime).
- Zimbabwe sanctions regime (https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/zimbabwe.aspx).
- Legislation: *Charter of the United Nations Act 1945* (https://legislation.gov.au/Details/C2021C00518 – Link to Regulations at: https://legislation.gov.au/Series/C1945A00032/Enables).
- Autonomous Sanctions Act 2011 (https://legislation.gov.au/Details/C2021C00581).
- *Autonomous Sanctions Regulations 2011* (https://legislation.gov.au/Details/F2022C00330).
- *Criminal Code Act 1995* (https://www.legislation.gov.au/Details/C2022C00324).
- Customs (Prohibited Exports) Regulations 1958 (https://www.legislation.gov.au/Details/F2023C00308).
- Customs (Prohibited Imports) Regulations 1956 (https://legislation.gov.au/Details/F2022C00511).

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Working with our international partners, we have advised and acted in investigations involving the US, Canada, the UK, the EU, China, Hong Kong, Singapore, Taiwan, Macao, Vietnam, Cambodia, Russia, Mexico, South Korea, the British Virgin Islands, New Zealand and South Africa.

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Belgium applies the sanctions adopted by the United Nations Security Council ("**UNSC**") and the European Union ("**EU**").

Belgium implements the EU sanctions or UNSC decisions through laws and royal decrees, such as the following:

- Law of 6 October 1944 regarding the control of any transfers of goods or assets between Belgium and a foreign country (modified by the Law of 28 February 2002) and the Royal Decree of 26 January 2014 on measures to control cross-border cash movements;
- Law of 11 May 1995 regarding the implementation of UNSC decisions;
- Law of 13 May 2003 relating to the implementation of restrictive measures adopted by the European Union Council against some states, individuals and entities, as amended from time to time;
- Royal decree of 28 December 2006 relating to specific restrictive measures against some individuals and entities within the framework of the fight against terrorism financing;
- Law of 18 September 2017 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and limitations to the use of cash, as amended from time to time; and
- Royal Decree of 14 July 2022 concerning restrictive measures with regard to public procurement and concession contracts in view of Russia's actions destabilising the situation in Ukraine.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The General Administration of the Treasury which is part of the Federal Public Service of Finance enforces the sanctions regime.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

The armed conflict in Ukraine has caused the implementation in Belgium of a vast set of EU measures by the General Administration of the Treasury. Last year, in an unprecedented move, the Administration decided to adopt specific conditions for the implementation of a specific provision adopted by the EU Council. On 22 December 2022, the General Administration of the Treasury adopted general conditions for the application of Article 6b(5) of Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures with regard to actions endangering or threatening the territorial integrity, sovereignty and independence of Ukraine ("**Regulation (EU) N° 269/2014**"). Article 6b(5) grants an opportunity for operators to unfreeze and remove assets from the National Settlement Depository ("**NSD**") that was added to the list of sanctioned entities of Regulation (EU) N° 269/2014 (Annex I) on 3 June 2022.

These general conditions have impacted the Belgian sanctions regime because, on the one hand, they made the application of Article 6b(5) more restrictive by adding new conditions; and, on the other hand, they were published on 22 December 2022, with a deadline for submitting applications set for 7 January 2023, which – in the middle of the holiday season – left applicants very little time to meet all the conditions. These conditions were announced on the website of the General Administration of the Treasury itself, which questions the legal nature of such conditions.

Another example relates to the 11th package of sanctions adopted by the EU Council on 23 June 2023 in the context of the conflict in Ukraine. This new set of sanctions is, like all the previous EU sanctions, directly applicable in Belgium and will be enforced by the General Administration of the Treasury.

The implementation of the EU sanctions in the context of the armed conflict in Ukraine has been intense in Belgium due to the presence of Euroclear in Brussels. Euroclear, an international clearing and settlement depositary, froze indistinctively all the Russian assets in its system since the very first day of the conflict. As a result, USD 196 billion has been reported as frozen by Euroclear while a large part seems to belong to entities or individuals that are not subject to sanctions which must target exclusively individuals or companies supporting directly or indirectly the conflict in Ukraine. In this context, the General Administration of the Treasury received thousands of demands to unfreeze assets from Euroclear. Administrative and judicial Courts in Belgium begin to hear appeals brought against the Administration's decisions.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

At the national level, the Belgian legislator is competent to adopt measures implementing UNSC and EU sanctions. The legislator may also entrust the government to adopt executive measures to complement the law.

EU sanctions are restrictive measures adopted by the EU Council on the basis of Articles 25, 28 and 29 of the Treaty of the European Union ("**TEU**") and Articles 75, 215, 288 and 352 of the Treaty on the Functioning of the European Union ("**TFEU**").

Regulations adopted by the EU Council are directly applicable in Belgium. Still, the Belgian legislator and/or the government may adopt implementing national measures to specify the procedure for a derogation such as, for example, derogations in the context of public procurement (see Royal Decree of 14 July 2022 concerning restrictive measures with regard to public procurement and concession contracts in view of Russia's actions destabilising the situation in Ukraine).

Also, the National Security Council is competent to define the national terrorism list which identifies individuals and entities suspected of terrorism and in respect of whom freezing measures apply, based on the Resolution 1273 (2001) of the UNSC.

The General Administration of the Treasury has jurisdiction to enforce the sanctions.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Belgium implements United Nations ("**UN**") sanctions.

Generally, the EU implements UN sanctions through EU Council Regulations directly applicable in Member States.

In parallel, Belgium adopts law and/or royal decrees to implement UN decisions involving actions which fall outside the jurisdiction of the EU, for example, in the area of criminal law (see Law of 11 May 1995 on the implementation of decisions of the United Nations Security Council).

Regarding the assets freezing measures, Belgium adopted the Law of 2 May 2019 on various financial provisions which provides the immediate application of the freezing measures adopted by the UN. This Law aims to ensure the effectiveness of the freezing measures from the date of the adoption of UN Security Council decisions until their transposition into EU law.

In May 2018, UN experts concluded that the Belgian government did not comply with the UN sanctions adopted in 2011 concerning Gaddafi's frozen assets. Tens of EUR millions in interest payments from Gaddafi's frozen funds managed by Euroclear were still being paid out. The Group of Experts considered that these interest payments and other remuneration did not comply with the UN assets freeze measure.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

Yes, Belgium is a Member State of the EU which issues sanctions.

(a) As mentioned above, EU sanctions are directly applicable in the EU Member States. Therefore, Belgium either applies EU sanctions directly or implements them through laws and royal decrees (see examples under question 1.1).

(b) Failure to implement the sanctions in Belgium would amount to a violation of the TFEU and be reportable to the EU Commission. No such case has been reported so far to the best of our knowledge. However, the implementation of a vast set of sanctions such as in the armed conflict in Ukraine reveals the lack of resources of the General Administration of the Treasury to handle timely the large number of requests to unfreeze assets or obtain the necessary authorisations provided in the EU sanctions Regulations.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Belgian authorities and entities apply the EU sanctions lists. In addition, Belgium has its own national list concerning freezing measures against specific individuals and entities within the framework of the fight against terrorism financing.

a) New individuals and entities are added to the EU sanctions lists through EU Council regulations amending existing regulations such as Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine and Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and the independence of Ukraine.
The list of sanctioned entities or individuals specific to Belgium is amended by Royal Decrees adopted pursuant to the Royal Decree of 28 December 2006 as regards specific restrictive measures against some individuals and entities within the framework of the fight against terrorism financing, confirmed by the Article 115 of the Law of 25 April 2007 laying down various provisions (IV).

b) Sanctioned individuals and entities can be removed from the EU sanctions lists by a decision of the EU Council. As for the national list, they can be removed by a decision of the Council of Ministers on a proposal of the National Security Committee (see question 2.5)

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Regarding the EU sanctions lists, individuals and entities may request the EU Council to reconsider its decision to list them. EU Council's decisions can be challenged before the General Court of the European Union in accordance with the conditions laid down in Article 275, paragraph 2 and Article 263, paragraphs 4 and 6 of the TFEU.

Regarding the national list, the names of the individuals and entities included in the list shall be reviewed at regular intervals, at least once every six months, or at the request of the persons concerned. Each request for review shall be submitted to the Ministry of Finance, who will transfer the request to the National Security Committee for review within 30 days. Then, the National Security Committee submits a proposal to Council of Ministers (see Article 5 of the Royal decree of 28 December 2006).

2.6 How does the public access those lists?

The EU sanctions lists are published in the Official Journal of the European Union which is available online.

The General Administration of the Treasury maintains an updated and consolidated national list of sanctioned individuals and entities available on its website.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Belgium does not have its own comprehensive sanctions or embargoes against specific regions or countries. Belgium applies EU law which maintains comprehensive sanctions and embargoes against certain countries that can be found on the so-called EU Sanctions Map (e.g., Belarus, Burundi, Russia, Bosnia & Herzegovina, etc.).

In its 11th package of sanctions in the context of the conflict in Ukraine, the EU adopted a new anti-circumvention tool enabling it to impose exceptional restrictions to third countries whose jurisdictions are considered to be at continued and particularly high risk of circumvention.

2.8 Does your jurisdiction maintain any other sanctions?

Belgium maintains national financial sanctions which are mainly freezing measures imposed in the context of the fight against terrorism (see question 2.4).

In addition, Belgium applies EU law which also includes financial sanctions such as freezing measures (see, for instance, Article 2 of Regulation (EU) N° 269/2014).

2.9 What is the process for lifting sanctions?

For listed persons who want to challenge their addition to the sanctions list in Belgium, see question 2.5.

EU sanctions Regulations provide possible derogations whereby the competent authorities of the Member States may grant an authorisation/exemption to lift a sanction in specific cases. Individuals or entities impacted directly or indirectly by EU sanctions may submit a request for authorisation to the General Administration of the Treasury.

For example, Article 6b(5) of Regulation (EU) N° 269/2014 provides a specific derogation from the assets freezing measure defined under Article 2 of the same Regulation. This derogation may benefit individuals and entities who have assets frozen in a well defined listed entity subject to certain conditions.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Belgium has an export control regime distinct from sanctions, regulated mainly by the Law of 11 September 1962 on the import, export and transit of goods and related technology and the Law of 18 July 1977 on General Customs and Excise.

In addition, Belgium is a member of various multilateral export control regimes as Nuclear Supplier Group (for nuclear weapons), Missile Technology Control Regime (for missile technology), Australia Group (for chemical and biological weapons) and Wassenaar arrangement (for conventional weapons).

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Belgium has indeed adopted the so-called Blocking Statute. Title VII of the Law of 2 May 2019 on various financial provisions implements in Belgian law the Council Regulation (EC) No 2271/96 of 22 November 1996, protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.

This Blocking Statute authorises EU companies not to comply with sanctions imposed by third countries and to claim damages from the person who caused the damage as a result of the extra-territorial consequences of these sanctions via a national court. Also, decisions of foreign courts based on other jurisdictions' sanctions are declared unenforceable in the EU.

This measure was used, for example, in 2018, when the US reinstated extraterritorial sanctions against Iran, in order to protect EU companies carrying out international trade in Iran.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Article 231 of the Law of 2 May 2019 on various financial provisions provides administrative fines in the case of violation of the Blocking Statute, i.e., in case of compliance with prescriptions or prohibitions of foreign jurisdictions that have unlawful effects in Belgium.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Any person or entity established in Belgium and any Belgian citizen out of Belgium must comply with the Belgian sanctions regime.

As mentioned above, Belgium also applies the EU sanctions regime which is binding on EU nationals within the EU and abroad, and on individuals/entities located in the EU or doing business in the EU, in whole or in part.

EU sanctions regime and, therefore, the Belgian sanctions regime, cover various forms of measures such as, for example, embargoes, travel bans, asset freezes, or restrictions on imports and exports. As a result, different types of transactions can be subject to the Belgian sanctions regime.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

There are specific provisions in the sanctions regime which provide blockages or assets freezing. Such measures target only listed individuals or entities.

For example, Article 2 of Regulation (EU) N° 269/2014 requires that financial institutions must (i) freeze the funds of individuals or entities listed in Annex I of this Regulation, and (ii) not make funds directly or indirectly available to these individuals or entities.

In Belgium, assets freezing is a restrictive measure/sanction in itself, and not a penalty for sanctions violation (see question 4.1).

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

For a number of sanctions, an authorisation may be granted for specifically defined transactions or situations. For example, the General Administration of the Treasury may grant a derogation to the assets freeze measure to authorise non-listed individuals or entities to withdraw their assets from a listed entity (see Article 6b(5) of Regulation (EU) N° 269/2014).

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

As a general matter, sanction violation may be reported to the General Administration of the Treasury together with any available information to assist in the enforcement of the restrictive measures.

The Administration may adopt specific reporting measures. For example, the Administration adopted general conditions to benefit from some asset freeze derogation, including an *a priori* reporting obligation and an *ex post* reporting obligation (see conditions of the General Administration the Treasury to implement Article 6b(5) of Regulation (EU) N° 269/2014).

The *a priori* report certified by a so-called guarantor had to be filed with the request and must include the following information: the positions to be sold; the full due diligence of the applicants and their beneficial owners; and the payment instructions and due diligence of the individuals and entities benefitting from the proceeds of the sale of the positions concerned.

The *ex post* report certified by the same guarantor must be submitted after the implementation of the authorisation. It must include the following information: the positions actually sold; the beneficiaries of the sale proceeds; and the evidence that the proceeds of the sale were deposited in a non-sanctioned entity.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

The General Administration of the Treasury is responsible for monitoring compliance with the possibility to impose financial penalties in the case of non-compliance. Yet, in Belgium, there is no specific compliance programme required by law under the supervision of the General Administration of the Treasury.

At the EU level, EU operators are required to maintain compliance programmes. The EU Commission makes available Frequently Asked Questions ("**FAQs**") and developed other tools such as the EU Sanctions Map, in order to facilitate economic operators' compliance with the restrictive measures.

For example, in its FAQs, the EU Commission recommends EU operators "*to perform appropriate due diligence calibrated according to the specificities of their business and the related risk exposure. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic areas of operations and specificities and related risk-assessment regarding customers and staff*".

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

In Belgium, the violation of EU sanctions is subject to criminal penalties of imprisonment between eight days and five years and/or a criminal fine of EUR 25 to EUR 25,000 on the one hand, and/or an administrative fine of EUR 250 to EUR 2.5 million on the other hand (see Article 6 of the Law of 13 May 2003).

On 28 November 2022, the EU Council adopted a proposal for a directive which would include the violation of EU sanctions in the EU criminal offences list in order to establish minimum common rules on the definition of criminal infringements and appropriate penalties for their violation.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The agents of the General Administration of the Treasury are empowered to investigate and record sanctions offences, without prejudice to the powers of judicial police officers and agents of the Customs and Excise Administration (see Article 7 of the Law of 13 May 2003).

The Public Prosecutor's Office has jurisdiction for prosecuting criminal offences.

4.3 Is there both corporate and personal criminal liability?

Belgium provides for both corporate and personal liabilities. Corporate liability does not exclude a personal liability, if all constitutive elements of a criminal offence are present for the legal entity and for the natural person, both will be liable as co-perpetrators.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

Please see the answer to question 4.1 above.

4.5 Are there other potential consequences from a criminal law perspective?

Sanctions violation may also amount to other criminal offence(s) under Belgian criminal law. For example, a violation of a prohibition of certain financial transactions may constitute a violation of the anti-money laundering legislation. The Belgian Criminal Code provides the specific consequences applicable to criminal offences.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

There is no specific provision in civil law for breaches of economic sanctions. However, Belgian common civil law may apply and could ground request for damages, if there is a fault, a prejudice and causal link between the two.

The application of the contractual liability principles could apply in certain cases where the violation of a sanction would also cause a breach of contractual obligations.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

The General Administration of the Treasury is responsible for investigating sanctions violations.

The ordinary courts are competent for enforcing civil consequences of the sanctions violation when they are seized.

4.8 Is there both corporate and personal civil liability?

The scope of the civil liability depends on the form of the company. In the case of an unlimited responsibility company, there can be both corporate and personal civil liability.

In the case of a limited responsibility company, the general rule is that the company is liable for the failure of its directors. Therefore, corporate liability generally prevails over personal liability.

However, there are specific circumstances in which limited liability will not protect the owner's personal assets, meaning that he or she can be held personally liable (for example, if he or she engages in an activity that is intentionally fraudulent or illegal, and that causes harm to the company or someone else).

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

Please see the answer to question 4.1 above.

4.10 Are there other potential consequences from a civil law perspective?

Please see the answer to question 4.6 above.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

The claimant may bring an action before a Belgian court on the basis of Article 1382 of the (former) Civil Code. He or she must demonstrate a fault, a prejudice and a causal link by any means of evidence.

Penalties/damages are determined on a case-by-case basis. As of today, we are not aware of such precedent.

Hearings and final judgments are public unless exceptional circumstances.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

The applicant may appeal a judgment within one month before the Court of Appeal.

Court of Appeal proceedings are *de novo* proceedings, which means that the Court looks afresh at the merits of the case and the penalty assessment.

Judgments of the Court of Appeal can be appealed to the Supreme Court which has limited jurisdiction to review the legality of the judgment.

As of today, we are not aware of judicial proceedings in Belgium where companies would have challenged penalty assessments in a case of sanctions violation.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Criminal and civil enforcement are only at the national level. There is no parallel state and local enforcement, but only state enforcement.

4.14 What is the statute of limitations for economic sanctions violations?

Administrative penalties are subject to a limitation period of five years from the date on which the offence was committed.

Criminal penalties are subject to a limitation period of five years for offences from the day on which the offence was committed (see Article 21, 4° of the Preliminary Title of the Code of Criminal Procedure). It is also five years term for offences from the date of the final judgment, or from the date on which the first instance judgment is no longer subject to appeal. If the sentence exceeds three years, the limitation period is 10 years (see Article 92 of the Criminal Code).

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

At the EU level, a proposal for a directive introduces criminal offences and penalties for the violation of EU sanctions. This proposal aims at making compliance with restrictive measures more effective. It would ensure that the EU sanctions are enforced uniformly in all Member States through common definitions and dissuasive penalties. Each Member State will have to implement that directive in its own legal system.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

Yes, the legal texts are publicly available, in English for the EU regulations and guidance, and in French for Belgian laws. Some guidance from the General Administration of the Treasury are also publicly available in English.

Relevant economic sanctions laws, regulations, administrative actions, and guidance can be found on the following pages (non-exhaustive list):

- The EU Sanctions Map (https://www.sanctionsmap.eu/#/main).
- Regulation (EU) N° 269/2014 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0269-20230624).
- Regulation (EU) N° 833/2014 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0833-20230427).
- The EU Commission FAQs (https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine/frequently-asked-questions-sanctions-against-russia_en).

- The EU Best Practices (https://data.consilium.europa.eu/doc/document/ST-10572-2022-INIT/en/pdf).
- EU Council – How and when the EU adopts sanctions (https://www.consilium.europa.eu/en/policies/sanctions/).
- EU Council – EU sanctions against Russia explained (https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/).
- Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation – Belgian sanction policy (https://diplomatie.belgium.be/en/policy/policy-areas/peace-and-security/sanctions/belgian-sanction-policy).
- Federal Public Service Finance (FSP) – Diverse information on financial sanctions (https://finance.belgium.be/en/control-financial-instruments-and-institutions/compliance/financial-sanctions#:~:text=The%20sanctions%20regimes%20applicable%20in,and%20the%20National%20Security%20Council).
- https://finance.belgium.be/en/control-financial-instruments-and-institutions/compliance/financial-sanctions#:~:text=The%20sanctions%20regimes%20applicable%20in,and%20the%20National%20Security%20Council; https://finance.belgium.be/en/about_fps/structure_and_services/general_administrations/treasury/financial-sanctions/national
- The General Conditions for the application of Article 6b(5) of the General Administration of the Treasury (https://finances.belgium.be/fr/controle-compliance/sanctions-financi%C3%A8res/sanctions-financi%C3%A8res-concernant-la-situation-en-ukraine-0).

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Cayman Islands


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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

The Cayman Islands is a British Overseas Territory and, as such, takes its sanctions regime from the United Kingdom (OTs are self-governing domestically, but matters of defence and foreign relations, including sanctions, are the responsibility of the United Kingdom).

The UK sanctions regime is governed by the *Sanctions and Anti-Money Laundering Act 2018*. Under this Act, sanctions in relation to particular nations, entities or individuals are enacted through secondary regulations (for example, the *Russia (Sanctions) (EU Exit) Regulations 2019)*. These regulations are in turn applied in the British Overseas Territories, including the Cayman Islands, by a number of Orders in Council (for example, the *Russia (Sanctions) (Overseas Territories) Order 2020*).

The Orders in Council apply the relevant regulations to the Overseas Territories, usually with a number of modifications or amendments to adapt the regulations to the Overseas Territory. As in the UK, these sanctions can be country-specific, or may target issues which are not specific to a particular country (for example, terrorist activities, or serious human rights violations). These sanctions are implemented by designating particular entities or individuals, or categories of entities or individuals, as "designated persons". The UK maintains a list of those entities and individuals which it has sanctioned (and which by extension are sanctioned in the Cayman Islands).

The Act defines six types of sanctions: (i) financial sanctions; (ii) immigration/travel sanctions; (iii) trade sanctions; (iv) aircraft sanctions; (v) shipping sanctions; and (vi) other sanctions for the purposes of UN obligations.

The primary financial sanction is the imposition of an asset freeze. This prohibits dealing with the funds or economic resources of a designated person, including by that person, and also making funds or economic resources available to or for the benefit of the designated person. These sanctions are broadly drafted, and capture any entities majority held or controlled by a designated person.

Trade sanctions include measures which prohibit the export or import of certain goods, prohibit the transfer of specified technology, or prohibit the provision of certain services to designated persons.

Aircraft and shipping sanctions include restrictions on disqualified aircraft or ships, and restrictions on owning, chartering, operating or registering certain aircraft or ships.

Finally, a person to whom the sanctions regime applies is prohibited from circumventing the sanctions regulations by participating in activities knowing that the object or effect of them is (including indirectly) to circumvent those regulations or to enable or facilitate their contravention. Any person who does so is subject to the same penalties as they would be for a primary breach of the regulations (addressed below).

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Financial Reporting Authority (the FRA) is responsible for the administration of sanctions in the Cayman Islands. Sanctions licences (addressed below) are the responsibility of the Governor of the Cayman Islands, who takes advice from both the FRA and the Attorney General's Chambers (the AGC) in conjunction with the Sanctions Coordinator.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

The imposition of sanctions following the Russian invasion of Ukraine has been unprecedented in scope, and has had a significant practical impact on the administration of the Cayman Islands sanctions regime. In addition, beginning in July 2022, new sanctions have been imposed by the United Kingdom which prohibit the provision of specified services to any person connected with Russia and the acquisition of land in Russia or interests in persons connected with Russia. Broadly, a person will be connected with Russia if they are domiciled, resident or located in Russia, or if they are incorporated or organised under the laws of Russia. As of March 2023, it is also prohibited to provide trust services to any designated person. These new sanctions also apply to the Cayman Islands as set out above.

Over time the United Kingdom has also introduced exceptions to these new prohibitions, principally to allow provision of services in order to comply with statutory or regulatory obligations (for example, provision of statutory audits to Cayman Islands entities which may be ultimately held by a person connected with Russia).

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Sanctions are imposed under the authority of the *Sanctions and Anti-Money Laundering Act 2018* as applied to the British Overseas Territories by a number of Orders in Council.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

The United Kingdom implements UN sanctions, and these are in turn implemented in the Cayman Islands through the process set out above.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

The Cayman Islands imposes sanctions only by extension of the sanctions imposed by the United Kingdom.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

The United Kingdom maintains a list of entities and individuals subject to sanctions. Persons will be designated either by way of specific powers conveyed on a Minister of the United Kingdom (in general, the Secretary of State) by the relevant Regulations or because they are named by or under a UN Security Council Resolution (for example, this is the case for sanctions in relation to Libya). In the former case, a designation may be varied or revoked by the relevant United Kingdom Minister. The power to designate persons or vary or revoke a designation is specifically excluded from the powers that are granted to the Governor in the relevant Orders.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

As persons are sanctioned in the United Kingdom, the power to vary or revoke a designation lies with the relevant United Kingdom Minister. The *Sanctions and Anti-Money Laundering Act 2018* provides for a designated person to request that the Minister vary or revoke their designation. The Governor of the Cayman Islands does not have any equivalent power.

2.6 How does the public access those lists?

A list of persons designated by the United Kingdom is maintained by the Foreign, Commonwealth & Development office and is available at: https://www.gov.uk/government/publications/the-uk-sanctions-list

The Office of Financial Sanctions Implementation also maintains a list of persons subject to financial sanctions, which is available at: https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-lis t-of-targets

The FRA maintains links to both of these lists, which are available (along with other relevant notices and guidance) at: http://fra.gov.ky/contents/page/1

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

No, neither the United Kingdom nor the Cayman Islands have in place any comprehensive sanctions or embargoes against any particular country or region. The full extent of applicable sanctions varies between countries and other persons, but the restrictions fall short of full embargoes.

2.8 Does your jurisdiction maintain any other sanctions?

In addition to country and person-specific sanctions, the United Kingdom (and therefore the Cayman Islands) also impose sanctions which target issues which are not specific to a particular country or person. These include sanctions relating to chemical, biological and nuclear weapons, cyber-attacks, terrorism and terrorism financing, and serious human rights violations.

2.9 What is the process for lifting sanctions?

As set out above, a designated person can request that sanctions imposed on it be lifted. In addition, the *Sanctions and Anti-Money Laundering Act 2018* contains a mechanism for periodic review of both imposed sanctions and on the Regulations under which they are imposed.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. Certain exports are subject to the United Kingdom *Export Control Act 2002* which is likewise applied in the Cayman Islands in some respects by an Order in Council.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

The United Kingdom *Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996* and the *Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) (Amendment) Order 2018* apply to British Overseas Territories citizens although they are not extended to the Cayman Islands.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

No, the Cayman Islands sanction regime applies only to Cayman Islands persons or to conduct within the Cayman Islands.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

The Cayman Islands sanctions regime applies based on both the nationality of the parties to a transaction and to the location where a transaction takes place. The relevant Orders impose restrictions on: i) transactions within the territory or territorial

sea of the Cayman Islands; and ii) any Cayman Islands person. A Cayman Islands person is: i) a body incorporated or constituted under the law of any part of the Cayman Islands; or ii) an individual ordinarily resident in the Cayman Islands who is: a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; b) a person who under the *British Nationality Act 1981* is a British subject; or c) a British protected person under the *British Nationality Act 1981*.

In respect of ships and aircraft, sanctions also apply to any Cayman Islands ship or Cayman Islands aircraft. This means a ship or aircraft registered in the Cayman Islands, or not registered outside of the Cayman Islands but which is wholly owned by Cayman Islands persons.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Yes. A person to whom the Cayman Islands sanction regime applies must not deal with funds or economic resources which are owned, held or controlled by a designated person if they have reasonable cause to suspect that they are dealing with such funds or economic resources. A person which holds funds or economic resources of a designated person must freeze those assets and make a report to the FRA.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Yes. A number of the relevant Orders provide for the Governor to issue licences in relation to some of the relevant sanctions. The Governor can do so only if certain purpose requirements are met (for example, to provide for the basic needs of a designated person, or to deal with an extraordinary situation), and can impose conditions and reporting requirements on any licence. The Governor may generally only issue a licence with the consent of the United Kingdom Secretary of State, though in practice granting this consent is delegated to either the Office of Financial Sanctions Implementation or the Foreign, Commonwealth & Development Office in the United Kingdom.

Licence applications should be made as early as possible. Prior to 2022, licences were generally dealt with rapidly (i.e. within two to three months), however, in light of the significant increase in sanctions imposed following the Russian invasion of Ukraine, at the time of writing the timeframe for issuing a licence is significantly longer.

The Cayman Islands authorities and United Kingdom authorities both prioritise humanitarian applications, and will process urgent applications in life-threatening circumstances.

Applicants are required to provide a full explanation of a transaction for which they need a licence. This will obviously include the value of any transaction, the purpose of the transaction, the route for any payment(s) to be made (including the sender and receiver of any funds or assets, and any intermediaries or other beneficiaries), and how any funds or assets will be accounted for. Applicants for a Financial Sanctions Licence must submit a licence application form, and it is strongly advisable to also submit a detailed explanation as to why the licence is sought. The licence application form is available here: http://fra.gov.ky/app/webroot/files/ASSET%20FREEZE%20LICENCE%20APPLICATION%20FORM(1).doc

The Governor of the Cayman Islands has also issued four General Licences. The first applies to certain investment funds, and allows the fund or its manager to: i) pay expenses necessary for the maintenance and existence of the fund (for example, annual Registered Office fees); and ii) redeem non-sanctioned investors from a fund which is frozen. The second allows for the trading of oil below a specified price cap. The third allows for the payment of legal fees by designated persons and the fourth allowed for the wind down of trust services provided to designated persons.

Breach of Cayman Islands sanctions is a strict liability offence.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Yes. There are reporting obligations and financial institutions and others (including banks and law firms) to file a Compliance Reporting Form with the FRA as soon as practicable if they know or have reasonable cause to suspect that a person is a designated person, the existence of affected assets or certain offences under the sanctions regime. The Compliance Reporting Form is available at: http://fra.gov.ky/app/webroot/files/COMPLIANCE%20REPORTING%20FORM%20(21%20Jul%202021).doc

Such a report must contain the information on which this knowledge or suspicion is based, and any other information the reporting party knows about the designated person and their funds or economic resources.

Every sanctions licence issued by the Governor will have reporting requirements which require the licensee to provide information to the FRA.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

The FRA has published both a Quick Guide to Financial Sanctions in the Cayman Islands and a more comprehensive Financial Sanctions Guidance, both of which are available at: http://fra.gov.ky/contents/page/1

The FRA does not mandate any specific compliance programme in relation to sanctions, however a number of regulated sectors in the Cayman Islands (in particular, the banking and investment funds sectors) are subject to separate regulatory requirements which may include maintenance of a compliance program.

The FRA expects Cayman Islands persons and persons conducting transactions in the Cayman Islands to comply with the law, including the sanctions regime. Beyond this, it is the responsibility of each person to whom the sanctions regime may apply to assess what compliance steps are appropriate for them in their circumstances.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes. The applicable penalties are set out in the relevant Order. In general, the maximum penalties are a fine at the discretion of the Grand Court of the Cayman Islands (which may be unlimited but cannot be excessive) and up to seven years' imprisonment.

These penalties are specifically extended to the directors or controllers of a company which has breached the sanctions regulations and, as noted above, also apply to any conduct which circumvents or is intended to circumvent the regulations.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The primary authority responsible for investigating sanctions offences is the FRA. However, where the FRA concluded that a breach may have occurred, it is likely that the Royal Cayman Islands Police Service may be called upon to undertake further investigations.

Prosecution of offences in the Cayman Islands is undertaken by the Director of Public Prosecutions (the DPP). The DPP is responsible for determining whether a particular case should be prosecuted, based on the available evidence and whether a prosecution is in the public interest.

4.3 Is there both corporate and personal criminal liability?

Yes, fines can be imposed on any person to whom the sanctions regime applies, including both individuals and companies.

As noted above, where a company has committed an offence, a director (or equivalent) of that company can also be prosecuted for the offence if the offence by the company was committed with the director's consent or connivance, or is attributable to the director's neglect. This may be in addition to, and not in substitution for, prosecution of the company.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

There is no maximum to the financial penalty which may be imposed for breach of the Cayman Islands sanctions regime. However, as a general matter of Cayman Islands law, any penalty which is fundamentally unreasonable or irrational may be subject to appeal.

4.5 Are there other potential consequences from a criminal law perspective?

Yes. Breach of the Cayman Islands sanctions regime can be penalised with up to seven years' imprisonment (for each breach in the case of multiple breaches) for individuals.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

No, civil penalties are not applicable to breaches of the Cayman Islands sanctions regime. Only the criminal penalties set out above are applicable.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable.

4.8 Is there both corporate and personal civil liability?

This is not applicable.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable to civil liability. In respect of criminal liability, see above.

4.10 Are there other potential consequences from a civil law perspective?

Conviction for breach of the sanctions regime may trigger any consequences which stem from a criminal conviction in the Cayman Islands. In general, this could be relevant to any licences or regulations which impose conduct or good character requirements in the Cayman Islands (including financial services licences, and legal practice). Conviction may also impact an individual's immigration status in the Cayman Islands or other jurisdictions.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

To date there have not been any appeals of penalties imposed for breaches of the Cayman Islands sanctions regime. Such an appeal would follow the usual criminal appeal process in the Cayman Islands, and would require judicial proceedings in the Cayman Islands Court of Appeal.

In general, a person convicted of an offence in the Cayman Islands (including a breach of sanctions) must seek leave to appeal within 14 days of conviction, though this deadline can be extended by the Court.

An appeal against conviction may be brought only on a ground which involves a question of law alone, or, with the leave of the Court, on a ground that involves only a question of fact or of mixed fact and law. An appeal against sentence may only be brought with the leave of the Court.

The Cayman Islands Court of Appeal may allow an appeal against conviction only if it is unsafe or unsatisfactory, if it should be set aside on the grounds of a wrong decision on any question of law, or if there was a material irregularity in the course of the trial. It may allow an appeal against sentence and impose either a more or less severe sentence only if it considers that a different sentence should have been imposed by the trial court.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

The Cayman Islands only has a single national prohibition on breaches of its sanctions regime.

4.14 What is the statute of limitations for economic sanctions violations?

There is no limitation on the time period within which a prosecution for breach of the sanctions regime can be brought in the Cayman Islands.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

At the time of writing, the authors are not aware of any additional sanctions-related measures which are proposed or under consideration.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

The *Sanctions and Anti-Money Laundering Act 2018* and relevant Regulations and Orders issued under that Act can be accessed at: https://legislation.gov.uk

The FRA's website contains links to guidance regarding sanctions in the Cayman Islands, the relevant sanctions lists, and the Sanctions Licence and Compliance Reporting forms. It can be accessed at: https://www.fra.gov.ky/

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Sam has been heavily involved in our economic sanctions and regulatory cases since he started with Campbells, in particular advising a number of clients in relation to sanctions imposed following the Russian invasion of Ukraine and related sanctions licence applications.
Sam's other regulatory experience includes advising on AML/CTF requirements in a non-dispute context, including financial services regulatory actions, investigations into international corruption and bribery allegations, and advising on a number of regulatory audits, investigations and document production notices.

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Campbells is a leading full service offshore law firm established in 1970. From our offices in the Cayman Islands, the British Virgin Islands and Hong Kong we provide comprehensive corporate and litigation advice and services to clients worldwide in relation to Cayman Islands and British Virgin Islands law. We are regularly trusted to advise some of the most prominent names in finance, investment and insurance and we are frequently involved in the largest and most complex transactions, disputes and insolvencies in both jurisdictions.
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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

There are two categories of economic sanctions implemented in China. First, China adopted United Nations (the "UN") sanction-related resolutions. With the permanent seat in the UN Security Council, economic sanctions mandated by the resolutions of the UN Security Council became China's international obligations. Second, China has enacted a number of laws and regulations in 2019 and 2021 to establish its own sanctions against foreign persons as a countermeasure for certain economic sanctions imposed by other countries, as well as certain rules to block the unjustifiable extraterritorial application of foreign laws and measures.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Ministry of Foreign Affairs ("MFA") is primarily responsible for administering UN sanctions through administrative notices, and various regulatory authorities such as the Ministry of Commerce ("MOFCOM"), the People's Bank of China (the central bank), the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission, the Ministry of Transport, the General Customs of China, and the Ministry of Public Security, enforce sanctions programmes within their respective authority.

As to China's own counter-sanctions measures, the MFA and MOFCOM are the primary authorities for administration and enforcement. Other regulatory authorities will be responsible for implementing the countermeasures, such as assets freezes and entry denials.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

Over the last 12 months, there have been no significant changes to sanction-related laws and regulations. However, the MFA and MOFCOM have been noticeably active in implementing counter sanction measures.

Since 2022, about 14 entities and individuals have been sanctioned according to the administrative notices issued by the MFA. Sanction reasons included interference with sovereignty and imposing unilateral sanctions related to Xinjiang and Hong Kong.

On December 23, 2022, MFA put individuals on the Anti-Foreign Sanctions List for the first time. Until June 2023, nine individuals and entities have been placed on the list.

On February 16, 2023, MOFCOM designated entities on the Unreliable Entity List for the first time, which included Lockheed Martin Corporation and Raytheon Missiles & Defense.

The MFA and MOFCOM's implementing of Anti-foreign Sanctions Law and Provisions on the Unreliable Entity List ("UEL Provisions") have indicated that foreign entities and individuals responsible for unjustified sanctions or being involved in activities contrary to the national security of China stand a higher possibility to be imposed with China's own countering measures, such as freezing assets, imposing a travel ban, and a transaction prohibition.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Since 2021, the Anti-Foreign Sanctions Law has become the primary authority for the Chinese government to impose its own sanctions. The law primarily targets foreign individuals/organisations that are considered to be actively pursuing or involved in enacting "discriminatory restrictive measures" against China. Any individual or organisation that directly or indirectly participates in the formulation, decision-making, or enforcement of the "discriminatory restrictive measures" may be placed on the counter-sanctions list. Related individuals and entities of the listed individuals or organisations may also be subject to countermeasures.

Prior to the Anti-Foreign Sanctions Law, the MFA had begun its sanctions on certain individuals and entities. So far, over 100 individuals and organisations have been sanctioned by the MFA, mainly for interfering in China's internal affairs, or imposing unilateral sanctions on relevant Chinese entities and individuals. The sanctions may be announced by the press statement of MFA or through the update of the Anti-foreign Sanctions List. The restrictions to those entities typically include banning the targeted persons and their families from entering China (including Hong Kong and Macao), freezing assets in China, and restricting transactions with organisations and individuals in China.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes, China implements UN sanctions through administrative notices. Generally, the MFA would first initiate a notice to notify

various government agencies of relevant UN Security Council resolutions and urge the agencies to implement economic sanctions mandated by the resolutions. Various regulatory authorities, such as the General Customs of China, the People's Bank of China, the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission, and the Ministry of Transport, would then issue notices to implement measures in their respective jurisdictions.

Practices differ in terms of how specific sanction resolutions would be implemented. Generally, specific sanction resolutions would be implemented in two manners:

1) Implementation without additional domestic rules to UN resolutions
   Under most scenarios, UN sanctions-related resolutions are implemented by issuing administrative notices attaching UN resolutions, without any additional domestic rules for government agencies. For instance, on September 18, 2014, the Ministry of Transportation just forwarded Resolution 2174 of the UN Security Council (sanctions against Libya which imposes sanctions on certain entities and persons), without adding additional domestic rules to implement this resolution. The Ministry of Transportation also urges all the relevant departments to take responsible measures and strictly implement the UN resolution.
2) Implementation with additional domestic rules to UN resolutions
   Another way is issuing relevant government agencies' additional rules/interpretations to UN resolutions. This practice is more common in the banking sector. The China Banking and Insurance Regulatory Commission has issued several notices with additional rules when implementing UN economic sanctions resolutions. These rules include urging banks to:
   i) remain vigilant in their businesses and transactions involving sensitive countries or regions;
   ii) timely check information on international events relevant to their business operations, including the sanction resolutions of the UN;
   iii) establish and improve the management information system, timely update relevant sanction lists and list of clients in suspicious transactions; and
   iv) prevent organisations or individuals from using the institution for supporting terrorism, money laundering and other illegal activities.

In some limited cases, China does not implement UN resolutions against certain countries/regions due to the political position of the Chinese government.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

No, China is not a member of any regional body that issues sanctions.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

China adopts the sanction lists of the UN Security Council and has also established its own list of sanctioned individuals and entities.

1) The Unreliable Entity List ("UEL")
   China establishes a working mechanism involving relevant departments of central state organs (the "working mechanism") to be responsible for administering the UEL regime. The working mechanism may self-initiate an investigation or initiate an investigation in response to suggestions or reports by relevant parties into the conduct of a foreign entity, to determine whether to place the foreign entity on the UEL. The foreign entity is permitted to make statements and defences during the course of the investigation. Where the subject foreign entity corrects its actions and takes measures to eliminate the consequences of its conduct within the designated time, the working mechanism may remove it from the UEL. In addition, the subject foreign entity can also apply to be removed from the UEL. The working mechanism will review its application and make a decision.
   As of June 2023, Lockheed Martin Corporation and Raytheon Missiles & Defense were placed on to the UEL for their involvements in arms sales to Taiwan, and are subject to the following sanction measures: prohibition from engaging in import and export activities related to China; prohibition from making new investments in China; prohibition on entry into China for senior management personnel; denial and revocation of work permits, stay and residence status in China for senior management personnel; and imposition of fines, which is up to twice the amount of the arms sales made to Taiwan since the implementation of UEL Provisions.
2) The Anti-Foreign Sanctions Law
   Pursuant to the Anti-Foreign Sanctions Law, the MFA or other relevant departments of the State Council, will issue orders announcing the determination, suspension, modification or cancellation of the counter-sanction listing and countermeasures. On December 23, 2022, MFA issued the first official order placing Maochun Yu and Todd Stein on the Anti-Foreign Sanctions List. Since then, official order from the MFA has become the main means of imposing sanctions under the Anti-Foreign Sanctions Law.
   As of June 2023, nine individuals and entities have been added to the Anti-Foreign Sanctions List. However, the authorities have not yet established specific procedures for adding or removing entities from the list.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

The UEL programme provides an opportunity for entities being investigated to present their own statements and defences during the investigation process. If their arguments or mitigation measures are accepted, the investigation can be terminated. However, if an entity has already been listed on the UEL, it can only apply for removal. Furthermore, if a subject foreign entity corrects its actions and takes measures to eliminate the consequences of its conduct within the designated timeframe, the working mechanism may decide to remove it from the UEL.

As to the sanctions imposed under Anti-Foreign Sanctions Law, the Anti-Foreign Sanctions Law stipulates that the listing cannot be challenged and can only be revoked by the authority on its own decision.

As of June 2023, no removals have been made.

2.6 How does the public access those lists?

The UN sanctions list is available on the UN website.

MOFCOM's UEL sanctions is available on the official website of MOFCOM.

Sanctions announced by the MFA through its press conference are available on the website of https://www.fmprc.gov.cn/eng/xwfw_665399/s2510_665401/2511_665403/

The Anti-Foreign Sanctions List is available on the website of http://new.fmprc.gov.cn/web/wjb_673085/zfxxgk_674865/gknrlb/fzcqdcs/

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Except for adopting UN sanctions and embargoes, China does not maintain its own comprehensive sanctions or embargoes.

2.8 Does your jurisdiction maintain any other sanctions?

As discussed above, the Chinese government has now established its own counter-sanctions regimes under the Anti-Foreign Sanctions Law and the UEL Provisions.

2.9 What is the process for lifting sanctions?

For UN sanctions and embargoes, the process for lifting sanctions depends on the UN's lifting decision.

As to the Chinese sanction lists, an entity listed on the UEL can apply for removal and may be removed from the list if it corrects its actions and takes measures to eliminate the consequences of its conduct within the designated timeframe, as determined by the working mechanism. However, for sanctions imposed under Anti-Foreign Sanctions Law, the listing cannot be challenged and can only be revoked by the authority on its own decision.

It is worth noting that the Chinese government has not published any implementing rules on the process for lifting sanctions.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. The Chinese export control framework was established in 2002 and underwent a major revision in 2020 with the enactment of the Export Control Law. The primary objectives of Chinese export controls are to prevent the proliferation of weapons of massive destruction, counter-terrorism and protect national security.

The Export Control Law covers a wide range of controlled items, inducing dual-use items, munitions, nuclear-related items and other items related to the maintenance of national security and interests, as well as the implementation of non-proliferation and other international obligations. The controlled items cover commodities, technologies, services, as well as data related to those items. Export, re-export and deemed export of such items are subject to the law.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Yes. On January 9, 2021, the MOFCOM promulgated the Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures (the "Blocking Rules"). The Blocking Rules essentially adopts a two-pronged test: (a) whether foreign laws and measures have unjustified extra-territorial application; and (b) whether such foreign laws and measures unjustifiably prohibit or restrict transactions between Chinese persons with third country persons. While the Blocking Rules do not specify the foreign laws and measures the application of which is to be blocked, which is subject to the government's absolute discretion, U.S. sanctions programmes that have extra-territorial applications (especially "secondary sanctions") are likely to be blocked under the Blocking Rules.

Chinese Persons have an obligation to report to the MOFCOM when they encounter prohibitions or restrictions by such foreign laws and measures. The MOFCOM may issue prohibition orders not to recognise, enforce or observe certain unjustified extra-territorial application of foreign legislation and other measures. Additionally, Chinese persons must comply with the prohibition order. They may apply for exemptions to comply with blocked foreign laws and measures. To date, the MOFCOM has not issued any prohibition orders. The Blocking Rules also allow affected parties to file civil lawsuits to seek compensation from parties that complies with blocked foreign laws and measures.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

China has not imposed any secondary sanctions.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Violations to China's sanctions laws and regulations can result in both criminal and administrative liabilities.

Criminal liabilities under PRC Criminal Law apply to: (1) crimes committed within PRC territory; (2) crimes committed by PRC citizens outside PRC territory; (3) crimes against the PRC or its citizens by foreigners outside PRC territory; and (4) crimes specified in international treaties to which the PRC is a signatory state or with which it is a member and the PRC exercises criminal jurisdiction over such crimes within its treaty obligations. It's unclear whether UN resolutions are considered as international treaties under PRC Criminal Law, and there is no precedent in which the PRC has asserted jurisdiction over activities violating UN resolutions where no PRC citizens were involved or violations were not committed in PRC territory.

As to administrative liabilities, relevant PRC government authorities have broad jurisdiction over PRC persons and activities conducted within the territory of the PRC.

Additionally, under the Blocking Rules and the Anti-Foreign Sanctions Law, potential civil litigations may be brought by Chinese persons against Chinese or foreign persons who violate the provisions and cause damages to Chinese persons.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

When an entity/individual is listed as a sanctioned entity/individual by a UN resolution, financial institutions or specific

non-financial institutions must take corresponding actions, which may include freezing their assets.

While the UEL Provisions do not specify such assets freezing measure, it provides a broad authorisation for the authorities to take any necessary measures once a foreign person is designated onto the UEL, which theoretically includes assets freezing.

Under the Anti-Foreign Sanctions Law, blocking or freezing funds or other property within Chinese jurisdiction is among the measures that authorities can take.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

For UN sanctions adopted by China, there is no such licence available in China, unless authorised by the UN.

As to the countersanctions imposed under the Anti-Foreign Sanctions Law, the law does not specify a licensing mechanism. Since the government has not published implementing rules, it is unclear whether there will be any licence available. The law provides that the authorities may decide to suspend, modify or revoke the sanctions and measures when circumstances are warranted, which suggests that parties might submit applications seeking special licences.

Under the UEL Provisions and the Blocking Rules, Chinese persons can apply for exemptions to conduct activities otherwise prohibited; however, there has been no practice yet.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

As to UN sanctions, there are certain reporting requirements in the banking and financial sector. Pursuant to the Notice of the *People's Bank of China on Implementing the Relevant Resolutions of the United Nations Security Council*, upon receipt of the notice from the MFA on the implementation of relevant UN sanction resolutions, financial institutions and specific non-financial institutions must immediately enter information about individuals and entities included in sanction lists into the relevant business systems and conduct a retrospective review. If any of the listed persons are identified, the financial institutions and specific non-financial institutions must take corresponding actions immediately and report relevant information to the People's Bank of China and other relevant authorities.

As to the countersanctions under the Anti-Foreign Sanctions Law, Chinese persons are required to implement the countermeasures as announced (such as assets freezing). The law does not specify reporting procedures for such persons implementing the assets freezing.

As to the Blocking Rules, Chinese persons must report to the MOFCOM when they encounter prohibitions or restrictions by foreign laws and measures; however, the detailed procedure is unspecified.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

The Chinese government has published a number of compliance guidelines to urge and encourage enterprises to establish compliance programmes. For instance, in late 2018, the National Development and Reform Commission, the MFA, MOFCOM and other agencies jointly published guidelines urging enterprises with overseas business to establish comprehensive compliance programmes related to trade, fair competition, anti-corruption, intellectual property, labour, etc. In April, 2021, detailed Internal Compliance Guidelines for Export Controls on Dual-Use Items ("Guidelines") were released. The Guidelines have a similar structure and elements to EU and U.S. export controls compliance guidelines, and provide detailed guidance, ready-to-use checklists and templates. According to the Guidelines, key elements of an internal compliance programme include management commitment, organisational structure, comprehensive risk assessment, review procedures, emergency measures, compliance training, compliance audits, record-keeping and management manual. When an exporter establishes an internal compliance programme for export control and operate it well, the authorities may grant facilitation measures during the export of controlled items such as general licensing.

Meanwhile, there are specific compliance requirements for banking financial institutions. According to the Notice of the China Banking Regulatory Commission on Issuing the Guidelines on the Management of Country Risk by Banking Financial Institutions, when conducting due diligence on transaction parties, banking financial institutions must strictly comply with relevant UN resolutions and remain alert to business and transactions involving sensitive countries or regions. Compliance expectations include timely checking of UN sanction resolutions, establishing appropriate management information systems, timely filing and updating the sanction lists and information about suspicious clients, etc. Banks are also required to develop "Know Your Customer" profiles for the administration of bank accounts to implement relevant UN sanction resolutions (Notice of the General Office of China Banking Regulatory Commission on Strengthening the Management of Bank Accounts and Effectively Implementing the Relevant Sanction Resolutions of the United Nations).

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes. Although economic sanctions laws and regulations do not explicitly state whether there are criminal penalties for violations, some incompliant activities may constitute criminal violations under PRC Criminal Law. For example:

1) Financial transactions with sanctioned individuals/entities may be regarded as money laundering under certain circumstances, which could lead to criminal punishments under Article 191 of PRC Criminal Law, including confiscation of illegal income and gains, criminal fines, and imprisonment for up to 10 years.
2) Importing or exporting of goods from or to sanctioned individuals/entities may be regarded as smuggling goods prohibited from import/export, which could lead to severe criminal penalties under Article 151 of PRC Criminal Law, including fines, criminal detention, imprisonment, etc.

Failing to implement the countermeasures taken against the sanctioned persons would violate the Anti-Foreign Sanctions Law, and may also result in criminal liabilities. However, specific penalties for such violations are yet to be determined.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

Regulatory authorities, such as the MFA, MOFCOM, the Ministry of National Security, the People's Bank of China or

Customs will investigate violations initially. If such violations constitute criminal offences, cases are further investigated by public security organs and/or the anti-smuggling division of Customs, and prosecuted by the people's procuratorates.

4.3 Is there both corporate and personal criminal liability?

There are both corporate and personal liabilities for criminal violations. For instance, financial institutions found guilty of money laundering may be fined, and persons directly in charge or responsible for the crime, could also be punished accordingly. If an organisation/entity is punished criminally for smuggling, the person in charge could also be convicted and sentenced to imprisonment.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

The amount of financial penalties depends on the characteristics of the criminal activities, the severity of the offence and the amount of illegal income. For the crimes of money laundering or smuggling goods prohibited from import or export, the amount of financial penalties is to be decided based on the seriousness of the violation and there is no maximum financial penalty specified.

4.5 Are there other potential consequences from a criminal law perspective?

Individuals/entities subject to criminal punishment could be placed on a discredited persons list, which could have various consequences, including restrictions on excessive spending, restrictions on assuming managerial roles in an entity, stricter scrutiny upon import and export activities, and other practical difficulties such as difficulty in obtaining financing.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

Yes. Specific incompliant activities can constitute administrative violations under relevant laws and regulation, for example:

1) Financial institutions violating the Anti-Money Laundering Law may be subject to fines ranging from 200,000–5 million RMB, and suspension or revocation of their business licence. Employees directly in charge may be subject to fines ranging from 10,000–500,000 RMB and a disciplinary warning. Their licences could be revoked and they could be prohibited from working in the finance industry.
2) Individuals/entities exporting prohibited goods in violation of relevant sanctions may be subject to one or several of the following penalties: i) revocation of business licences; ii) confiscation of the goods concerns and illegal proceeds; iii) fines of up to 1 million RMB; and/or iv) exclusion from obtaining export licences and/or limitation or revocation of export trading rights.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

Relevant authorities, including the General Customs of China, the People's Bank of China (the central bank), the National Financial Regulatory Administration, the China Securities Regulatory Commission, the Ministry of Transport and the Ministry of Public Security, are responsible for investigating and enforcing administrative (civil) economic sanctions violations within their respective authority.

4.8 Is there both corporate and personal civil liability?

There are both corporate and personal liabilities for administrative violations. For instance, in cases of money laundering, financial institutions may face fines ranging from 200,000–5 million RMB, while persons directly in charge may be subject to fines ranging from 10,000–500,000 RMB, disciplinary warnings, licences revocation, or prohibition from working in the finance industry.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

The maximum financial penalties depend on the severity of the violation and the amount of illegal income. For instance, financial institutions that violate anti-money laundering laws may face a maximum fine of 5 million RMB, while employees in charge may be subject to a maximum fine of 500,000 RMB.

4.10 Are there other potential consequences from a civil law perspective?

Individuals/entities that are administratively punished may be placed on the discredited persons list, which could have various consequences, including restrictions on excessive spending, restrictions on assuming managerial roles in an entity, stricter scrutiny upon import and export activities, and other practical difficulties such as difficulty in obtaining financing.

Foreign entities may also be placed onto the Unreliable Entities List under the UEL Provisions.

In addition, the Blocking Rules and the Anti-Foreign Sanctions Law allow Chinese persons to bring civil lawsuits against Chinese or foreign persons for damages resulting from violations of the Rules or the AFSL.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

The administrative (civil) enforcement process varies depending on the relevant laws and regulations and the authority responsible for the matter. For instance, pursuant to the People's Bank of China Administrative Penalties Procedures, an Administrative Penalties Committee is set up to adjudicate significant cases and decide on whether and how to impose administrative penalties. The Committee handles the initiation, investigation, adjudication and review of the case. Where the Committee decides to impose administrative penalties, it will issue a document named the "People's Bank of China Administrative Penalty Decision". The assessment of penalties depends on the severity of the violation and the amount of illegal income. However, there is no specific guidance on how to assess the penalty.

The final decisions and resolutions made by competent authorities are usually published on their official websites.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

Persons or entities who disagree with the administrative (civil) penalty have the right to apply to the people's government at the same level or to the competent department at a higher level for administrative reconsideration. Generally, they may apply for administrative reconsideration within 60 days from the date they become aware of the administrative actions taken by relevant authorities. The people's government or higher-level department shall review the application to decide whether to accept it within five days. The reconsideration decision shall be made within 60 days from the date the application is accepted.

In addition, persons/entities who disagree with an administrative penalty have the right to bring an administrative lawsuit without going through the administrative reconsideration process.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Criminal and administrative (civil) enforcements are not limited to the national level. In reality, most criminal and civil enforcements are conducted by authorities at the local level. However, certain important or high-profile cases may be escalated to provincial or even national-level government agencies.

4.14 What is the statute of limitations for economic sanctions violations?

For criminal sanctions violations, the statute of limitation varies depending on the statutory maximum sentence for each violation and ranges from five to 20 years. In exceptional cases, the statute of limitations may exceed 20 years.

For administrative sanctions violations, the statute of limitations is two years from the date the illegal act is committed. However, it may be extended to five years if the act causes harm to financial security, except as otherwise prescribed by law.

To initiate civil litigations under the Blocking Rules and the Anti-Foreign Sanctions Law, the statute of limitations is three years starting from when persons know or should have known that their rights have been infringed upon.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

All sanctions-related measures have been stated above.

However, it's worth noting that the Chinese government has been increasingly focused on national security issues in recent years, as evidenced by the issuance of a series of laws and regulations and the implementation of security enforcement efforts. Some of the relevant laws include the Data Security Law, Personal Information Protection Law, Measures for Cybersecurity Law, Counterespionage Law, among others. One high-profile enforcement case that exemplifies China's commitment to national security is the ban on Micron's products. The Cyberspace Administration of China determined that Micron's products carry "serious network security risks" that pose hazards to China's information infrastructure and affect national security. As a result, Chinese critical information infrastructure operators have been requested to stop buying products from Micron.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

As stated above, China implements the UN sanctions through a series of administrative notices. Most of these notices are available on the website of the MFA at: https://www.fmprc.gov.cn. The notices of the MFA are written in Chinese only and no official documents in English are provided

Chinese sanctions laws regulations and sanction lists are available at the following websites:

- The Provisions on the Unreliable Entity List (in English): http://english.mofcom.gov.cn/article/policyrelease/questions/202009/20200903002580.shtml
- The Blocking Rules (in English): http://english.mofcom.gov.cn/article/policyrelease/announcement/202101/20210103029708.shtml
- The Anti-Foreign Sanctions Law (in Chinese): http://www.npc.gov.cn/npc/c30834/202106/d4a714d5813c4ad2ac54a5f0f78a5270.shtml. No official documents in English are provided
- The Anti-Foreign Sanctions List (in Chinese): http://new.fmprc.gov.cn/web/wjb_673085/zfxxgk_674865/gknrlb/fzcqdcs/. No official documents in English are provided
- The sanctions of the MFA (in English): https://www.fmprc.gov.cn/eng/xwfw_665399/s2510_665401/2511_665403/
- The Unreliable Entity List (in Chinese): http://aqygzj.mofcom.gov.cn/article/zcgz/gzgf/. No official documents in English are provided

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

International sanctions are a set of restrictive measures adopted mainly by the UN Security Council (the "**UNSC**") and the European Union (the "**EU**") in the form of resolutions (in the case of UNSC) or regulations and/or directives (in the case of the EU). Since the Czech Republic is a Member State of both organisations, international sanctions are legally binding and enforceable.

In the Czech Republic, the competent authority responsible for the national coordination of carrying out international sanctions imposed for the purpose of maintaining or restoring international peace and security, protecting fundamental human rights and fighting terrorism, is the Financial Analytical Office (the "**FAO**"). It is responsible for the coordination of the implementation of sanctions on the national level. Depending on the type of sanctions, other ministries and Government agencies or sector regulators can participate in their sphere of action.

International sanctions are implemented in the Czech Republic by means of the Act no. 69/2006 Coll., on the implementation of international sanctions (the "**Implementation Act**"). This act serves in situations where international sanction is not imposed by a directly applicable act of the EU. In such case, it should be declared by the Government of the Czech Republic through a Government Decree. The FAO is entitled (under the condition that it is permitted by the resolutions of the UNSC or the EU Council imposing international sanctions) to grant an exemption from the bans and restrictions for certain reasons stipulated by the Implementation Act.

Until 2 January 2023, the Czech Republic was only following the international sanctions imposed by either UNSC or the EU. Effective from 3 January 2023, a new act has become effective in the Czech Republic. Based on this new act, a new National Sanctions List has been established. Please see more information on this in questions 1.3 and 2.4 below.

Finally, the EU 5th Anti-Money Laundering Directive was successfully implemented in the Czech Republic by Act no. 253/2008 Coll., on certain measures against money laundering and financing of terrorism (the "**AML Act**").

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The agenda of implementation of international sanctions that are binding in the Czech Republic is within the competence of the FAO. As of February 2023, the FAO has sanctioned nine natural and 67 legal persons in accordance with the Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. The FAO is a responsible authority when dealing with offences according to the Implementation Act, except for the offences, which shall be dealt by Ministry of Industry and Trade (please see below).

The Ministry of Foreign Affairs (the "**MFA**") is responsible for maintaining the National Sanctions List in the Czech Republic. Please see more information on this in questions 1.3 and 2.4 below.

The Ministry of Industry and Trade (the "**MIT**") deals with offences in accordance with the Implementation Act, if the application of an international sanction which has been or may have been threatened by the offence involves foreign trade in military material or the regime for the control of exports of dual-use goods and technologies.

Certain regulated businesses may fall under the supervision of a specialised regulator, e.g. the Czech National Bank (the "**CNB**").

All information on the realisation of international sanctions, as well as the implementation of anti-money laundering and terrorism financing regulations, can be found on the official website of the FAO at https://fau.gov.cz/

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

The biggest change from the national perspective is the establishment of the National Sanctions List. It was established by the Act no. 1/2023 Coll., on Restrictive Measures against Certain Serious Conduct in International Relations (the "**Sanctions Act**"), and is effective from 3 January 2023. As mentioned, the National Sanctions List is maintained by the MFA. This list contains in principal individuals or entities that are not yet placed in the EU Sanctions List.

Further, the practice must also reflect development on an international scene: several new sanctions have been imposed on Russia pursuant to their military invasion of Ukraine. As of the time of writing this chapter (10 August 2023), there have been 11 sanctions packages in total, aimed against Russia and Belarus. The sanctions packages are issued by the EU and are ever-broadening the sanctions already imposed on Russian and Belarussian industry, products and people. At the moment, there is no telling if the most recent sanctions package (adopted on 23 June 2023) will be the last one and how long these packages will be in effect. The Czech Republic abides and follows all these sanctions packages, since they are directly applicable.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

The FAO, ministries and specialised regulators (as mentioned above in question 1.2).

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes, Czech Republic respects UN's sanctions and participates in their enforcement. The Implementation Act provides for further details. Sanctions set out by UNSC are most often implemented in the Czech Republic through decisions and regulations of the EU Council or the EU Commission.

If any sanction is adopted only by the UNSC and the EU institutions do not adopt their own immediately effective regulation, the Government of the Czech Republic should issue its own regulation under the authority of the Implementation Act to implement the UNSC's sanctions.

We are not aware of any significant failures of the EU/the Czech Republic in the implementation of UNSC's sanctions.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

The Czech Republic is a member of the UN and the EU. Consequently, the Czech Republic follows both the UN's and the EU's sanctions regulations. Regarding the sanctions adopted by UNSC, please see question 2.2 above. Decisions and regulations of the EU Council or the EU Commission are directly applicable and do not usually require the adoption of any additional legislation at the national level.

We are not aware of any significant failures of the Czech Republic in the implementation of EU sanctions.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

As mentioned in question 1.3 above, the National Sanctions List has been established as of 3 January 2023. The main reason for establishment of this list was to include on the National Sanctions List entities that have not yet been included on the European Sanctions List.

When MFA receives information that certain entities have committed or is committing sanctionable acts, it can propose a request to the Czech Government to place such entity in the EU Sanctions List. However, such placement does not occur immediately after a Government's decision. Therefore, the Sanctions Act allows for an entity to be placed on the National Sanctions List following a Government's decision, if it is not placed on the EU Sanctions List within one month of the proposal. If there is a risk of defeating the purpose for which the entity is to be placed on the EU Sanctions List, the entity may be placed on the National Sanctions List immediately, without delay following the Government decision.

An entity may object to its inclusion on the National Sanctions List by submitting a reasoned objection in writing. This shall be addressed to the MFA, with the Government taking a decision thereon. The entity may also seek judicial review. Neither of these two instruments, however, have suspensive effect.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

In the event of the unjustified designation and inclusion in any sanctions list, the entity must file a request to be removed from the sanctions list, addressed directly to the organisation, which has included such individual on its sanctions list.

Individual can also challenge its inclusion on the Czech National Sanctions List (please see more in question 2.4).

2.6 How does the public access those lists?

All the information on realisation of international sanctions as well as the implementation of anti-money laundering and terrorism financing regulations can be found at https://fau.gov.cz/ and most of the information on the website is available in English as well. However, there is no guarantee as to the accuracy of the translation, since the only official language in Czech Republic is Czech.

The Czech National Sanctions List can be accessed on the official website of MFA at: https://www.mzv.cz/jnp/cz/zahranicni_vztahy/sankcni_politika/sankcni_seznam_cr/vnitrostatni_sankcni_seznam.html

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

No, the Czech Republic does not maintain such comprehensive sanctions on national level, however, it follows the UNSC's and the EU's sanctions lists.

2.8 Does your jurisdiction maintain any other sanctions?

No, it does not.

2.9 What is the process for lifting sanctions?

For further information please see question 2.5 above.

Furthermore, regarding the Czech National Sanctions List, MFA shall cancel the inclusion of the entity on this list as of the date when such entity is placed in EU Sanctions List.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. In terms of trade restrictions, the relevant authority is the Ministry of Industry and Trade. Traders in military material must apply for an import or export licence for every single contract whose object is military material. The decision on granting of the import/export licence is issued by the Ministry of Industry and Trade based on the binding statements provided by the MFA, Ministry of Interior and Ministry of Defense. Please note that the Czech legal definition of "military material" may be broader (more severe) that that of EU common lists.

Regulation also concerns the dual-use items and goods in order to prevent their misuse for the violation of human rights.

The EU itself controls the export, transit, brokering and technical assistance of dual-use items so that it can contribute to international peace and security and prevent the proliferation of weapons of mass destruction.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

There are blocking statutes on the European level, adopted by the directly effective Council Regulation (EC) No 2271/96 of 22 November 1996, protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. The purpose of the EU's blocking statute is to protect the EU entities from the extra-territorial application of third country laws, since the EU does not recognise the extra-territorial application of laws adopted by third countries and considers such effects to be contrary to international law.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

No, it does not.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

The Czech Republic mostly follows the UNSC's and EU's Sanction lists. These lists should not be discriminatory; therefore, nationality or location should not be important when including any entity in such lists.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Yes. The property must be frozen, and nobody can dispose with it or use it under the threat of a significant fine.

The holder of such property subject to international sanctions shall be entitled to claim against the Czech Republic compensation for the necessary costs related to its administration and protection from the moment of delivery of the notification to the FAO. However, if international sanctions are also imposed on the holder of such property, he/she is not entitled to compensation from the Czech state.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

First of all, the exemption from international sanctions is subject to and may only be used under the conditions and to the extent provided for in the relevant UNSC and EU sanctioning regulation. If the sanctioning regulation does not expressly allow for an exemption, then no exemption can be granted.

The FAO decides on exemptions in an administrative procedure; the basic time limit is 30 days and may be extended by the time necessary to inform the European Commission and the EU Member States.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Reports must be filed without any unnecessary delay. The Implementation Act states that anyone who becomes aware in a credible manner that he/she is in possession of a property subject to international sanctions is obliged to notify the FAO without undue delay. A significant fine can be imposed if the entity fails to report such information or if such entity disposes/uses the property subject to the international sanctions.

The subjects that fall under the AML Act have, amongst other obligations, an obligation to also report to FAO findings of (or reasonable assumption of the same) any details that would make the sanction regime applicable (i.e. parties identification, goods or services identification). Obliged persons according to the AML Act are also obliged to report any suspicious business in connection with its activities to the FAO.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

There is no requirement to prove intent or good practice that would be applicable to the public or all entrepreneurs.

However, all subjects that fall under the AML Act must apply and design internal procedures to ensure compliance, although such rules do not have to be in writing. However, the most involved businesses (such as banks, other financial institutions, gambling operators, real estate intermediaries, entities providing services related to virtual assets in particular) must perform risk management and adopt so called "*system of internal principles*" in writing.

In any case, as all subjects that fall under the AML Act must be able to prove that they have such processes in place, written policy is always recommendable, as a means of proof of due practice and diligence especially in the case of any legal breach scenario.

In addition, most financial institutions are likely to also screen against the various US & UK sanctions lists, as well as the sanctions lists of those countries/jurisdictions they most often engage in business with.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes. For more information, please see question 4.4 below. Furthermore, certain behaviour leading to a breach of sanction could be also interpreted as a different type of criminal activity, e.g. supporting of a terrorist group.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The Police of Czech Republic and state prosecutors who are entitled to bring the case to the court. Some investigations are being initiated based on the notification from the FAO.

4.3 Is there both corporate and personal criminal liability?

Yes. Since 2012, legal persons in Czech Republic can be held criminally liable as well.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

According to the Czech Criminal Code, a "Breach of International Sanctions" is considered as a criminal offence against the peace. For this criminal offence, a punishment of up to three years of imprisonment and/or pecuniary punishment can be given. The amount of pecuniary punishment is decided by the court based on the facts and the scale of the criminal offence.

4.5 Are there other potential consequences from a criminal law perspective?

A maximum of eight years can be given, if offence of "Breach of International Sanctions" (i) is committed as a member of a terrorist group, (ii) causes damage on larger scale (more than EUR 410,000), (iii) causes a serious threat to the international status of the Czech Republic, or (iv) contributes substantially to the disruption of international peace and security, measures aimed at the protection of human rights and freedoms, the fight against terrorism, respect for international law or the promotion of democracy and the rule of law.

The court may impose the sanction of dissolution of a legal person (if the legal person has its registered office in the Czech Republic) if its activities consisted wholly or mainly in the commission of a crime or crimes.

Further consequences include, e.g. possible loss of business licence, and also the risk of criminal prosecution in general including costs related to legal defence and PR consequences.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

In the Czech legal system, civil penalties are understood as fines/penalties agreed between parties as contractual fines.

Furthermore, there are administrative offences for breaches of law that are less serious than crimes, and administrative penalties can be imposed for such breaches.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

The FAO, ministries and specialised regulators, as referred to above in question 1.2.

4.8 Is there both corporate and personal civil liability?

Yes, there is.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

The highest pecuniary penalty provided for by the Implementation Act is CZK 50,000,000 (approx. EUR 2,050,000).

The highest pecuniary penalty provided for by the Sanctions Act is CZK 200,000 (approx. EUR 8,250).

The highest pecuniary penalty provided for by the AML Act is CZK 130,000,000 (approx. EUR 5,360,000) or 10% of the net annual turnover according to the most recent consolidated accounts, whichever is higher.

Apart from the penalty, the sanction of seizure of specific assets (usually assets that were acquired as the result of the crime) can be imposed.

4.10 Are there other potential consequences from a civil law perspective?

Further consequences include, e.g. possible loss of business licence, fine, prohibition of activities, forfeiture of items, publication of the decision of the offence.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

All administrative penalties are imposed within strict proceedings, regulated by Act no. 500/2004 Coll., Administrative Code, Act no. 250/2016 Coll., Act on Administrative Liability and Related Procedure. The proceedings are closed (non-public, in difference to criminal proceedings, that are always public) and two-instance.

Appeals against FAO decisions are within the jurisdiction of the Ministry of Finance. The decisions are not public, unless the FAO imposes the sanction of publication, and in such case, they are publicised on the FAO's web.

The principles and rules of imposing penalties are rather general, and the authorities have very broad discretion. However, the penalty imposed must be always justified in a detailed way in the written decision, and alleged failure to do so is often grounds for an appeal.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

As mentioned above (question 4.11), proceedings before the FAO are two-instance and the appeals against FAO decisions are within the jurisdiction of the Ministry of Finance. Extraordinary remedies might be possible, however as a rule, they do not postpone enforceability.

Final decisions, including imposed penalties or sanctions in general, may be challenged within judicial review. As said, the penalty imposed must, under the consistent case law, always be justified in a very detailed way, so alleged failure to do so may be successful ground for challenging the decision in judicial proceedings.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

No. Czech Republic consists of only a single jurisdiction.

4.14 What is the statute of limitations for economic sanctions violations?

The rules are quite complex, with a possibility of stay or re-start of the period of limitations.

Statute of limitations for criminal offences according to the Czech Criminal Code related to international sanctions is up to 10 years (depending on the severity of the criminal offence).

Statute of limitations for administrative offences is usually one year, with the exception of offences, where a fine of more than CZK 100,000 can be imposed – then it is three years.

General statute of limitations for civil offences is three years.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

Since the situation in Ukraine is not stable, there is no telling how many more sanctions packages will be adopted by the EU.

Currently in the Czech Republic, there is a lot of property in the ownership of Russian or Belarussian citizens. Some of these owners are still not placed on the EU sanctions list and in the past few months, domestic media are pressing the Government to include them on the National Sanctions List at least.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

All the information on realisation of international sanctions as well as implementation of anti-money laundering and terrorism financing regulations can be found at https://fau.gov.cz/ and most of the information on the website is available in English as well. However, although there is no guarantee as to the accuracy of the translation, since the only official language in Czech Republic is Czech.

More details can always be obtained by way of consulting legal professionals.

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

The French sanctions regime includes measures decided at the national, European and United Nations (UN) levels.

Both the UN and EU's sanctions either concern a geographical zone or a theme (e.g., nuclear non-proliferation or counter-terrorism). They either target a sector of activity or natural and legal persons. France fully complies with all of them.

At the national level, France has the ability to impose autonomous sanctions, in two areas: counterterrorism (Article L. 562-2 of the French Monetary and Financial Code); and in defence of the "*national interest*" (Article L.151-2 of the Monetary and Financial Code).

Both these national regimes are built on broad notions, allowing France to possibly sanction a large number of individuals and entities and/or impact many sectors of activity. As of today, 40 natural and legal persons are listed by France under its counterterrorism sanctions regime, and 15 decrees concern the defence of the national interest.

The measures decided autonomously by France consist of assets freezing, restrictions on transactions and embargoes.

Further details about these regimes are provided below.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The enforcement of the French sanctions' regime is handled by the Ministry for Europe and Foreign Affairs and the Ministry of Economy and Finance.

Within both ministries, sub-entities handle different aspects of sanctions.

Under the Ministry of Economy and Finance, the main authorities are:

- the French Treasury, which handles financial matters (e.g., delivers transactions authorisations); and
- the Directorate General for Enterprise, in particular the "*Service des Biens à Doubles Usages (SBDU)*" which handles matters related to import/export of dual-use goods.

Under the Ministry for Europe and Foreign Affairs:

- the French Customs are in charge of the implementation of sanctions on French territory.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

As an EU Member State, France has had to constantly adjust to the sanctions decided by the Council of the EU against Russian individuals and legal entities, as well as some sectors of activity, for the past year.

As such, France has been regularly implementing new prohibitions and obligations to more and more individuals and entities as their names have been added on the lists of sanctioned persons by the Council of the EU.

The EU issued two additional sanctions packages in 2023, with new measures such as reporting of assets obligations, prohibition on circulation of technology and industrial goods via Russia, and tightening of export restrictions.

As provided in question 4.1 below, discussions are currently actively ongoing among EU institutions to create an EU offence that would allow Member States to prosecute, judge and sentence individuals and entities circumventing EU sanctions.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

EU Sanctions decisions and regulations are adopted by the Council of the EU, in the Framework of the Common Foreign and Security Policy ("CFSP").

They are directly applicable within all Member States, which as such do not need to implement them: they are only responsible for the implementation of sanctions on their territory (for France see above at question 1.2).

Most UN sanctions are also implemented by the EU, and as such are directly applicable in France (for UN sanctions regime that are not implemented see below at question 2.2).

French national sanctions are decided by the Ministry of Economy and Finance, together with the Ministry of the Interior. In France, decrees are executive acts that do not need the approval of the Legislature and are adopted unilaterally.

All measures' application, international and national, is then organised, controlled and when necessary sanctioned by the Ministry for Europe and Foreign Affairs and the Ministry of Economy and Finance, as detailed in question 1.2 above.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

France is a permanent member of the UN Security Council, and a Member State of the EU, which has been granted the status of observer with enhanced rights within the UN.

The EU implements, via Council Regulations, all sanctions adopted by the UN Security Council that fall within the EU's competence. Such sanctions do not have to be implemented by France for them to be applicable nationally.

For the matters that fall outside the EU's competence, France implements UN sanctions via a national act (most often decrees).

To the best of our knowledge, France does not fail to implement UN sanctions; it is on the contrary known for fully complying.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

As explained above, France is a Member State of the European Union and as such implements its sanctions regime.

The EU has been issuing sanctions since 1987, when it was still called the European Economic Community. Today, the Council of the EU, gathering ministers of Member States, is the institution that decides restrictive measures.

The sanctions of the Council can be found in various Decisions and Regulations. The Decisions must be implemented by Member States to enter into force, while Regulations automatically do upon publication in the Official Journal of the EU.

Like with UN sanctions, Frances fully complies with restrictive measures issued by the EU.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Both the UN and the EU maintain their own lists of sanctioned individuals.

The French Treasury of the Ministry of Economics and Finance keeps an updated list of entities and individuals sanctioned under the French regime, i.e., UN, EU and national levels.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

The process to remove names varies according to the source of the sanction:

- To have one's name removed from the UN sanctions list, they would have to make an application to the Focal Point for Delisting of the UN, except for the sanctions against ISIL/Al-Qaeda, for which the application must be made to the Ombudsperson.
- When listed by the Council of the EU, the person sanctioned can ask the Council to reconsider its decision and/or apply for the annulment of the measure before the General Court of the Court of Justice of the EU.
- When sanctioned by the French Ministry of Economy and Finance, the person can ask the Ministry to reconsider their decision, and in case of a refusal, apply to the French administrative Court for it be cancelled (*recours pour excès de pouvoir*).

2.6 How does the public access those lists?

The list of all individuals and legal entities sanctioned by France (UN, EU and national) can be found on the website of the French Treasury (https://gels-avoirs.dgtresor.gouv.fr/).

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

France does not actually maintain any national embargo against countries or regions itself, but it applies those imposed by the European Union. The EU embargoes either stem from UN Security Council's Resolutions, or were created under the Common foreign and security policy of the EU itself.

A map of all the embargoes France complies with (e.g., Russia, Iraq, Venezuela, or Zimbabwe) is maintained by the French Customs and can be found here: https://www.douane.gouv.fr/demarche/consulter-la-carte-interactive-des-mesures-de-restrictions-commerciales

2.8 Does your jurisdiction maintain any other sanctions?

France does not maintain any other sanctions.

2.9 What is the process for lifting sanctions?

When the application made by the person sanctioned is successful, the process to lift the measure is as follows:

- UN sanction: there is a sanction committee for each sanction regime established by the UN, in charge of removing entries from their sanctions lists.
- EU sanction: an official decision of the European Council, which brings together leaders of all EU members, is required, together with a publication in the EU's Official Journal.
- French national sanction: the Ministry that issued the sanction in a decree must release a new decree, amending the first one.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

France applies Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items, distinct from sanctions.

It concerns dual use goods, i.e., civil items that could be used for prohibited military ends, nuclear proliferation or torture.

In France, the application of the Regulation is supervised by the SBDU and French Customs.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

France does not have any blocking statute or restriction that prohibits adherence to other jurisdictions' sanctions or embargoes, but the EU does, to which France complies.

Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, allows European individuals and entities based in Europe from applying the sanctions imposed by the US on Cuba and Iran. The scope of this Regulation is restricted to these two American sanctions regimes.

As such, all other sanctions decided by the US and other states can be respected by European actors.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Sanctions taken by the French Ministries do not have extraterritorial effects.

Although in theory the EU has always stated its sanctions would not have any extraterritorial effects, this has been called into question since the 11th package of sanctions against Russia was issued in June 2023.

It created the possibility to take exceptional, last resort measures restricting the sale, supply, transfer or export of certain goods such as sensitive dual-use goods and technology, or goods and technology that might contribute to the enhancement of Russia's military, technological and industrial capacities whose export is already restricted to third countries whose jurisdiction is demonstrated to be at a particularly high and continuing risk of being used for circumvention.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Sanctions imposed by the EU must be applied by:

- every individual present on the French territory, no matter what their nationality is;
- every individual who is on an EU ship or aircraft;
- every French national (natural or legal person), no matter in which country they are; and/or
- any non-European entity, established in a non-European country, whenever the transaction made with the EU goes against the Resolution imposing the sanctions.

French sanctions must be applied by the persons designated in the decree providing for the measures, by French nationals and on French territory.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

The obligation to comply with sanctions must be respected by any person or economic operator: banks; exporters; importers; and/or insurance companies.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Each sanctions regime (UN or EU, and each EU sanction regime per country or per theme) applied by France provides for different possibilities of licences, that are specific to each of them.

Some licences can nonetheless be found in most of the different regimes, such as transactions made in the context of a pre-existing contract, payment of lawyer's fees, etc.

In such cases, the French Treasury can issue licences, upon the request of a person sanctioned, for funds to be unfrozen.

There are two types of authorisations:

- general: the Treasury allows for all similar transactions (to the same person, same purpose, same form of payment, etc.) for an unlimited time; and
- specific: the Treasury allows one specific and defined transaction.

Conditions for licences to be permitted include the communication of certain information on the target of the transaction, indication of the purpose of the transaction, etc.

The French Customs can issue licences for the import or export of goods that is in principle prohibited, upon the request of the person that wants the good concerned to enter or leave French territory from or to a country sanctioned by the EU.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Since 21 July 2022, it is mandatory under Article 9 §2 of Regulation 269/2014 for entities and individuals listed by the EU to declare their assets owned in France, to the French Treasury.

Article 8 of the same Regulation provides the obligation for any person that knows about assets frozen and owned that were not declared, to report them to the competent authority of their country, i.e., the French Treasury in France.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

As sanctions are part of French law, which must be respected by any person located on the French territory, operators are required to ensure compliance with the sanctions in place in France (UN, EU and national).

There is otherwise no indication on how to comply with said sanctions. More and more French banks, insurance companies and other entities now create and develop their own process, to comply with sanctions, which can lead to cases of overcompliance.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Discussions are currently ongoing among EU institutions to create a European criminal offence incriminating the violation of restrictive measures decided by the EU.

The crime will cover several behaviours such as helping people to bypass an EU travel ban, trading sanctioned goods or running transactions with those hit by EU restrictive measures. Penalties will be decided by each Member State when they implement the Decision in their law, but the Commission recommends imprisonment, fees, freezing and/or seizing of assets.

France is already planning on introducing this crime in its Criminal Code.

In the meantime, Article 459 §2 of the French Customs Code applies. It incriminates the violation of European restrictions on financial and economic relations issued under Article 215 of the Treaty on the Functioning of the European Union, which includes sanctions.

The sentences are five years of imprisonment maximum, seizing of the object, product and transport of the offence, and a fee.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

In France, investigations are conducted by administrative agents, including customs agents, as well as police officers.

The decision to prosecute is then made by the Minister of Economy and Finance, who refers the case to the competent Prosecutor.

Despite the creation of a new European offence mentioned above, the EU's competence in criminal matters is currently limited to the prosecution of fraud against the EU's finances. Investigations and prosecution of violations of EU sanctions will therefore probably be handled by Member States' national investigators and prosecutors.

Some Member States, including France, have expressed their willingness for the European Public Prosecutor's Office to have the jurisdiction to investigate and prosecute these offences.

4.3 Is there both corporate and personal criminal liability?

Article 459 of the French Customs Code provides for both corporate and personal criminal liability.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

The maximal financial penalty applicable to natural persons is double amount of the product of the transaction (Article 459 §1).

For legal persons, it is 10 times the value of the product of the transaction (Article 459 §1 of the Customs Code and 131-38 of the Criminal Code).

4.5 Are there other potential consequences from a criminal law perspective?

Article 459 §4 provides for several incapacities for individuals convicted of violating a sanction, and the decision of the tribunal is published in the media.

For legal persons, Article 131-39 of the French Criminal Code provides for several other sentences such as prohibition to exercise any activity, closing of the entity or prohibition to issue checks.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

There are no civil penalties in France for violating economic sanctions law or regulations, as in French law a "civil penalty" refers to cases where a person claims to have suffered a civil damage in relation to a criminal offence.

There are, however, administrative penalties applicable for violating EU counterterrorism and anti-money-laundering sanctions.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

As there are no civil penalties for violating economic sanctions laws or regulations in France, there is no government authority responsible for investigating and enforcing civil economic sanctions violations.

The administrative proceedings mentioned above are held by the French Prudential Supervision and Resolution Authority, an administrative institution under the supervision of the Bank of France, which is in charge of investigating and sentencing such violations (Article L.561-36-I 1° of the Monetary and Financial Code).

4.8 Is there both corporate and personal civil liability?

There is no civil liability, only administrative.

Article L.561-36 of the Monetary and Financial Code provides for both corporate and personal liability.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

The administrative penalties can be:

- for legal persons: a fine can be pronounced, the maximum being either 100,000,000.00 euros or 10% of the entity's revenues; and
- for natural persons: a fine of maximum 5,000,000.00 euros.

4.10 Are there other potential consequences from a civil law perspective?

Other disciplinary measures can be taken against directors of the entities such as the prohibition to exercise their profession, withdrawal of accreditations, or removal from the list of qualified persons (Article L.561-36-IV of the Monetary and Financial Code).

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

The administrative sanctions are taken by a sanctions commission after an investigation and a hearing led by the commission.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

Such decisions can be appealed before the French Administrative Supreme Court.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

As of now, criminal enforcement is only at the national level. However, as developed above, the EU is working on creating a European criminal offence, which should enter into force in the next year.

4.14 What is the statute of limitations for economic sanctions violations?

The current statute of limitations for economic sanctions violations as a criminal offence is six years in France.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

At the European level, it has been reported that the EU is currently working on a sanctions framework for Sudan.

The European Commission is also actively working on a new anti-corruption framework, that will notably extend the sanctions decided under the European CFSP to the most serious corruption cases, with no condition of a direct link with the EU.

In France, the Senate has been trying to push for an embargo to be put against Azerbaijan, in reaction to the situation with Armenia.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

Sources on the French law are accessible only in French:

- The Customs Code: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071570/
- The Criminal Code: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719/
- The Guide of good conduct of the French Treasury: https://www.tresor.economie.gouv.fr/Institutionnel/Niveau2/Pages/f3234489-26a1-48f7-8a05-f31d34551f13/files/d30c8579-086d-42e1-a43f-8b79a677dc46
- The notes and guides of the French Customs: https://www.douane.gouv.fr/notes-aux-operateurs-et-mesures-restrictives-en-reponse-lagression-militaire-de-la-russie
- A map of all the embargoes France complies with (e.g., Russia, Iraq, Venezuela, or Zimbabwe), maintained by the French Customs, can be found here: https://www.google.com/maps/d/u/0/viewer?mid=198oYCCQQSKzPt7G-mXaeWHvBgt-Q&ll=2.686907992793485%2C33.883104212499894&z=2

However, all EU sources are accessible in English, and all concern France:

- The EU sanctions map: https://www.sanctionsmap.eu/#/main
- The EU sanctions timelines: https://www.consilium.europa.eu/en/policies/sanctions/
- The website of the Commission, which publishes guidelines and FAQs for each EU sanction regime: https://commission.europa.eu/index_en

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Since its creation in 2002, WJ Avocats has developed a particular expertise in cross-border litigation and a strong presence on the international stage. Located in Paris and Brussels, the firm assists and represents French and foreign clients, natural and legal persons (States, NGOs, associations, corporations) both in an advisory capacity and in front of any jurisdictions. In collaboration with a network of international lawyers, the firm regularly handles the most complex cases, managing not only the legal aspects but also media and public relation strategy.
The firm also advises its private clients in all aspects of the management of their financial and cultural assets.
It is one of the first French firms to have specialised in International Criminal Law, with a strong expertise in matters of extradition, international and European arrest warrants, withdrawal of INTERPOL notices and mutual legal assistance.

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Germany applies all sanctions imposed by the United Nations Security Council ("**UNSC**") ("**UN Sanctions**") and, as a European Union ("**EU**") Member State, all sanctions imposed by the EU ("**EU Sanctions**").

Germany does not unilaterally impose sanctions. However, Germany maintains a discrete national export control regime that – in very limited circumstances – is used to impose unilateral export control measures that are sometimes referred to as "German Sanctions" externally. For details, please refer to question 2.10 below.

Germany's sanctions regime distinguishes between sanctions with a focus on a specific jurisdiction ("*Länderbezogene Embargomaßnahmen*") and sanctions with a focus on specific individuals/entities ("*Personenbezogene Embargomaßnahmen*"). In the following, we shall refer to both as "sanctions" and use the terminology explained below.

Sanctions with a focus on a specific jurisdiction can further be divided into (full) embargoes, comprehensive sanctions and targeted sanctions. Embargoes, as the term is used hereinafter, prohibit all trade with or for the benefit of the sanctioned party. Comprehensive sanctions prohibit most forms of trade with, or for the benefit of, the sanctioned party. Targeted sanctions prohibit only specific forms of trade with or for the benefit of the sanctioned party.

Embargoes and comprehensive sanctions are regularly implemented in the form of economic sanctions. Targeted sanctions may also be implemented in the form of economic sanctions or in the form of financial sanctions.

Economic sanctions, broadly comparable to U.S. sectoral sanctions, are designed to restrict trade, usually within a particular economic sector, industry or market – *e.g.*, the oil and gas sector or the defence industry ("**Economic Sanctions**").

Financial Sanctions, broadly comparable to U.S. Specially Designated Nationals ("**SDN**") listings, are restrictive measures taken against specific individuals or entities that may originate from a sanctioned country or may have engaged in a condemned activity ("**Financial Sanctions**").

These natural persons and organisations are identified and listed by the EU in the EU Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions ("**EU Consolidated List**") (see question 2.4 below for details), resulting in targeted restrictions such as travel bans or asset freezing for those listed. With the application of EU Financial Sanctions, all funds and economic resources belonging to, owned by, held by or controlled by natural or legal persons, entities and bodies listed are frozen. Moreover, no funds or economic resources can be made available, directly or indirectly, to or for the benefit of the listed parties.

Finally, the knowing and intentional participation in activities intended to circumvent the aforementioned asset freezes is also prohibited.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The government agencies that administer or enforce the sanctions and export control regime in Germany are:

(i) the Federal Office for Economic Affairs and Export Controls ("*Bundesamt für Wirtschaft und Ausfuhrkontrolle*") ("**BAFA**"), the competent authority for administering Economic Sanctions and the export control regime, which, *inter alia*, is processing applications for export licences and for release of frozen economic resources within the framework sanctions exceptions;

(ii) the German Federal Bank ("*Deutsche Bundesbank*"), the competent authority for administering Financial Sanctions, which, *inter alia*, is processing reports from banks and insurance companies on the implementation of the asset freeze as well as applications for release of frozen funds within the framework of sanctions exceptions;

(iii) the Central Department for Sanctions Enforcement ("*Zentralstelle für Sanktionsdurchsetzung*") ("**ZfS**"), the competent authority to enforce the asset freeze and the prohibition to make available funds or economic resources adopted by the EU within the framework of Financial Sanctions, which is primarily investigating funds and assets of sanctioned parties;

(iv) the German Customs Administration ("*Zoll*"), the competent authority to, *inter alia*, enforce import- and export-related prohibitions within the framework of Economic Sanctions and to take appropriate operative measures, including the imposition of fines for violations of sanctions that constitute an administrative offence;

(v) the Public Prosecutor's Offices ("*Staatsanwaltschaften*") in German Federal States ("*Länder*") and Federation ("*Bund*"), the competent authorities to prosecute breaches of sanctions amounting to crimes and administrative offences, which may rely on Customs Criminal Office ("*Zollkriminalamt*"), Customs Investigation Offices ("*Zollfahndungsämter*") and Main Customs Offices ("*Hauptzollämter*") for conducting criminal investigations.

Furthermore, the Federal Office for the Protection of the Constitution ("*Bundesamt für Verfassungsschutz*") ("**BfV**"), in

close cooperation with the domestic intelligence services of the German Federal States and with other agencies, including BAFA, is responsible for uncovering any activities of proliferation concern in order to prevent any illegal procurement efforts of foreign countries. Also, the Financial Intelligence Unit ("*Zentralstelle für Finanztransaktionsuntersuchungen*") ("**FIU**"), the central office for financial transaction investigations, organised as part of the German Customs Administration system, analyses suspicious activity reports under the Money Laundering Act that include the overlapping topic of terrorist financing.

Further, the European Commission is the competent authority for certain sanctions-related authorisation requests.

Finally, Europol, jointly with EU Member States, Eurojust and Frontex, is conducting "Operation Oscar" to support financial investigations by EU Member States targeting criminal assets owned by individuals and legal entities sanctioned in relation to the Russian invasion of Ukraine. Operation Oscar also aims to support criminal investigations by EU Member States in relation to the circumvention of EU-imposed trade and economic sanctions. Together with the EU Sanctions Whistleblower Tool and the addition of sanctions violations to the list of EU crimes, this continues to increase enforcement risk in the EU, which in the past was somewhat dependent on the enforcement appetite of the EU Member State competent authority tasked to enforce EU sanctions.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

Yes, there have been some significant changes in the past year.

Russia's war of aggression against Ukraine. The EU and Germany reacted to Russia's continuing aggression against Ukraine by implementing further rounds of (additional) EU Financial Sanctions and Economic Sanctions and export control measures against Russia. Further sanctions were also enacted against Belarus for its involvement into Russia's full-scale invasion of Ukraine and against Iran for the manufacture and supply of drones to Russia.

An overview over the latest developments and a summary of the sanctions currently in place can be found:

- For the EU at: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russias-military-aggression-against-ukraine_en#sanctions
- For Germany at: https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/Embargos/Russland/russland_node.html and https://www.bundesbank.de/de/service/finanzsanktionen/sanktionsregimes (in German).

Enforcement. After enacting the German Sanctions Enforcement Act I ("**SEA I**") in May 2022 containing measures that could be implemented in the short term to render German sanctions enforcement more effective, Germany enacted the Sanctions Enforcement Act II ("**SEA II**") in December 2022, which brought about structural improvements of sanctions enforcement in Germany.

SEA II comprises amendments to the German Foreign Trade Act (*Außenwirtschaftsgesetz*), Money Laundering Act (*Geldwäschegesetz*), Banking Act (*Kreditwesengesetz*), Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz*), Insurance Supervision Act (*Versicherungsaufsichtsgesetz*), Securities Institutes Act (*Wertpapierinstitutsgesetz*), Securities Trading Act (*Wertpapierhandelsgesetz*), Capital Investment Code (*Kapitalanlagegesetzbuch*), Stock Exchange Act (*Börsengesetz*), Financial Services Supervision Act (*Finanzdienstleistungsaufsichtsgesetz*) and nine further acts.

Furthermore, SEA II introduced the new German Sanctions Enforcement Act (*Sanktionsdurchsetzungsgesetz* or "**SanktDG**"), which created a new government agency – the ZfS as mentioned above at question 1.2 – under the authority of the Federal Ministry of Finance hosted by the General Directorate of Customs.

The ZfS, without interfering with the competence of other government agencies mentioned above at question 1.2, has a statutory mandate to ensure the enforcement of sanctions adopted in the EU Regulations and to work together with agencies in other EU Member States on the enforcement of these sanctions.

The primary responsibility of the ZfS is to enforce the asset freeze and the prohibition to make available funds or economic resources adopted by the EU within the framework of Financial Sanctions. In order to efficiently investigate funds and other assets of sanctioned parties, the ZfS has been given comprehensive powers to identify and seize assets. SanktDG also introduces new administrative proceedings for asset investigation which can be initiated by the ZfS with respect to the sanctioned parties (person-related investigation) or questionable assets (asset-related investigation). The ZfS shall also administer a new register of assets of sanctioned parties. Furthermore, a whistleblower system has been established within the framework of the ZfS to collect information on potential and actual sanctions violations and violations against asset reporting obligations under EU and German law. Finally, the ZfS has the authority to appoint a monitor to supervise sanctions compliance in companies which have violated, or are at risk of violating, Financial Sanctions.

2 Legal Basis / Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Germany does not unilaterally impose sanctions, but applies all UN and EU Sanctions (see question 1.1 above).

The legal authority for EU Sanctions is Article 29 of the Treaty on the EU ("**TEU**") and Article 215 of the Treaty on the Functioning of the EU ("**TFEU**").

In the case of arms embargoes, the Council of the EU (the "**Council**"), the institution representing the governments of the EU Member States, adopts a respective Council Decision as part of its Common Foreign and Security Policy ("**CFSP**"). This Decision is binding on EU Member States, which, in turn, implement the decision on an EU Member State level. In Germany, the legal authority for such implementation and enforcement is the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*) ("**AWG**"), flanked by the administrative authority, the Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*) ("**AWV**").

In the case of EU Economic Sanctions and EU Financial Sanctions, the Council again adopts a respective Decision as part of its CFSP and, additionally, an EU Sanctions Regulation which is binding and directly applicable in all EU Member States. While the EU Member States do not, therefore, need to implement such EU Sanctions Regulations in national EU Member State law, the EU Sanctions Regulations require the EU Member States to create authorities to ensure enforcement of the EU Regulation on an EU Member State level.

Regarding the legal authorities or administrative authorities for implementing UN sanctions, please see question 2.2 below.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes.

UN Sanctions are regularly implemented via EU Sanctions which, in turn, apply in Germany (see question 2.1 above).

As the process of the implementation of UN Sanctions via EU Sanctions may cause a delay between listing by the United Nations ("**UN**") and applicability in Germany, Germany additionally directly implements UN Sanctions based on Section 6(1) AWG in connection with Sections 4(1)(2) and 4(1)(3) AWG, Section 4(2)(3) AWG and Section 13(6) AWG.

There are no significant ways in which the EU and/or Germany have failed to implement UN sanctions.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

Yes.

Germany is a Member State of the EU and implements EU Sanctions; regarding the process of implementation in the case of arms embargoes, EU Economic Sanctions and EU Financial Sanctions, the Council adopts a respective decision as part of CFSP. In Germany, the legal basis for implementation into German law and respective enforcement of such a decision is the AWG, flanked by the administrative authority AWV.

In the case of EU Economic Sanctions and EU Financial Sanctions, the respective additional EU Sanctions regulation is directly applicable in all EU Member States. Therefore, while the EU Member States do not need to implement such EU Sanctions regulations in national EU Member State law, the EU Sanctions regulations require EU Member States to implement authorities to ensure enforcement of the EU regulation on an EU Member State level; in Germany, this is done via the AWG, flanked by the AWV.

There are no significant ways in which Germany has failed to implement EU Sanctions.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Germany does not maintain a list of sanctioned individuals and entities, but applies the EU Consolidated List. For the process of the implementation of such EU Financial Sanctions, see questions 2.1 and 2.3 above; for further details on (de-)listing, see https://www.consilium.europa.eu/en/policies/sanctions/adoption-review-procedure/

Individuals and entities are added to or removed from the EU Consolidated List upon a proposal of the High Representative of the EU for Foreign Affairs. Various bodies and committees of the Council discuss the respective proposal before the Council decides on the addition/removal by unanimous vote.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Sanctioned persons may submit a request to the Council, asking for the reassessment of the listing decision (see here for details: https://www.consilium.europa.eu/en/policies/sanctions/adoption-review-procedure/)

According to Articles 275 and 263 of the Treaty of the Functioning of the EU, sanctioned persons may also challenge the Council's listing decision before the European General Court ("**EGC**").

The European Court of Justice ("**ECJ**") may also review whether UN Sanctions, specifically those related to listings, are in accordance with EU primary law. For illustration purposes, a respective judgment can be found at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62005CJ0402&from=DE

2.6 How does the public access those lists?

The sanctions search tool maintained by the EU, the so-called "**EU Sanctions Map**" (available at https://www.sanctionsmap.eu), serves as a good starting point for an initial assessment on whether Germany maintains sanctions against a particular jurisdiction, individual or entity.

An overview of sanctions with a focus on specific jurisdictions can be found at https://www.bafa.de/SharedDocs/Downloads/DE/Aussenwirtschaft/afk_embargo_uebersicht_laenderbezogene_embargos.pdf?__blob=publicationFile&v=6

An overview of sanctions with a focus on specific individuals/entities, the so-called EU Consolidated List of persons, groups and entities subject to EU Financial Sanctions, can be found at https://data.europa.eu/euodp/en/data/dataset/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions

German companies also regularly screen against the UN Sanctions List and sanctions lists from jurisdictions in which they do business or with which they otherwise interact, such as the US (OFAC Sanctions List) and the UK (OFSI Consolidated List).

Searching and consolidating hundreds of sanctions lists is laborious and therefore companies often rely on screening list data vendors. There are different types of vendors including traditional, innovative and niche vendors on the market:

- More traditional vendors provide and enrich the data through their own research and consolidate all relevant and available sanctions lists and other lists (e.g., suspected money laundering and terrorism financing). Usually, these vendors additionally offer rule-based screening tools.
- More innovative vendors employ advanced analytics, e.g., natural language processing models, to technically enhance sanctions list data in multiple languages and detect connected parties through entity resolution technology.
- Some niche vendors focus on building up video and image databases for these lists to enable companies to detect individuals using other names to disguise their real identity or individuals that are not publicly known by name, which is especially relevant for terrorism financing.

When selecting a vendor, companies should focus on factors like list update management (e.g., frequency) and scope of available data points for each list entry.

How can companies manage those lists?

Managing screening lists is a relevant exercise for companies as list data is one of the two key data inputs used for list screening models together with client (static) data. Consequently, managing the quality and scope of these lists is crucial for increasing risk coverage and efficiency in screening results.

List management is a frequent source of inefficiency in the name-list screening process. In many cases, screening list data

providers deliver a complete set of lists but do not support their clients in choosing the relevant list screening scope for them. This can result in the tendency to screen a client portfolio against too many lists, some which may be irrelevant to the company's business model, geographic scope of operations, and risk appetite. By selectively defining the list scope, fewer alerts (and, in turn, fewer false positives) will be created, automatically leading to an improvement in efficiency.

List scope can be defined by aligning, for example, the geographic scope to the company's countries of operation with the relevant sanctions regimes, the products subject to sanctions, or the depth of the screening level. Moreover, the list scope should be based on risk appetite. While sanctions are usually assessed as a zero-tolerance risk, within other suspected money laundering and terrorism financing relevant lists, the list scope can usually be reduced significantly.

What does ongoing monitoring involve and what is its relevance to businesses?

Ongoing monitoring requirements in Germany involve different types of screening with varying levels of complexity that depend on the type of company. The most comprehensive screening requirements are found in the German financial services industry. Here companies are expected to conduct sanctions screening at several stages of the relationship life cycle. There are two major types of sanctions screening processes – the client/vendor/employee screening and the transaction screening.

The client/vendor/employee screening is carried out as part of the onboarding due diligence procedures and then daily across the entire portfolio to cover potential changes either in list data or client/vendor/employee data. A typical challenge that can be observed with this type of screening is the complexity of screening connected parties (e.g., UBOs, supply chain, etc.) as these are often difficult to identify. In addition, missing regular and event-driven review triggers often lead to outdated data points making the detection of suspicious activity more error-prone.

Transaction screening is conducted as part of the payment process for each transaction before it is released. In this case, the counterparty of the transaction rather than the bank's customer is subject to screening against sanctions lists. In the transaction screening process, the typical challenges concern the implementation of the requisite technological capabilities. Robust payment screening technology is required to enable *ex-ante* screening of transactions, which must be stopped from processing until sanctions screening has been conducted on very short time-scales. As compared to client screening, transactions screening is further complicated by the fact that payment transactions data often contain limited information about the counterparty and that often the extraction process of relevant screening information from the transaction data is complex (e.g., in trade finance transactions).

In both cases, applying new technology capabilities can help overcome some of the inherent challenges concerning sanctions screening. Advanced analytics techniques, such as contextual data enrichment and entity resolution, can help companies to enhance effectiveness and efficiency. Consequently, if ongoing monitoring is done thoroughly, companies can better manage their actual risk exposure and make informed decisions, e.g., about taking a new client into their portfolio or keeping an existing one.

What causes higher false positives and how can organisations manage false positives better?

The screening approach currently applied by most companies follows the logic of data inputs (e.g., client static data, sanction list data, etc.) that are fed into a detection model. This model usually employs (fuzzy) name matching logic to compare the client data with the list entries and, as a result, provides a confidence score. The company defines a threshold based on its risk appetite starting from which confidence level a match is considered suspicious and an alert is created.

There are three main areas companies can focus on to improve on managing false positives:

- Data: Often, it can be observed that only a limited number of data points is included and that relevant information, such as, for example, date of birth is not part of the data fields used by name-matching algorithms. Contextual data enrichment and entity resolution can help to make connections and transfer relevant screening information, e.g., collected in the KYC process, to increase the probability of a name match or automatically discount due to disconfirming information. Poor data quality in client data management systems can also cause higher numbers of false positives. In this case, clear policies and procedures, a strong risk culture raising awareness, especially in the first line of defence, and intuitive tooling that supports data collection and update processes can help companies to improve data quality over time.
- Detection: Traditional screening tools often still deploy static rule-based detection algorithms that focus on exact name matching, running the risk of missing out on relevant alerts. A good approach to improving screening detection algorithms is typically, on the one hand, to increase sensitivity of the matching logic (e.g., through the use of a string distance measure such as the Levenshtein ratio, tokenisation, phonetic algorithms, etc.) in order to increase risk coverage and, on the other hand, to reduce false positive alerts by including additional data points such as customer static data as described above, implementing feedback loops to tune the algorithms over time or using more advanced machine learning algorithms to increase precision and efficiency.
- Alert handling: It can be observed in the market that alerts are often handled on a first-in-first-out-principle leading to a lack of transparency on the actual risk exposure and potential longer lead times to handle risks properly. Technology can support alert handling to focus on the most relevant alerts by employing techniques such as risk-based alert segmentation, alert triage or alert hibernation to suppress obvious false positive alerts, prioritise the ones with highest risk exposure and route them to the respective reviewer to enable process efficiency.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

For an explanation of the different types of sanctions, please see question 1.1.

The UN, the EU and, correspondingly, Germany currently do not apply embargoes against any country or region.

However, Belarus, North Korea, Russia and Russian-occupied areas of Ukraine, in particular Crimea, Sevastopol and parts of the oblasts of Donetsk, Kherson, Luhansk and Zaporizhzhia, are currently subject to comprehensive sanctions.

2.8 Does your jurisdiction maintain any other sanctions?

Germany applies sanctions targeting, to a different extent, countries and/or persons from several non-EU countries as listed herein (https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/Embargos/embargos_node.html). As of July

21, 2023, those countries are: Armenia; Azerbaijan; Belarus; Burundi; Central African Republic; China; Democratic Republic of the Congo; Guinea; Guinea-Bissau; Iran; Iraq; Lebanon; Libya; Mali; Moldova, Myanmar (Burma); Nicaragua; North Korea; Russia; Somalia; South Sudan; Sudan; Syria; Tunisia; Turkey; Ukraine (in particular, non-government controlled areas); Venezuela; Yemen; and Zimbabwe.

2.9 What is the process for lifting sanctions?

The same procedure for the imposition of sanctions applies to the revocation of sanctions; please refer to question 2.1 above.

Accordingly, the decision by the Council must also be unanimous. This requirement has led to EU Sanctions regulations often containing an end date so that, instead of a uniform decision to lift them, a uniform decision to maintain the sanctions will usually be required every six months.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes.

The EU's export control regime for dual-use items governed by Regulation (EU) 2021/821 ("**Dual-Use Regulation**") is binding and directly applicable in Germany. This export control regime includes:

- export control rules, including assessment criteria and types of authorisations (individual, global and general authorisations);
- a common EU list of dual-use items;
- provisions for end-use controls on non-listed items in certain cases (e.g., cyber-surveillance items which could be used for serious human rights violations);
- controls on brokering and technical assistance relating to dual-use items and their transit through the EU;
- control measures and compliance to be introduced by exporters; and
- provisions on administrative cooperation, implementation and enforcement through EU Member States.

Further EU's export control regulations directly applicable in Germany include Regulation (EU) 258/2012 ("**Firearms Regulation**") and Regulation (EU) 2019/125 ("**Anti-Torture Regulation**").

Control of exports of military technology and equipment in the EU is governed by Council Common Position 2008/944/CFSP, which defines common rules as binding for EU Member States, and the corresponding EU Common Military List. The Common Position includes criteria for the assessment of the export licence applications and some further rules. It does not affect the right of EU Member States to operate more restrictive national policies.

On that basis, Germany maintains a discrete and complex national export control regime regulated in AWG and AWV. In particular, Germany maintains its national Export Control List in Annex AL to AWV, which includes military goods controls (Part I Section A), additional items controlled nationally (Part I Section B) and certain vegetable products (Part II).

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Yes.

Germany enforces the EU Blocking Statute (as amended, the "**EU Blocking Statute**"), and the AWV also includes the prohibition against declaring adherence to a foreign boycott. Further, the GDPR, while having the primary function of protecting the personal data and privacy rights of EU data subjects, in practice can sometimes act as a "blocking statute" prohibiting transfers to non-EEA countries or the processing of personal data pursuant to obligations that arise outside of EU or EU Member State law.

EU Blocking Statute

The effect of the EU Blocking Statute is to prohibit compliance by EU entities with, *inter alia*, the re-imposed U.S. sanctions on Iran as well as certain U.S. sanctions on Cuba, the most relevant being those deriving from the application of certain parts of the U.S. Cuban Liberty and Democratic Solidarity Act of 1996, the so-called "*Helms-Burton Act*".

The EU Blocking Statute was originally enacted in 1996 as a countermeasure to certain U.S. extraterritorial sanctions against Cuba, Libya, and Iran. The EU viewed these sanctions as a violation of international law, a threat to international trade and an impairment of the interests of "EU operators". Consequently, pursuant to its preamble, the EU Blocking Statute sought to protect against the "*effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom*". To achieve that goal, the EU Blocking Statute, *inter alia*, prohibits compliance with any legal acts listed in the regulation which "*purport to regulate activities of natural or legal persons under the jurisdiction of a Member State*". The Member States of the EU are responsible for implementing sanctions to be imposed in the event of a breach. Germany does so by penalising a breach of the EU Blocking Statute as an administrative offence with a maximum fine of EUR 500,000 with the potential of additional forfeit of gains.

In addition, the EU Blocking Statute nullifies the effect of foreign court judgments based on relevant legal acts in the EU, hinders service and discovery requests, such as those deriving from Helms-Burton Act claims, and establishes a reporting obligation as well as a right to recover damages. These effects and obligations have been discussed in depth at https://www.gibsondunn.com/new-iran-e-o-and-new-eu-blocking-statute-navigating-the-divide-for-international-business/

It remains to be seen whether the fact that the EU itself has entered the terrain of extraterritorial sanctions (see below under question 2.12) will influence the continuing existence and application of the EU Blocking Statute.

Boycott Declaration Prohibition

Section 7 sentence 1 of the AWV states: "*The issuing of a declaration in foreign trade and payments transactions whereby a resident participates in a boycott against another country (boycott declaration) shall be prohibited (…).*"

There is no precedent clarifying the exact scope, but it is a common understanding among sanctions practitioners in Germany that, unlike the EU Blocking Statute, Section 7 of the AWV does not prohibit mere compliance with foreign sanctions; rather, it specifically prohibits the *issuing of a declaration* to do so.

Section 7 sentence 2 of the AWV further clarifies that "[*The boycott declaration prohibition*] *shall not apply to a declaration that is made in order to fulfil the requirements of an economic sanction by one state against another state against which the Security Council of the United Nations in accordance with Chapter VII of the United Nations Charter, the Council of the European Union in the context of Chapter 2 of the Treaty on European Union or the Federal Republic of Germany has also imposed economic sanctions*".

This only leaves a narrow window of application of Section 7 of the AWV. As an example, due to no UN, EU and, accordingly, German sanctions implemented or applied against Cuba, the issuing of a boycott declaration relating to Cuba in the context of a German *nexus* should be approached carefully.

General Data Protection Regulation

Sanctions screening involves screening customer data against designated sanction lists. The very act of inputting a name (or, indeed, other details such as address, nationality, passport, tax ID, place of birth, date of birth, former names and aliases) into a sanctions screening tool or the filing of a Suspicious Activity Report ("**SAR**") could qualify as an act of personal data processing under the GDPR.

The processing of personal data is lawful under the GDPR when conducted in line with one of the legal bases provided in the regulation, such as when it is "(…) *necessary for compliance with a legal obligation to which the controller is subject (…)*" as per Article 6(1)(c) of the GDPR. While a German company may be able to rely on EU sanctions law as a "*legal obligation*" justifying the screening of personal data under some circumstances, this may not necessarily be the case for sanctions screening due to U.S. and other third-country sanctions, export control laws and regulations – which stem from a "*legal obligation*" arising outside of EU or EU Member State law.

For personal data transfers to the U.S., on July 10, 2023, the European Commission adopted its adequacy decision for the EU-U.S. Data Privacy Framework, concluding that the U.S. ensures an adequate level of protection for personal data transferred from the EU to companies participating in the Framework.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "Secondary Sanctions")?

Yes, without explicitly recognising that these are Secondary Sanctions.

The EU has historically strongly opposed Secondary Sanctions and even enacted the EU Blocking Statute prohibiting compliance by EU entities with certain extraterritorial sanctions of the U.S.

However, after Russia launched a full-scale invasion of Ukraine in February 2022, setting off the largest armed conflict in Europe since World War II, the EU introduced certain elements at least reminiscent of Secondary Sanctions in its Russia sanctions regulations, which are directly applicable in Germany.

In particular, the new version of Art. 3(1)(h) of Council Regulation (EU) 269/2014 ("**Reg 269/2014**") introduced within the 8th sanctions package of October 5, 2022 provides for a listing criterion targeting persons facilitating infringements of the prohibition against circumvention of EU sanctions against Russia. Such persons can now be added to EU sanctions lists, thus becoming subject to an asset freeze. Such risk exists if a non-EU person facilitates infringement of the circumvention prohibition (i.e., the prohibition to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent EU sanctions) committed by a person under EU jurisdiction.

Furthermore, within the 11th sanctions package of June 23, 2023, the EU introduced a novel anti-circumvention tool in Art. 12f of Council Regulation (EU) 833/2014 ("**Reg 833/2014**"), allowing to restrict exports of certain goods to third countries whose jurisdiction is demonstrated to be at high risk of being used for circumvention of EU sanctions against Russia. No countries or goods have yet been designated under this provision. Therefore, the provision is the first step to signal to countries with a certain unusual development in their exports to Russia that the EU is willing to take the next level of escalation, if need be (e.g., Kazakhstan, Georgia, Armenia, Turkey, Azerbaijan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan etc.). At the same time, the designation of a third country under this regime is considered to be an exceptional, last-resort measure, which shall be taken only if individual measures and further dialogue with the third country proved inefficient to prevent systemic circumvention.

Despite these remarkable developments towards Secondary Sanctions, the Consolidated FAQs of the European Commission on EU sanctions against Russia still claim that EU sanctions are never extraterritorial and do not apply to non-EU companies that do business entirely outside the EU. It remains to be seen whether the EU will recognise its adherence to Secondary Sanctions as a legitimate policy instrument at least in certain exceptional cases.

Furthermore, please note that EU Sanctions regularly apply to *business carried out in whole or in part in the EU*. Given the tendency of the ECJ and European Commission to interpret sanctions provisions broadly and the lack of any indications that a *de minimis* interpretation would be available, this jurisdictional criterion can significantly expand the reach of EU Sanctions. With respect to this criterion, it has been argued in German commentary literature that the use by non-EU companies of servers located within the EU for the conclusion of a contract or execution of a transaction relevant from the EU sanctions perspective would suffice to establish the necessary EU *nexus*. Another example of how EU jurisdiction might be established under this provision, as mentioned in German commentary literature, includes the use of SWIFT by non-EU companies for payments in connection with transactions relevant from the EU sanctions perspective, given that SWIFT is a society incorporated under Belgian law.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Broadly speaking, any parties and transactions with a nexus to Germany and/or the EU may be subject to sanctions as well as export control laws and regulations applicable in Germany.

In Germany specifically, any trade in goods, services, capital, payments and other types of trade with foreign (*i.e.*, non-German) territories, as well as the trade in foreign valuables and gold between residents of Germany ("*Außenwirtschaftsverkehr*"), while not restricted *per se*, is subject to Germany's sanctions and export control laws and regulations, specifically to the restrictions of the AWG and AWV.

This also includes restrictions under international agreements, which the German legislative bodies have approved in the form of federal acts, such as the Wassenaar Arrangement, the Nuclear Suppliers Group, the Australian Group and Missile Technology Control Regime and legal provisions of the bodies of international organisations to which the Federal Republic of Germany has transferred sovereign rights (*i.e.*, the EU).

EU Sanctions, in turn, generally apply: (i) within the territory of the EU; (ii) on board of any aircraft or vessel under the jurisdiction of an EU Member State; (iii) to any person inside or outside the territory of the EU who is a national of an EU Member State; (iv) to any legal person, entity or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of an EU Member State; and (v) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Yes.

Any individual or entity obliged to comply with EU Financial Sanctions, regularly EU banks and financial institutions, that know or have reasonable cause to suspect that they are in control or in possession of, or are otherwise dealing with, the funds or economic resources of a person subject to EU Financial Sanctions, must: (i) freeze the funds and specifically not deal with them or make them available to, or for the benefit of, the designated person; and (ii) report the funds or economic resources to the competent authority of the EU Member State (in Germany, the German Federal Bank). See question 3.4 for further details on reporting.

Making payments to a bank account of a sanctioned person is prohibited, unless specifically authorised by a competent authority or unless it is reasonably determined that the funds will not be made available to the sanctioned person. EU banks may credit frozen accounts insofar as it can be ascertained that the incoming funds are frozen upon being credited to the account.

For specific questions on freezing of funds and/or making available economic resources, please see the respective Commission opinion of June 19, 2020, available at https://finance.ec.europa.eu/system/files/2020-06/200619-opinion-financial-sanctions_en.pdf and FAQs on sanctions against Russia and Belarus regarding asset freeze and prohibition to provide funds or economic resources as of May 10, 2023, available at https://finance.ec.europa.eu/publications/asset-freeze-and-prohibition-provide-funds-or-economic-resources_en

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Yes.

For EU Financial Sanctions, *e.g.*, those based on Reg 269/2014, the competent authorities of the EU Member State to enforce such EU Financial Sanctions (in Germany, the German Federal Bank) may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources in certain cases laid down in Articles 4-6e of Reg 269/2014, *e.g.*, after having determined that the release of funds or economic resources concerned is necessary to satisfy the basic needs of the sanctioned person.

For EU Economic Sanctions, *e.g.*, those based on Reg 833/2014, the competent authorities of the EU Member State to enforce such EU Economic Sanctions (in Germany, BAFA) may authorise certain transactions, *e.g.*, the sale of dual-use goods for non-military use in Russia intended for medical or pharmaceutical purposes.

For specific licences related to the EU Blocking Statute, the respective request should be sent to the European Commission's dedicated EU Blocking Statute team at: EC-AUTHORISATIONS-BLOCKING-REG@ec.europa.eu.

The German export control regime also includes exceptions and authorisation requirements. A more detailed description on the respective process can be found at https://www.bafa.de/EN/Foreign_Trade/Export_Control/export_control_node.html

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Yes.

According to the respective provisions of EU Financial Sanctions, i.e., Article 8 of Reg 269/2014, those who are subject to EU Financial Sanctions must: (i) supply immediately any information which would facilitate implementation of the Regulation to the competent authority of the EU Member State, in Germany accordingly, to the German Federal Bank; and (ii) cooperate with the competent authority in any verification of such information.

In German law, Article 10 of SanktDG stipulates a similar reporting requirement of a sanctioned person: (i) to report their funds or economic resources to ZfS; and (ii) to cooperate with the ZfS in any verification of such information. This requirement is triggered only if the EU Regulation providing for Financial Sanctions does not already provide for a respective requirement.

Further, there are additional reporting obligations in place, partly deriving from more specific banking-related laws, *e.g.*, those applicable specifically to financial institutions. Such organisations are expected to report information about sanctioned individuals through SARs. This must be reported to the German Federal Bank, which is responsible for the implementation of EU Regulations on Financial Sanctions in Germany, and/or the FIU. Specifically, in case of asset freezes due to EU Financial Sanctions, banks and financial institutions must provide information about any funds, accounts, assets, BIC codes, reference numbers, amounts and dates connected with the sanctioned individuals and entities.

How can technology support regulatory reporting?

As suspicious activity reporting (SAR) in the sanctions area is observed less frequently than in anti-money laundering (AML), the process to reporting is less standardized in Germany. AML SARs are reported through a portal (GoAML) that can be supported by technology through measures such as the automated creation of a XML file containing all relevant data regarding the client, the transaction and the counterparty subject to reporting, through automated data extraction mechanisms and the deployment of narrative generation algorithms. In contrast, the approach to reporting sanctions alerts in Germany is by sending a rudimentary form via mail, fax or e-mail to the BAFA, leaving less room for automation. From an audit perspective, it can still be helpful to employ technologies such as narrative generation in the rarer cases of sanctions reporting to ensure consistency as well as creating a simple management information dashboard to gain insights on the company's reporting processes (e.g., point in time when transaction was intended to be carried out, time elapsed until reporting is filed, etc.).

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

Both the EU, via Commission Recommendation 2019/1318 on internal compliance programmes for dual-use trade controls, and Germany, *via* BAFA Leaflet on Internal Compliance Programmes (ICP) for company-internal export control systems, and German Federal Bank Guidance on compliance with financial sanctions, have become vocal on how they expect individuals and companies under their jurisdiction to implement sanctions and export control laws and regulations.

In principle, while there is no obligation to maintain a compliance programme, the responsible persons must prove "the due

care of a prudent manager faithfully complying with his duties" (see BAFA Leaflet on Internal Compliance Programmes (ICP) for company-internal export control systems, referring to section 93 of the German Stock Corporation Act), which will be – to say the least – facilitated by maintaining a risk-based compliance programme.

The guidance provided by the European Commission, BAFA and German Federal Bank is similar and suggests that in the area of sanctions and export control the management should set up an internal export control programme, which should include the following components: a regularly repeated risk assessment; management commitment to the objectives of sanctions and export control compliance; an organisational structure and distribution of responsibilities reflecting the results of the risk assessment; sufficient human and technical resources and other (IT) work equipment to address the identified risks; appropriate process organisation; record-keeping and storage of documents; diligent staff selection, training and awareness raising, as well as regular reviews of process and system controls (ICP audits), taking appropriate corrective actions if needed; the establishment of a whistleblower system; and assuring physical and technical security.

Is there any reference or due diligence recommendation available?

In addition to the guidance from the European Commission, BAFA and German Federal Bank outlining the requirements for Internal Compliance Programmes as mentioned above, the BAFA has published a Leaflet on Article 5 of Dual-Use Regulation, which contains specific guidelines for the due diligence in connection with controls of non-listed cyber-surveillance items. In particular, these guidelines refer to a three-stage, transaction-related screening process based on item, destination and end-user reference points to be conducted as part of the due diligence.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes.

Violations of EU Sanctions and German foreign trade law, including Germany's export control regime, may be punished as criminal offences or as administrative offences. Intentional violations constitute criminal offences. According to Section 17(1) AWG, for example, a violation of an arms embargo constitutes a criminal offence and is punishable by imprisonment of up to 10 years. Furthermore, a fine may be imposed and determined according to the perpetrator's individual financial situation/income and the offence.

Provisions on criminal offences and penalties can be found in Sections 17 and 18 AWG, Section 80 AWV and Section 16 SanktDG.

Negligent violations of EU Sanctions and German foreign trade law, including Germany's export control regime, are generally considered administrative (regulatory) offences. "Negligence" is defined as not exercising the necessary standard of care ("*Fahrlässigkeit*"). As per Section 19(6) AWG, such administrative offence may result in a fine of up to EUR 500,000 per offence and forfeit of gains resulting from the administrative offence committed.

Further details can be found at: http://www.bafa.de/SharedDocs/Downloads/DE/Aussenwirtschaft/afk_merkblatt_icp_en.pdf?__blob=publicationFile&v=3

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The authority responsible for investigating and prosecuting criminal Economic Sanctions is the public prosecutor's office at the court which exercises local jurisdiction over the breach of sanctions (Section 143(1) of the Courts Constitution Act ("**GVG**")).

The competent public prosecutor's office will be assisted by the competent authority administering the sanctions (in cases of Financial Sanctions, the ZfS and German Federal Bank, and in cases of Economic Sanctions, the BAFA). Furthermore, as noted above, the public prosecutor's office may rely on certain offices within the German Customs Administration for conducting criminal investigations; see question 1.2 above.

Only in rare and extremely exceptional cases may the Federal Prosecutor General take over the investigation (Section 142a GVG); *e.g.*, if the sanctions violation investigated has the potential to disrupt or endanger national security or external security of the foreign relations of the Federal Republic of Germany.

4.3 Is there both corporate and personal criminal liability?

While the concept of corporate criminal liability does not exist under German law, corporations may still face administrative penalties based on the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz*) ("**OWiG**").

Specifically, under Section 30 OWiG, the corporation may be fined if certain executive employees, specifically executive employees with the power to represent the corporation, have committed a criminal offence or a regulatory offence, *e.g.*, a breach of applicable sanctions laws and regulations, as a result of which duties incumbent on the corporation have been violated, or where the corporation has been enriched or was intended to be enriched.

Furthermore, under Section 130 OWiG, if the owner or certain executive employees, specifically executive employees with the power to represent the corporation, intentionally or negligently omit to take the supervisory measures required to prevent contraventions, *e.g.*, breaches of applicable sanctions laws or regulations, such owner or executive employee may be held liable. An example of this would be the failure to implement an effective internal compliance programme resulting in a breach of sanctions laws or regulations by an employee whom the owner or the executive employee was supposed to supervise.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

In general, and if a maximum fine is not specified in the particular law, the maximum fine for individuals should not exceed EUR 1,000 (see Section 17(1)OWiG). However, Section 19(6) AWG punishes administrative offences of individuals in the context of sections 19(1), 19(3)(1)(a), 19(4)(1)(1) with a maximum fine of up to EUR 500,000. Other administrative offences regarding the AWG are to be punished with a maximum fine of up to EUR 30,000. The exact amount depends on the economic circumstances of the perpetrator.

According to Section 30(1) OWiG, if a criminal or administrative offence which violates the responsibilities of or enriches or was supposed to enrich a legal entity is committed: by the body or a member of the body that is authorised to represent that legal

entity; by the executive or a member of the board of directors of an association; by a shareholder authorised to represent that legal entity; or by any other executive, then the legal entity itself can be punished with an administrative penalty. In the case of an intentional criminal offence, a fine of up to EUR 10 million can be imposed; in the case of a negligent criminal offence, a fine of up to EUR 5 million can be imposed (Section 30(2)(1) OWiG). If the violation in the context of Section 30(2) OWiG is an administrative offence, the maximum fine is governed by the particular violated law, Section 30(2)(2) OWiG. If the particular law governing the administrative offence refers to Section 30(2)(3) OWiG, the maximum fine shall be multiplied by 10.

In any case, the maximum fine can be significantly higher if Section 17(4)(1) OWiG is applicable, which states that the fine is supposed to be higher than the economic advantage for the perpetrator ("*disgorgement*"). According to Section 17(4)(2) OWiG, every particular maximum fine could therefore be exceeded significantly if the economic advantage for the perpetrator is higher than the maximum fine. These provisions are explicitly applicable in the context of fines against legal entities under Section 30(1) OWiG (*see* Section 30(3) OWiG).

4.5 Are there other potential consequences from a criminal law perspective?

Yes.

Another potential consequence of a violation of Sections 17-19 AWG, Sections 80-82 AWV and Sections 16-17 SanktDG is that the objects to which the criminal or administrative offence relates and objects which were used or intended for the committing or preparation may be confiscated pursuant to Section 20 AWG or Section 18 SanktDG.

In practice, a breach has practical consequences with regard to the customs authority. In response to a breach, the customs authority may suspend or revoke authorisations or customs simplifications that have been granted. The consequences particularly affect export-oriented companies. Finally, the audits carried out by a customs authority depend on the risk profile of the company. Thus, if the customs authority has noticed an increase in the number of infringements committed by the company in foreign trade and has already imposed fines, the frequency of the company's audit automatically increases.

As a further potential consequence, according to Section 124(1)(3) of the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*) ("**GWB**"), contractual authorities may exclude a company from participating in any award procedure if the company has committed serious misconduct while doing business, resulting in the questioning of its integrity. As the awarding authority has the discretion to assess if a company has committed serious misconduct, resulting in the questioning of its integrity and possibly a violation of Sections 17, 18, or 19 AWG, this could lead to an exclusion according to Section 124(1)(3) GWB.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

Yes.

For civil penalties which can be imposed on corporations, please see questions 4.3 and 4.4 above.

Provisions on administrative offences and civil penalties which can be imposed on individuals are laid down in Section 19 AWG, Sections 81 and 82 AWV and Section 17 SanktDG.

Penalties for violations of EU sanctions are in particular provided for in Sections 19(1)(1) and 19(5) AWG and Section 82 AWV.

4.7 Which government authorities are responsible for investigating and enforcing civil Economic Sanctions violations?

The local public prosecutor's office ("*Staatsanwaltschaft*") and main customs office ("*Hauptzollamt*"), with assistance of the ZfS, German Federal Bank and BAFA, are responsible. See question 1.2.

4.8 Is there both corporate and personal civil liability?

Yes.

Both corporate and personal civil liability may occur as a result of a breach of EU sanctions.

Companies may be held liable for regulatory offences as described above in questions 4.3 and 4.4. In addition, companies may also become subject to general civil liability.

Individuals may be held liable for regulatory offences as described above in question 4.6. In addition, personal liability may arise under civil law for members of the Management Board in light of Section 93(3) of the German Stock Corporation Act.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

Please see question 4.4 above.

4.10 Are there other potential consequences from a civil law perspective?

Please see question 4.5 above regarding criminal liability and question 4.8 regarding civil liability.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

The local public prosecutor's office and main customs office are in charge of investigating administrative offences and imposing regulatory fines.

The imposition of fines is regulated in Section 17(3) OWiG. The assessment of fines is made at the discretion of the imposing authority and shall primarily consider the significance of the regulatory offence and the degree of fault by the perpetrator. Financial circumstances of the perpetrator can also be taken into account. The necessity to disgorge the profits of the perpetrator in accordance with Section 17(4) OWiG (see also question 4.4 above) is also regularly taken into account.

Resolutions by the competent authorities are typically not public.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

In principle, the person or company concerned may appeal the decision imposing a fine. As a consequence, the authority which imposed the fine may decide to grant the appellant's request. Otherwise, the matter is brought before the court.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

The local public prosecutor's office and main customs office, with the assistance of the ZfS, German Federal Bank and BAFA, prosecute violations of EU sanctions and German export control laws on a national level; see questions 1.2, 4.2 and 4.7 above.

In parallel, the ZfS enforces the asset freeze and the prohibition to make available funds or economic resources adopted by the EU within the framework of Financial Sanctions.

4.14 What is the statute of limitations for Economic Sanctions violations?

The applicable statute of limitations is based on whether the sanctions violation is considered a crime or an administrative offence. Further, the statute of limitations applicable in cases where the sanctions violation is considered a crime depends on the maximum prison term associated with the specific sanctions violation.

In cases where the sanctions violation is a crime, specifically in cases of an intentional violation of an arms embargo, the limitation period is 10 years (Section 17(1) AWG, Section 78(3)(3) StGB). Under certain perpetrator-related circumstances (*e.g.*, gang membership), the limitation period is 20 years (Section 17(3) AWG, Section 78(3)(2) StGB). For intentional violations of typical EU sanctions provisions, the limitation period is five years (Section 18(1) AWG, Section 78(3)(4) StGB).

In cases where the sanctions violation is an administrative offence, *e.g.*, in cases of negligent breach of EU sanctions, the limitation period is three years (Section 19 AWG, Section 31(2)(1) OWiG).

5 General

5.1 If not outlined above, what additional Economic Sanctions–related measures are proposed or under consideration?

Further packages of EU sanctions against Russia can be expected in the light of Russia's ongoing war of aggression against Ukraine.

5.2 Please provide information for how to obtain relevant Economic Sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

Official information regarding EU sanctions is published and frequently updated on a sanctions map provided by the European Commission, which can be accessed at https://www.sanctionsmap.eu/#/main

The above-mentioned EU law can also be found online on EUR-Lex. For example, see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT for the TFEU and https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012M%2FTXT for the TEU

German law is publicly accessible at https://www.gesetze-im-internet.de/titelsuche.html. A list of laws available in English can be accessed at https://www.gesetze-im-internet.de/Teilliste_translations.html (please be aware of the disclaimer under "*User-Notice*").

An influential source of guidance on EU sanctions against Russia and Belarus are the Consolidated FAQs of the European Commission, which are being published and continuously updated at https://finance.ec.europa.eu/publications/consolidated-version_en

Germany is among the few EU countries which have published an own detailed guidance on EU sanctions against Russia.

In particular, the German Federal Ministry for Economic Affairs and Climate Action ("*Bundesministerium für Wirtschaft und Klimaschutz*") ("**BMWK**"), which is the Ministry supervising the BAFA and thus in charge of Economic Sanctions, has published the FAQs on EU sanctions against Russia, which are gaining considerable influence through their level of detail. The BMWK FAQs can be accessed at https://www.bmwk.de/Redaktion/DE/FAQ/Sanktionen-Russland/faq-russland-sanktionen.html (in German).

The German Federal Bank has also published detailed FAQs on EU Financial Sanctions, particularly addressing sanctions against Russia and Belarus, which can be accessed at https://www.bundesbank.de/resource/blob/886614/a0d6f1533ec63ed763765ed797ef178f/mL/faq-finanzsanktionen-data.pdf (in German).

The introductory leaflet published by the BAFA is very comprehensive and valuable to those new to this area of law as well as experienced practitioners. This around 40-page document can be downloaded free of charge at https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/Allgemeine_Einfuehrung/allgemeine_einfuehrung_node.html

For comprehensive current developments and more detailed information on, in particular, individual sanctions regimes, see – *inter alia* – https://www.gibsondunn.com/2022-year-end-sanctions-and-export-controls-update/

A deeper insight into U.S. sanctions law is recommended: Adam Smith/Stephanie Connor/Richard Roeder, in *U.S., EU, and UN Sanctions: Navigating the Divide for International Business*, published by Bloomberg Law in 2019.

Gibson Dunn's International Trade practice and the lawyers on our global sanctions team can help navigate the complex web of varying obligations and restrictions.

AlixPartners helps clients across the globe with sanctions risk analytics, forensics, and risk management transformation (see https://www.alixpartners.com/services/investigations-disputes-risk/investigations-compliance/).

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AlixPartners works with clients around the world, helping businesses respond to challenges when everything is on the line – from urgent performance improvement to complex restructuring, from risk mitigation to accelerated transformation. The firm conducts investigations, serves as independent compliance monitor, and performs data collection globally and at a moment's notice. They also help companies decrease compliance risk through effective controls and compliance procedures.

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

The Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**"), being a special administrative region of the People's Republic of China ("**PRC**"), has no autonomous sanctions regime as the matters concerning foreign affairs are within the ambit of the Central People's Government of the PRC.

Hong Kong only implements sanctions imposed by the resolutions of the Security Council of the United Nations ("**UNSC**"), under the United Nations Sanctions Ordinance (Cap. 537) ("**UNSO**"), to the extent that they are against persons and places outside the PRC. Under the UNSO, the Chief Executive of Hong Kong ("**CE**"), makes regulations ("**UNSO Regulations**") to give effect to the UNSC's sanctions, upon receipt of instructions from the Ministry of Foreign Affairs of the PRC ("**MFA**").

While UNSO is the designated legislative framework for implementing UNSC's sanctions, the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("**UN(ATM)O**") gives effect to not only the UNSC resolutions but also the recommendations of the Financial Action Task Force ("**FATF**", of which Hong Kong is a member), which is aimed at preventing the financing of terrorist acts and combatting threats posed by foreign terrorists.

In parallel, there is other legislation complementing the sanctions regime underpinned by UNSO, which is comprehensive. In view of the potential time gap between the making of the UNSO Regulations and the issuance of instructions by MFA to the CE, the following legislation has been implemented to supplement the sanctions regime in Hong Kong:

- The Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526) and the Chemical Weapons (Convention) Ordinance (Cap. 578) have been enacted to counter the proliferation of weapons of mass destruction.
- The Import and Export Ordinance (Cap. 60) and its subsidiary legislation regulate and restrict export to and import from countries of certain goods and impose strategic trade control.
- The Immigration Ordinance (Cap. 115) regulates the entry into or transit through Hong Kong by individuals.
- The Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("**AMLO**"), Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) ("**DT(ROP)O**") and Organized and Serious Crimes Ordinance (Cap. 455) ("**OSCO**") address the risks associated with money laundering, terrorist financing and proliferation financing.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

A number of government agencies share responsibility for administering and/or enforcing the sanctions regime in Hong Kong, including:

- The Commerce and Economic Development Bureau ("**CEDB**") is responsible for the dissemination of information in relation to UNSC's sanctions. After UNSO Regulations have been gazetted, the CEDB will issue press releases and notify the concerned bureaux and departments, which will in turn notify the stakeholders under their respective purviews. The CEDB also maintains on its website the lists of individuals and entities subject to the UNSC's sanctions. See further discussion in question 2.4 below.
- The Trade and Industry Department ("**TID**") is tasked with the regulation of import and export control on strategic commodities, which includes munition items, chemical and biological weapons, and other goods that have the potential to be developed into weapons of mass destruction.
- The Hong Kong Monetary Authority ("**HKMA**") and Securities and Futures Commission ("**SFC**") have the responsibility of supervising authorised and licensed institutions, to ensure compliance with the laws and regulations in Hong Kong, including the AMLO, DT(ROP)O and OSCO.
- The Hong Kong Police Force ("**Police**") and the Customs and Excise Department ("**Customs**") are the enforcement agencies of the UNSO. The Police focuses on the enforcement of financial sanctions, and sanctions on financial transactions or transfer of funds, and the Customs focuses on the enforcement against the supply, sale or transfer of arms, and other items subject to sanctions.

- The Joint Financial Intelligence Unit ("**JFIU**") is managed and operated by both the Police and the Customs. The JFIU is responsible for receiving and processing the Suspicious Transaction Reports ("**STR**"), which should be filed when one notices any suspicious transactions under the OSCO, UN(ATM)O, DT(ROP)O and AMLO.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

There have been significant developments in reinforcing the regime against money laundering, terrorist financing and other related threats through judicial decisions and regulatory efforts, notably:

- When financial institutions file a STR concerning activities of certain account(s), the JFIU may issue "Letters of No Consent" ("**LNC**") to withhold the prerequisite consent for the financial institutions to allow withdrawals from the relevant account(s). The constitutionality of the practice of the JFIU in issuing LNCs was challenged and held to be unconstitutional by the Court of First Instance in *Tam Sze Leung v Commissioner of Police* [2021] HKCFI 3118. On appeal, the LNC regime was affirmed by the Court of Appeal in *Tam Sze Leung v Commissioner of Police* [2023] HKCA 537 in April 2023. Subsequently, the applicants (Tam Sze Leung and others) sought leave from the Court of Appeal to appeal to the Hong Kong Court of Final Appeal. In mid-August 2023, the Court of Appeal granted leave to the applicants to appeal to the Court of Final Appeal on four questions of great general or public importance, one of which, in gist, is whether the LNC regime is unconstitutional. The re-affirmation of LNC regime by the Court of Appeal had been crucial as the LNC regime is often used by the Police to immediately withhold consent for banks to deal with accounts holding assets which are alleged or suspected to be the proceeds of crime. However, in light of the Court of Appeal's recent decision, the issue of whether LNC regime is unconstitutional is to be confirmed by the Court of Final Appeal, the final appellate court in Hong Kong.
- The AMLO was amended to introduce a licensing regime for virtual asset service providers and a two-tier registration regime for dealers in precious metals and stones. These changes, which align the local regulatory regime with the international standards set by the FATF, took effect on 1 June 2023.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

As Hong Kong has no autonomous sanctions regime, Hong Kong cannot impose sanctions and can only implement sanctions. Please refer to the answer to question 1.1 above.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

The only sanctions implemented in Hong Kong are those imposed by the UNSC, as discussed in our answer to question 1.1 above.

When the UNSC resolves to impose sanctions and calls upon member states (including the PRC) to enforce those sanctions, the MFA may issue instructions to the CE to implement the sanctions. Under the UNSO, the CE will then make UNSO Regulations to give effect to the MFA's instructions.

It is true to say that Hong Kong does not implement UNSC's sanctions to the extent that the UNSC's sanctions are against persons and places in the PRC (which has been specifically carved out under the UNSO) or that the MFA does not give such instructions.

The UNSO Regulations are not subject to the Legislative Council's approval or amendment, and once the MFA issues instructions, the CE has no discretion to refuse making the UNSO Regulations. As such, and subject to the aforesaid circumstances, it is unlikely that Hong Kong would fail to implement UNSC's sanctions. That said, there is a potential delay in the implementation of UNSC's sanctions in Hong Kong, as there is typically a time gap between the MFA's instructions and the making of the UNSO Regulations in Hong Kong.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

No. Please refer to the answer to question 1.1 above.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Yes, Hong Kong maintains lists of sanctioned individuals and entities:

- Once a UNSO Regulation has been gazetted, the CEDB will update the lists of individuals and entities sanctioned by the UNSC and implemented in Hong Kong under the UNSO, including lists of countries subject to sanctions, lists of individuals and entities subject to targeted arms-related sanctions, lists of individuals and entities subject to targeted financial sanctions, lists of individuals subject to travel ban, lists of ships published under section 31A of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537AE) and a consolidated UNSC sanctions list.
- Once a person is designated as a terrorist or a terrorist associate by the UNSC, the CE will publish a corresponding notice in the Gazette specifying such name(s) of the person. The Security Bureau ("**SB**") maintains the database of specification of names of such persons.

As the sanctions are imposed by the UNSC rather than Hong Kong, the application for removal from the lists of sanctions must follow the de-listing procedures provided by the UNSC. The intended party (except those inscribed on the ISIL (Da'esh) and Al-Qaida Sanctions List) must also submit de-listing requests either through the stipulated focal point process or through their state of residence or citizenship.

Further, there is legal difficulty for a party to request local authorities in Hong Kong to assist in seeking relief from sanctions imposed by the UNSC resolutions. In *Win More Shipping Ltd v Director of Marine* [2019] HKCFI 1137, a ship owner sought to challenge by way of judicial review the failure of the Director of Marine to make a request to the UNSC for the release of the ship which was detained in South Korea for suspected violation of the relevant UNSC sanctions. The Court of First Instance

made it clear in that case that the ship owner's reliance on the United Nations Convention on the Law of the Sea was futile, as an international treaty does not give rise to any legal rights or obligations which are directly enforceable in the domestic courts in Hong Kong.

For false positive cases (i.e. cases where individuals or entities are affected by targeted financial sanctions due to mistaken identification or confusion with individuals or entities on the sanctions lists), these individuals or entities may, after requesting an explanation from the institution that froze the assets, submit written requests for clarification to the CEDB.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Please refer to the answer to question 2.4 above.

2.6 How does the public access those lists?

The aforementioned lists can be accessed on the respective bureaus' website.

- The CEDB's lists can be accessed on the CEDB's website at: https://www.cedb.gov.hk/en/policies/united-nations-security-council-sanctions.html
- The SB's database can be accessed on the SB's website at: https://www.sb.gov.hk/eng/special/terrorist/terrorist.html

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Hong Kong does not maintain comprehensive sanctions or embargoes against any countries or regions, other than the UNSC's sanctions, for reasons as explained in our answer to question 1.1 above.

2.8 Does your jurisdiction maintain any other sanctions?

Hong Kong does not maintain any other sanctions, for reasons as explained in our answer to question 1.1 above.

2.9 What is the process for lifting sanctions?

Once the UNSC has lifted the sanctions, the relevant UNSO Regulations may be amended and/or repealed upon the MFA's instructions to the CE in Hong Kong, and the relevant lists of sanctioned individual and entities maintained by the CEDB and/or SB (where appropriate) would be updated accordingly.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Hong Kong, as a separate customs territory from the PRC, maintains a separate and autonomous export control system that is distinct from sanctions. The Hong Kong's export control regime (e.g. strategic trade control, licensing and registration for specific types of goods) is governed by the Import and Export Ordinance (Cap. 60) and its subsidiary legislation.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Hong Kong does not have blocking statutes or other restrictions that prohibit adherence to sanctions or embargoes imposed by other jurisdictions.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Hong Kong does not impose secondary sanctions.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

In general, the UNSO Regulations apply both on the basis of jurisdiction and nationality, i.e. the sanctions are applicable to a person acting in Hong Kong, as well as a Hong Kong person (i.e. a person who is both a Hong Kong permanent resident and a Chinese national, or a body incorporated or constituted under Hong Kong law) acting out of the jurisdiction.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Yes, parties are under a positive duty not to deal with the funds or other property that may violate sanctions prohibitions, for example:

- It is an offence to make available, directly or indirectly, any funds, other financial assets, or economic resources, to or for the benefit of any designated persons or entities as specified by notices published in the Gazette or on the website of the CEDB ("**Designated Persons or Entities**") under the UNSO and the subsidiary legislation.
- It is also an offence to provide or collect property for use to commit terrorist acts, or to make available or collect or solicit property or financial (or related) services for terrorists and terrorist associates, or deal with their property under the UN(ATM)O.

Further, financial institutions, upon receiving a LNC, should also exercise their discretion as to whether to freeze the account(s) at issue in view of the risk of breaching the OCSO. See our answer to question 1.3 above.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Yes, there are such licences available in Hong Kong:

- Under the UNSO Regulations, the CE may grant a licence for making available any funds, other financial assets, or economic resources to or dealing with, any funds or other financial assets or economic resources belonging to any Designated Persons or Entities, or owned or controlled by persons or entities under specified circumstances.

- Under the UN(ATM)O, the Secretary for Security may licence exceptions to the prohibitions to unfreeze property and to allow payments (such as reasonable living or legal expenses) to be made to or for the benefit of a designated party thereunder.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

If a person knows or suspects that any property is the proceeds of crime and/or terrorist property, or was used or to be used in connection with such purpose, that person shall, as soon as practicable, file a STR with the JFIU to report such knowledge or suspicion. A STR should include the following information:

- personal particulars (including, but not limited to, name, identity card, date of birth, address, telephone number, bank account number) of the person(s) or company involved in the suspicious transaction;
- details of the suspicious financial activity;
- the reason why the transaction is suspicious; and
- the explanation, if any, given by the person about the transaction.

A person who fails to report, commits an offence and is liable to a fine up to HK$50,000 and to imprisonment for three months.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

For the general public, the CEDB maintains the lists of Designated Persons or Entities under the UNSO, while the SB maintains the database in relation to the UN(ATM)O. The lists are updated periodically to ensure that the public will obtain the latest information regarding the sanctions imposed. See our answer to question 1.2 above.

For specific targets, the responsible bureaux, departments and regulators collaborate to convey the compliance expectations. This is achieved by informing stakeholders, issuing guidelines and circulars to the industry, and closely supervising the regulated institutions.

There is no specific compliance programme which primarily focuses on the UNSC sanctions in Hong Kong. However, Hong Kong's financial institutions are subject to extensive regulations aimed at mitigating the risks of terrorist financing, financial sanctions and proliferation financing. For example, the HKMA has issued the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorized Institutions), which outlines HKMA's expectations for institutions in various aspects, including the establishment of proper internal policies, maintenance of reporting mechanisms, and compliance with reporting duties.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes, there are criminal penalties if a person violates economic sanctions law and/or regulations in Hong Kong:

- A UNSO Regulation may provide that a contravention of any such regulation shall be a criminal offence, and may prescribe that a contravention or breach thereof shall be punishable on summary conviction by a fine not exceeding HK$500,000 and imprisonment for a term not exceeding two years; or on conviction on indictment by an unlimited fine and imprisonment for a term not exceeding seven years. The applicable criminal penalties are set out in each UNSO Regulation.
- Regarding the offences under the UN(ATM)O, the penalty varies for different offences. The highest penalty, upon conviction on indictment, can result in imprisonment for a term not exceeding 14 years. For example:
  - A person who contravenes the prohibition on provision or collection of property to commit terrorist acts under the UN(ATM)O is liable on summary conviction to a fine at HK$100,000 and to imprisonment for two years; and on conviction on indictment to a fine and to imprisonment for 14 years.
  - A person who contravenes the prohibition on recruitment of a person to become terrorists and terrorist associates under the UN(ATM)O is liable on summary conviction to a fine at HK$100,000 and to imprisonment for one year; and on conviction on indictment to an unlimited fine and to imprisonment for seven years.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The Police and the Customs are responsible for the enforcement of financial sanctions and trade sanctions, respectively. See our answer to question 1.2 above.

4.3 Is there both corporate and personal criminal liability?

Yes, there is both corporate and personal criminal liability:

- Under the UNSO, "person" includes a group, undertaking and entity, who are all subject to the UNSO and the UNSO Regulations. While one must refer to the specific provisions in each UNSO Regulation, generally, where any body corporate is guilty of an offence thereunder and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be punished accordingly.
- Similarly, the UN(ATM)O applies to a "person" which includes any body of persons, corporate or unincorporated.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

See our answer to question 4.1 above.

4.5 Are there other potential consequences from a criminal law perspective?

There is no other criminal consequence under the UNSO, the UNSO Regulations or the UN(ATM)O; unless the conduct in question also violates other ordinances or subsidiary legislation as non-exhaustively set out in our answer to question 1.1 above.

On the other hand, in the event of any breaches of the AMLO, the HKMA and/or the SFC have the authority to take disciplinary action against the person and/or institutions under their regulatory purview, which is arguably quasi-criminal in nature. The HKMA has the power to publicly reprimand a financial institution or impose a pecuniary penalty on a financial institution under the AMLO. Similarly, the SFC has the power to fine, private or public reprimand, suspend or revoke relevant authorisations or licences as an exercise of the SFC's disciplinary measures.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

There are no direct civil penalties for violating economic sanctions laws and/or regulations.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable in Hong Kong.

4.8 Is there both corporate and personal civil liability?

This is not applicable in Hong Kong.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable in Hong Kong.

4.10 Are there other potential consequences from a civil law perspective?

This is not applicable in Hong Kong.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable in Hong Kong.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

This is not applicable in Hong Kong.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

This is not applicable in Hong Kong.

4.14 What is the statute of limitations for economic sanctions violations?

As a general rule, the time limit for prosecution of a summary offence is within six months of the commission of the offence, unless otherwise specified in the legislation creating the offence. As regards an indictable offence, there is no time limit for prosecution.

Nonetheless, the UNSC sanctions may specify a different time limit for prosecution; for example, the United Nations Sanctions (Iraq) Regulation (Chapter 537B of the Laws of Hong Kong) stipulates that summary proceedings for an offence alleged to have been committed outside Hong Kong, may be commenced at any time not later than 12 months from the date on which the person charged first enters Hong Kong after committing the offence.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

No other relevant measures are currently proposed or under consideration.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

- List of regulations made under the UNSO: https://www.elegislation.gov.hk/hk/cap537!en?tab=s
- Lists of UNSC Sanctions published by the CEDB: https://www.cedb.gov.hk/en/policies/united-nations-security-council-sanctions.html
- Lists of terrorist and terrorist associates under UNATMO published by the SB: https://www.sb.gov.hk/eng/special/terrorist/terrorist.html
- UN Sanctions Circulars published by the TID: https://www.tid.gov.hk/english/aboutus/tradecircular/un/index.html
- List of countries subject to UN Sanctions and scope of sanctions that relates to trade published by the TID: https://www.tid.gov.hk/english/import_export/uns/uns_countrylist.html

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Italy can either adopt autonomous sanctions or implement sanctions adopted by the EU and the UN. Historically, Italy has predominantly implemented EU and UN sanctions.

The types of sanctions which may be adopted and/or implemented in Italy are both targeted economic and financial sanctions (i.e. asset freezes) and trade sanctions.

The Italian legal framework for economic sanctions mainly consists of the following laws:

- Legislative Decree No. 109/2007, on targeted economic and financial sanctions; and
- Legislative Decree No. 221/2017, on trade and sectorial sanctions, including trade of some dual-use items.

Law No. 185/1990 is the relevant law on the control of export, import and transit of armament materials (see question 2.10).

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

Targeted economic and financial sanctions

The Financial Security Committee of the Ministry of Economy and Finance enforces asset freezing measures imposed by the Minister of Economy and Finance, the EU, and the UN.

The State Property Agency of the Ministry of Economy and Finance is responsible for the custody and administration of assets and economic resources subject to freezing measures. The Agency can manage assets and resources directly or, when necessary, through a custodian. The Agency can perform all acts of ordinary administration independently but must consult the Financial Security Committee for all acts of extraordinary administration.

The Financial Intelligence Unit is an autonomous and independent body established at the Bank of Italy. It collects information on assets and resources held by designated subjects and monitors the implementation of asset freezing measures.

Trade sanctions

The Unit for Authorizations of Armament Materials of the Ministry of Foreign Affairs and International Cooperation implements domestic and international provisions on armament materials, dual-use items, and other trade sanctions, and issues the relevant authorisations.

The Customs Agency of the Ministry of Economy and Finance cooperates in the control and enforcement of trade sanctions.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

Yes. Law-Decree No. 69/2023, issued on June 13, 2023, amended Legislative Decree No. 221/2017, on trade sanctions, introducing new criminal penalties for the cases of sanctions violations. Prior to the amendments, Legislative Decree No. 221/2017 provided for penalties (imprisonment and/or fines) only for violations of export restrictions on listed materials. It does not provide for penalties for violations of all other types of trade and sectoral restrictions. Following these amendments, Legislative Decree No. 221/2017 provides for penalties for violations of both export and import restrictions, as well as for violations of restrictions on the provision of services of any kind.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Targeted economic and financial sanctions

The Minister of Economy and Finance is the competent authority to impose targeted financial sanctions. Article 4-bis of Legislative Decree No. 109/2007 provides that, pending the adoption of targeted economic and financial sanctions by the EU and the UN, the Minister of Economy and Finance shall: impose asset freezing measures on subjects who commit, or attempt to commit, terrorist acts; act for the purpose of financing the proliferation of weapons of mass destruction; or threaten international peace and security.

Trade sanctions

The Minister of Foreign Affairs and International Cooperation and the Minister of Defence are the competent authorities for the implementation of trade sanctions and regulations on dual-use items.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Generally, UN sanctions are implemented by the EU, and they become applicable in Italy as part of EU law.

In the absence of EU deliberations, Italy will implement UN sanctions autonomously. For instance, Article 4 of Legislative Decree No. 109/2007 provides that, in order to enable the direct

implementation of UN asset freezing measures, pending the adoption of the relevant deliberations by the EU, the Minister of Economy and Finance, upon the proposal of the Financial Security Committee, shall order the freezing of funds and economic resources held by UN designated subjects.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

Yes, Italy is an EU Member State. Most sanctions adopted by the EU are contained in Regulations and are thus directly applicable in Italy, without the need for domestic enactment legislation.

Pursuant to Article 3 of Legislative Decree No. 109/2007, the Financial Security Committee can obtain from government agencies and judicial authorities any useful information to identify the assets and economic resources held by EU designated subjects and located in the Italian territory. Once the Committee has identified the relevant assets and economic resources, it will order their freezing and share the information with the relevant public authorities.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

A public consolidated list of sanctioned individuals and entities is not available in Italy. Currently, there are no subjects designated by Italy independently from international organisations; therefore, reference can be made to the consolidated lists of designated subjects published by the EU and the UN.

Should a subject be designated by the Ministry of Economy and Finance, notice would be published on the Ministry's website and on the Official Gazette of the Italian Republic, pursuant to Article 4-bis of Legislative Decree No. 109/2007.

Whenever the grounds for designation fail (e.g. the subject is removed from the sanctions list) or are proven incorrect (e.g. as a result of a court determination), the Financial Security Committee shall request the Ministry to revoke the designation according to Article 4-sexies. The Committee can also request the lifting of sanctions imposed by the UN and the EU, through the Ministry of Foreign Affairs and Cooperation International.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

As mentioned under question 2.4, Italy does not normally sanction subjects other than those already designated by the EU and the UN. However, should a subject be designated by the Ministry of Economy and Finance independently from international organisation, the measure could be challenged before the competent administrative courts.

2.6 How does the public access those lists?

See question 2.4.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Italy has not implemented any country-related sanctions regimes other than those adopted by the EU and the UN. The EU Sanctions Map provides a list of all countries subject to EU and UN sanctions. North Korea, Iran, Libya, Russia, and Syria are the countries subject to the most comprehensive sanctions regimes.

2.8 Does your jurisdiction maintain any other sanctions?

No, it does not.

2.9 What is the process for lifting sanctions?

As mentioned under question 2.4, according to Article 4-sexies, whenever the grounds for designation fail (e.g. the subject is removed from the sanctions list) or are proven incorrect (e.g. as a result of a court determination), the Financial Security Committee will request the Ministry of Economy and Finance to revoke the designation.

Trade sanctions are lifted through publication of Government acts.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Law No. 185/1990 regulates the control of export, import and transit of armament materials and implements Directive 2009/43/EC on the simplification of terms and conditions of transfers of defence-related products within the Community.

Generally, transactions of armament materials are permitted with foreign governments or companies authorised by the government of the recipient country. However, the export of armament materials to countries embargoed by the EU or the UN and to countries whose policies conflict with the principles enshrined in article 11 of the Italian Constitution (i.e. countries that use war as an instrument of offence against the freedom of other people and as a means of settling international disputes) is prohibited.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Council Regulation (EC) No. 2271/96 (the Blocking Statute), that is directly applicable in Italy, aims to protect EU operators against the effects of the extraterritorial application of some US sanctions on Iran, Libya and Cuba.

The Blocking Statute prohibits EU operators from complying with any requirement or prohibition resulting from specified foreign laws. EU operators whose economic and financial interests are affected by the extraterritorial application of those laws must inform the European Commission.

However, if EU operators consider that non-compliance with a requirement or prohibition based on the specified foreign laws would seriously damage their interests or the interests of the EU, they can apply to the European Commission for authorisation to comply with such laws.

The Blocking Statute does not have wide practical application due to lack of enforcement by the competent authorities.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

No, Italian sanctions do not have extraterritorial effects.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Italian sanctions apply within the Italian jurisdiction (i.e., within Italian territory, to Italian nationals, to companies and organisations incorporated under Italian law, and onboard aircraft or vessels flying Italian flag).

For instance, an Italian company or an Italian-flagged vessel will be subject to EU and Italian sanctions laws even when conducting business in a third country or navigating in international waters.

Similarly, a foreign company will be subject to EU and Italian sanctions laws when conducting business in Italy, and a foreign-flagged vessel moored in an Italian port may be frozen if it belongs to an EU-designated subject.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Article 21-bis of Legislative Decree No. 221/2017, as amended by Law-Decree No. 69/2023 (see question 1.3), provides for confiscation of the goods (dual-use items/goods listed in the anti-torture regulation/any other listed goods) that were exported or traded in violation of sanctions laws. The article further clarifies that, when confiscation of those goods is not possible, courts shall order the confiscation for an equivalent value of other sums of money or property of lawful origin that the convicted person has the use of, including through intermediaries.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Italian and EU sanctions laws provide for exemptions (general carve-outs) and authorisations ("individual licences"). There are no "general licences" such as the ones in the USA.

Targeted economic and financial sanctions

Generally, asset freezing measures do not prevent financial or credit institutions that receive funds transferred by third parties to the account of a listed subject from crediting the frozen accounts, provided that any additions to such accounts will also be frozen. For instance, asset freeze measures do not apply to the addition of frozen accounts of interest or other earnings on such accounts, payments due under contracts, agreements or obligations that were concluded or arose before the date of designation, and payments due under judicial, administrative or arbitral decisions rendered in an EU Member State or enforceable in the Member State concerned. Other exemptions may apply, depending on the relevant sanctions regime.

EU regulations normally also allow the issuance of an individual (not general) licence in order to release or make available funds or economic resources of/for sanctioned subjects when such funds or economic resources are either: i) necessary to satisfy the basic needs of the sanctioned subjects (including but not limited to foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges); ii) intended for the payment of reasonable professional fees; iii) intended for the payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; iv) used to satisfy claims secured by a decision rendered prior to the date of designation, provided that the decision is not for the benefit of the sanctioned subject; v) due under a contract that was concluded by, or an obligation that arose for, the sanctioned subject before the date of designation, provided that the payment is not for the benefit of the sanctioned subject; or vi) necessary for other extraordinary expenses.

All authorisations related to asset freeze measures are to be sent to the Technical Secretariat under the Financial Security Committee of the Ministry of Economy and Finance by certified post at csf@pec.mef.gov.it.

Trade sanctions

With respect to trade sanctions, circumstances under which licences may be issued are generally provided by the EU and vary depending on the applicable sanctions regime.

When they do not constitute exemptions, humanitarian purposes, health emergencies, or the urgent prevention or mitigation of environmental hazards or natural disasters and similar situations may constitute grounds for a licence.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Article 7 of Legislative Decree No. 109/2007 provides that, within 30 days of designation, all operators that are subject to the reporting obligations provided for in Legislative Decree No. 231/2007 (banks, insurance companies and other financial institutions, professionals such as accountants, notaries and lawyers, operators engaged in the trading of arts and luxury items, etc.) shall report to the Financial Intelligence Unit about any funds and economic resources belonging to designated subjects. Information on economic resources shall be communicated to the Financial Guard as well.

A general reporting obligation is also set forth in EU regulations (as a way of example, see article 8 of Reg. (EU) 269/2014) that provide that all individuals and entities shall immediately communicate any relevant information (information on funds and economic resources belonging to designated subjects, information on frozen assets, etc.) to the competent authority of the EU Member State where they are resident or located and shall transmit such information, directly or through the Member State, to the European Commission.

EU regulations (as a way of example, see article 9 of Reg. (EU) 269/2014) also provide that, within six weeks of the date of listing, the designated subject shall report funds or economic resources belonging to, owned, held or controlled by them within the jurisdiction of a Member State to the competent authority of that Member State. In Italy, the authority competent for collecting this information is the Financial Intelligence Unit. The information shall be sent by email to ari.cin.congelamenti@bancaditalia.it.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

Businesses in Italy are not required to put in place specific sanctions compliance programmes. There are, however, some general due diligence obligations that may be relevant in connection with compliance with sanctions.

Legislative Decree No. 231/2001, concerning corporate administrative liability, provides that an entity may be considered liable for a number of listed crimes committed in its interest and to its advantage by individuals who hold management positions within the entity, or by individuals subject to their supervision. The listed crimes include money laundering and terrorism-related crimes. However, the entity shall not be liable if it proves that it adopted adequate organisational and managerial models (structures and procedures) to prevent crimes such as the one committed. Therefore, although Legislative Decree No. 231/2001 does not expressly provide for a mandatory due diligence process, it creates a strong incentive to adopt organisational and managerial models for the prevention of crimes.

Legislative Decree No. 231/2007 regulates the prevention of the use of the financial system for the purposes of money laundering and the financing of terrorism. It applies to: banks, insurance companies and other financial institutions; professionals such as accountants, notaries and lawyers when they offer advice on financial and real estate matters; and other operators, such as those engaged in the trading of arts and luxury items. These businesses are required to conduct know-your-customer and other due diligence procedures on the transactions that their clients intend to undertake, and are required to report suspicious transactions to the competent authorities.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Pursuant to articles 18, 19 20 and 21 of Legislative Decree No. 221/2017, whoever exports dual-use items and other listed products, provides related assistance, or provide services of any kind in violation of applicable laws or without the necessary authorisation shall be punished with imprisonment of between one to six years or a fine ranging from €15,000 to €250,000, depending on the violation.

Pursuant to articles 23 to 27-bis of Law No. 185/1990, whoever violates regulations on the transfer of armament materials shall be punished with imprisonment of up to 12 years and fines, the amount of which depends on the value of the transaction.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The Financial Police of the Minister of Economy and Finance mostly investigates financial-related violations, whereas the Customs Agency of the Minister of Economy and Finance investigates violations of trade sanctions.

Supervisory authorities – such as the Bank of Italy, the Insurance Supervision Institute, the National Commission for Companies and the Stock Exchange – also have some investigative powers within their areas of operation.

4.3 Is there both corporate and personal criminal liability?

Criminal liability is always personal.

See question 4.8 for further clarification on corporate liability.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

As mentioned under question 4.1, financial penalties may amount to €250,000.

Higher fines – which may depend on the value of the transaction – are provided for in the case of violation of regulations on the transfer of armament materials.

4.5 Are there other potential consequences from a criminal law perspective?

No, there are not.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

No. Sanctions laws provide for criminal and administrative penalties (see questions 4.1, 4.4 and 4.9).

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable (see question 4.6).

4.8 Is there both corporate and personal civil liability?

As mentioned under questions 3.5, Legislative Decree No. 231/2001, concerning corporate administrative liability, provides that an entity may be considered liable for a number of listed crimes committed in its interest and to its advantage by individuals who hold management positions within the entity, or by individuals subject to their supervision. The listed crimes include money laundering and terrorism-related crimes.

However, the entity shall not be liable if it proves that it adopted adequate organisational and managerial models to prevent crimes such as the one committed.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

As mentioned under question 4.1 and 4.4, fines for violation of trade sanctions can amount to €250,000.

Higher fines – which may depend on the value of the transaction – are provided for in case of violation of regulations on the transfer of armament materials.

Higher fines are also provided for in case of violation of targeted economic and financial sanctions: in fact, Article 13 of Legislative Decree No. 109/2007 provides that whoever violates asset freeze measures shall be subject to an administrative fine ranging from €5,000 to €500,000.

4.10 Are there other potential consequences from a civil law perspective?

On the one hand, sanctions may constitute a cause of *force majeure* that prevents the performance of a contract. Upon the occurrence of a *force majeure* event, the parties are released from performance of services that have become impossible (e.g. as prohibited by sanctions laws) and thus cannot incur liability for damages for non-performance.

On the other hand, the introduction of sanctions clauses is becoming more and more common. Sanctions clauses contain definitions of "Sanctioned Activity", "Sanctioning Authority" and "Sanctioned Party" and a warranty of the parties, for themselves and for those for whose actions they are accountable, that they are not sanctioned parties and that they will not act in violation of sanctions laws.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable (see question 4.6).

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

This is not applicable (see question 4.6).

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Criminal and civil enforcement is carried out at a national level.

4.14 What is the statute of limitations for economic sanctions violations?

When the law provides for criminal penalties, the statute of limitations corresponds to the maximum penalty established by law, and in any case cannot be less than six years in the case of a felony and four years in the case of a misdemeanour. This means that violations of trade sanctions would be subject to a six-year prescription period (see question 4.1). However, the penalty and statute of limitations may be higher if the violation of sanctions is associated with terrorist activity or other crimes.

When the law provides for administrative penalties, the statute of limitations is five years.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

This is not applicable.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

The official website containing Italian legislation is the following: https://www.normattiva.it/ (the text of the laws is available only in Italian).

However, the following websites can be used to obtain information on economic sanctions in English:

- Sanctions overview: https://www.esteri.it/it/politica-estera-e-cooperazione-allo-sviluppo/politica_europea/misure_deroghe/
- Financial Security Committee: https://www.dt.mef.gov.it/en/attivita_istituzionali/prevenzione_reati_finanziari/comitato_sicurezza_finanziaria/index.html
- Financial Intelligence Unit: https://uif.bancaditalia.it/homepage/index.html?com.dotmarketing.htmlpage.language=1
- Unit for Authorizations of Armament Materials: https://www.esteri.it/it/ministero/struttura/uama/
- Customs Agency: https://www.adm.gov.it/portale/en/home

Marco Lopez de Gonzalo has wide experience in shipping and trade law, covering charterparties and bills of lading, carriage of goods, casualties, shipbuilding, purchase of ships and aircrafts, CIF and FOB contracts.
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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Japan does not have a comprehensive law authorising sanctions, and instead imposes economic sanctions through various laws and regulations. The primary ground for imposing sanctions is the Foreign Exchange and Foreign Trade Act ("FEFTA"), which mainly regulates cross-border transactions involving goods, services and finances.

The FEFTA authorises the relevant administrative authorities to impose sanctions in any of the following cases:

(a) the competent minister finds it necessary to fulfil Japan's international obligations under treaties and other international agreements;

(b) the competent minister finds it necessary as part of Japan's contribution to international efforts to achieve international peace; or

(c) the Cabinet decides to take countermeasures necessary to maintain peace and security in Japan.

While the majority of Japan's economic sanctions are derived from UN Security Council ("UNSC") resolutions which fall under the first two categories ((a) or (b) above), Japan also implements sanctions measures based on international cooperation with other countries, such as the U.S. and the EU (category (b) above), as well as unilateral sanctions that are not derived from UNSC resolutions or international cooperation (category (c) above).

The types of transactions that may become subject to sanctions under the FEFTA are (i) the import and export of goods ("trade in goods"), (ii) service transactions (such as intermediaries of trade between foreign countries, and transfer of technology and software) ("service transactions"), (iii) payments from Japan to a foreign state and payments between residents and non-residents ("international payments") (for the definitions of residents and non-residents, please see question 3.1), and (iv) capital transactions (such as contracts for money deposits, trust, money lending, and trading securities) ("capital transaction"). In the following section, the types of transactions falling under (i) and (ii) above are collectively referred to as "international trade" and the types of transactions falling under (iii) and (iv) above are collectively referred to as "financial transactions".

While the FEFTA is the primary grounds for imposing sanctions, Japan relies on other laws and regulations to impose sanctions when the FEFTA does not provide the grounds to do so. In 2014, Japan enacted the following legislation pursuant to recommendations from the Financial Action Task Force ("FATF")'s 2008 third round mutual evaluation report on Japan's anti-money laundering ("AML") and counter-terrorist financing ("CFT") measures.

(i) Amendment to the Act on Punishment of Financing for Offences of Public Intimidation (the "Criminal Financing Punishment Law") to expand the scope of objects contributing to or used for terrorism that a person may not intentionally provide, from "funds" to "funds and other benefits", which is interpreted to include goods, houses, information, etc.

(ii) Enactment of the Act on Special Measures Concerning Asset Freezing, etc., of International Terrorists Conducted by Japan Taking into Consideration United Nations Security Council Resolution 1267, etc. ("Act on International Terrorist Assets-Freezing"), which restricts almost all transactions (including domestic ones) with terrorists listed by the UNSC or the Japanese government.

The FATF published its fourth round mutual evaluation report on Japan's AML/CFT measures in August 2021. In response, Japan is working on swift implementation of asset blocking sanctions designated by UNSC and the expansion of asset blocking sanctions to persons and entities controlled by sanctioned persons and entities, among other matters.

As Japan's sanctions are primarily governed by the FEFTA, unless specifically mentioned otherwise, the following section will generally cover sanctions on international trade and financial transactions regulated by the FEFTA.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

Under the FEFTA, the competent government agency differs depending on the types of transaction subject to sanctions:

(a) trade in goods: the Minister of Economy, Trade and Industry ("METI");

(b) service transactions: the Minister of Finance ("MOF"); or METI, depending on the type of service transaction;

(c) international payments: the MOF; or METI, depending on the type of transaction; and
(d) capital transactions: the MOF; or METI, depending on the type of capital transaction.

As a general rule, the METI administers transactions related to the import and export of goods, while the MOF administers transactions related to finance.

The implementation of the Act on International Terrorist Assets-Freezing is implemented by the local Public Safety Commissions. The competent authority for the Criminal Financing Punishment Law is the Ministry of Justice.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

Yes. The Japanese government has introduced a number of measures in response to Russia's invasion of Ukraine as part of Japan's contribution to international efforts to achieve international peace. The sanctions currently in place in Japan that are taken in response to this crisis are as follows:

(i) **Asset freezing sanctions**
Japan has designated a number of entities and individuals related to Russia, the self-proclaimed Donetsk People's Republic, the self-proclaimed Luhansk People's Republic, or Belarus as subject to asset freezing sanctions. Under the asset freezing sanctions, international payments to and from, and capital transactions (i.e., money deposits, trust, and money lending) with, the designated entities and individuals require prior approval from the MOF.

(ii) **Prohibition of issuance and distribution of certain securities and the provision of certain services**
The Japanese government prohibited the following transactions, except where the Japanese government issues prior approval.
(i) new issuances and primary offerings of securities by the Russian government in Japan;
(ii) acquisitions of securities newly issued by the Russian government by residents from non-residents or transfers of such securities from residents to non-residents;
(iii) provision of any services by residents relating to new issuances and primary offerings of securities by the Russian government in Japan; and
(iv) provision of certain trust, accounting/auditing, management consulting, construction and engineering services to Russia.

(iii) **International trade measures**
The Japanese government has implemented the following trade-related measures:
(i) a general import and export ban to and from the self-proclaimed Donetsk People's Republic and the self-proclaimed Luhansk People's Republic;
(ii) (a) imposition of the new requirement of prior approvals for exports of certain general purpose goods and technologies that the Japanese government has determined contribute to the military capabilities of Russia or Belarus, and (b) a policy of denying applications for prior approvals for exports of these items, as well as goods and technologies subject to international export control regimes, to Russia and Belarus;
(iii) an export ban on oil refining equipment, luxury goods, advanced technology goods, goods relating to chemical weapons, and goods that strengthen industrial infrastructure (such as trucks and automobiles with an engine size greater than 1.9 litres) to Russia;
(iv) an import ban on certain goods (such as gold, liquor, wood products, and machinery) from Russia; and
(v) an export ban on designated Russian and Belarusian entities.

(iv) **Price cap on Russian-origin crude oil and Prohibition of related services**
The Japanese government requires prior approval for import of Russian-origin crude oil and petroleum products that are purchased at above a specified maximum price and provision of related services (such as maritime transportation) for those Russian-origin crude oil and petroleum products.

(v) **Prohibition of new investment involving Russia**
The Japanese government requires prior approval for new outward direct investment involving Russia.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

The FEFTA authorises the two competent ministers, the MOF and the METI, to impose sanctions if:
(a) he/she finds it necessary to fulfil Japan's international obligations under treaties and other international agreements; or
(b) he/she finds it necessary as part of Japan's contribution to international efforts to achieve international peace.

The FEFTA also authorises the Cabinet to impose sanctions if it decides to take countermeasures necessary in order to maintain peace and security in Japan. Such Cabinet decisions must be approved by the Diet. The details of sanctions are determined by the competent ministers mentioned above.

With regard to service transactions, international payments, and capital transactions subject to sanctions, the competent ministers mentioned above authorise the Minister of Foreign Affairs ("MOFA") to designate the individuals and entities with which a person is prohibited from engaging in transactions.

In addition, the Act on International Terrorist Assets-Freezing: (i) requires the National Public Safety Commission to designate individuals and entities that are listed as international terrorists in UNSC resolutions; and (ii) authorises the National Public Safety Commission to designate individuals and entities that it considers as international terrorists, pursuant to UNSC resolution 1373.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes, Japan implements economic sanctions pursuant to UNSC resolutions, as described in question 1.1 above. UNSC resolutions are implemented primarily through the FEFTA and the Act on International Terrorist Assets-Freezing.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

No. However, as described in question 1.1 above, Japan implements sanctions when it finds that their imposition is necessary to contribute to international efforts toward achieving international peace. This type of sanction would be implemented based on international cooperation with other countries, such as the U.S. and the EU. For example, Japan is currently implementing

this type of sanction in relation to Russia's invasion of Ukraine and North Korea's nuclear tests and ballistic missile launch.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Japan maintains lists of individuals and entities subject to sanctions measures for both international and unilateral sanctions.

As explained in question 2.1 above, whether Japan implements sanctions under the FEFTA is decided by the MOF, METI, or the Cabinet. Pursuant to such decisions, the MOF or METI decides upon the specific sanctions measures to be implemented. Finally, the MOFA, authorised either by the MOF or METI, designates individuals and entities with whom a person is prohibited from engaging in service transactions, international payments, and capital transactions, whose names are placed on the sanctions list and who are subject to the sanctions.

Therefore, in order for individuals and entities to be removed from those sanctions lists, the MOF, METI or the Cabinet must decide that such sanctions are no longer necessary. Pursuant to such decisions, the MOF or METI will decide to lift the sanctions on the listed individuals or entities. The MOFA will then amend the sanctions list to remove the designated individuals and entities.

Also, under the Act on International Terrorist Assets-Freezing, the National Public Safety Commission designates international terrorists. The list provided by the National Public Safety Commission must be amended by the Commission as and when necessary.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

(i) **Challenge prior to designation**

The FEFTA does not provide a specific mechanism by which individuals or entities can challenge their designation prior to their placement on the sanctions list.

Listed individuals or entities may be able to challenge their addition to the sanctions lists under the Administrative Procedure Act; however, there are no publicly available cases or established interpretations regarding the application of the Act to the designation of individuals or entities on the sanctions lists.

The Administrative Procedure Act provides that prior to "adverse dispositions", an administrative agency shall, in principle, grant individuals or entities: (i) an opportunity for a hearing where the individuals or entities may state their opinions and produce evidentiary documents; or (ii) an opportunity for explanation where the individuals or entities in question may submit an explanation of their views on the subject in writing. "Adverse dispositions" means a disposition whereby administrative agencies directly impose duties upon specified persons or limit their rights. Prior to the designation, an individual or entity may be entitled to the procedures described above.

On the other hand, the Act on International Terrorist Assets-Freezing clearly requires the National Public Safety Commission to hold a hearing prior to the designation unless the Commission believes the hearing will make it extremely difficult to enforce sanctions.

(ii) **Challenge after designation**

Neither the FEFTA nor the Act on International Terrorist Assets-Freezing provides a specific mechanism by which individuals or entities can challenge their designation after their designation on the sanctions list.

However, an individual or entity may be able to either: (i) request an administrative review by the original or higher administrative agencies regarding the dispositions, under the Administrative Complaint Review Act; or (ii) bring an action in court for revocation of the original administrative disposition, under the Administrative Case Litigation Act. It should be noted that there are no publicly available cases or established interpretations regarding the application of these Acts to the designation of individuals or entities on the sanctions lists.

2.6 How does the public access those lists?

The consolidated list of sanctioned individuals and entities designated pursuant to the FEFTA can be found on the website of the MOF and is available at the following URL (in Japanese only) (last accessed 8 August 2023): http://www.mof.go.jp/international_policy/gaitame_kawase/gaitame/economic_sanctions /list.html

The consolidated list of international terrorists designated by the National Public Safety Commission pursuant to the Act on International Terrorist Assets-Freezing can be found on the website of the National Public Safety Commission and is available at the following URL (in Japanese only) (last accessed 8 August 2023): https://www.npa.go.jp/bureau/security/terrorism/zaisantouketu.html

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Japan has unilaterally implemented a general ban on exports to and imports from North Korea, and a ban on embankment of North Korean vessels. In addition, Japan has implemented a general ban on imports from Crimea and Sevastopol.

2.8 Does your jurisdiction maintain any other sanctions?

In addition to the sanctions imposed pursuant to UNSC resolutions or taken in cooperation with other countries, Japan imposes unilateral sanctions when a Cabinet decision is made to take countermeasures that are particularly necessary in order to maintain peace and security in Japan.

Japan has implemented unilateral sanctions measures against North Korea due to rising concerns about its nuclear and missile activities, and also about its involvement in the abductions of Japanese citizens. Unilateral sanctions measures against North Korea include a ban on entry into Japan by North Korean nationals and vessels, a ban on all export to and import from North Korea, a ban on payments to individuals and entities with North Korean residency, etc.

2.9 What is the process for lifting sanctions?

As explained in question 2.1 above, whether Japan implements sanctions under the FEFTA is decided by the MOF, METI, or the Cabinet. Therefore, in order for a sanction to be lifted (other than the deletion of individuals and entities from the sanctions list, which is determined by the MOFA), the MOF, METI or the Cabinet must decide that sanctions are no longer necessary. Pursuant to such decisions, the MOF or METI must amend the regulations or public notices which determined the specific sanctions measures to be implemented.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. The Japanese export control regime is also implemented primarily through the FEFTA, which enforces two types of control: list control; and catch-all control. List control requires exporters to apply for a licence when exporting or transferring sensitive military and dual-use items (goods, technology, or software), as designated in accordance with international export control regimes, to a foreign country. Starting July 23, 2023, manufacturing equipment for advanced semiconductors is also included in the list of items subject to list control. Catch-all control requires the same when less sensitive items being exported will be used for certain applications related to weapons of mass destruction ("WMD") or conventional arms.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

No, it does not.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

No. However, please see question 3.1 below regarding extraterritorial application of the FEFTA and the Act on International Terrorist Assets-Freezing.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Regarding international payments subject to sanctions (i) "residents" or "non-residents" who intend to make payments from Japan to a foreign state must obtain permission from competent authorities, and (ii) "residents" who intend to make payments to or receive payments from "non-residents" must also obtain permission, under the FEFTA. A "Resident" is defined as: (i) a natural person with a domicile or residence in Japan; or (ii) a corporation with a principal office in Japan, and "non-residents" are defined as a natural person or corporation other than a resident.

Residents or non-residents who intend to conduct capital transactions are required to obtain permission.

However, with regard to service transactions subject to sanctions, only residents are required to obtain approval when the relevant resident intends to conduct service transactions with non-residents.

Regarding trade in goods subject to sanctions, the FEFTA requires exporters from Japan or importers to Japan to apply for approval of the sanctioned trade.

In addition, the FEFTA is applied to actions in a foreign country by the representative, agent, employee, or other worker of (i) a corporation with a principal office in Japan, or (ii) a person with a domicile in Japan if such transactions are undertaken in connection with that corporation's/person's assets or business.

The Act on International Terrorist Assets-Freezing restricts almost all transactions in Japan with designated terrorists, regardless of the counterparts' nationality or residency. In addition, it is also applied to transactions in foreign countries made by (i) a corporation with a principal office in Japan, or (ii) a natural person with a domicile or address in Japan.

The Criminal Financing Punishment Law criminalises any persons in Japan who provide terrorists and their supporters with funds, services, real estate, goods, information and other benefits. This law is also applied to persons in a foreign country, regardless of nationality, when such acts are also governed by the International Convention for the Suppression of the Financing of Terrorism, even if they are committed outside of Japan.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

No. However, the FEFTA requires that banks and crypto assets exchanges do not deal with payments requested by their customers unless the banks and exchanges confirm that the payments and underlining transactions do not violate sanctions or prohibitions under the FEFTA. In addition, the Act on Prevention of Transfer of Criminal Proceeds ("Criminal Proceeds Act") requires banks and other financial institutions to confirm the identities of their customers, and to notify the government authorities of "suspicious transactions". "Suspicious transactions" are transactions of property which are suspected to be criminal proceeds or transactions by a customer, etc. who is suspected to have been conducting acts that constitute specific crimes, including acts of terrorism, as stipulated in the Criminal Financing Punishment Law, and exports/imports that violate economic sanctions under the FEFTA.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

The FEFTA and the Act on International Terrorist Assets-Freezing requires a person to obtain permission or approval for financial transactions and international trade that are subject to economic sanctions. A person may apply for permission or approval to undertake such transactions; however, generally speaking such permission will not be granted.

The Act on International Terrorist Assets-Freezing clearly stipulates a list of conditions under which transactions are permitted. For example, payments are permitted when they are used for "expenses usually required for normal living" of the terrorists and their families.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Please see question 3.2 above.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

Although the MOF has established compliance guidelines in order for banks and other financial institutions to effectively comply with their obligations under the FEFTA, as stated in question 3.2 above, the FEFTA does not create legally binding compliance standards or programmes with regard to financial transactions.

The Financial Services Agency has also established the "Guidelines for Anti-Money Laundering and Combating the Financing of Terrorism", which clarify the required actions and expected actions to be implemented by each financial institution in order to comply with the identification and verification obligations, etc., required in the Criminal Proceeds Act.

With regard to export control, although not specific to sanctions, the FEFTA requires all persons engaged in exports of goods or transfers of technology to establish certain kinds of internal control systems in order to comply with the export control regulations.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

The FEFTA provides for criminal penalties for violating such laws and regulations.

As noted above, in terms of financial transactions and service transactions, the FEFTA requires a person to obtain permission from the competent authorities for transactions that are subject to sanctions. If a person engages in such transactions without such permission, that person will be subject to: (i) imprisonment for not more than three years; or (ii) a fine of not more than one million yen (provided that if three times the value of the subject matter of the violation exceeds one million yen, the fine is not more than three times that value).

Next, in terms of trade in goods, the FEFTA requires a person to obtain approval for certain transactions that are subject to economic sanctions. If a person engages in such transactions without such approval, the person will be subject to: (i) imprisonment for not more than five years; or (ii) a fine of not more than 10 million yen (provided that if five times the value of the subject matter of the violation exceeds 10 million yen, the fine is not more than five times that value).

These penalties are imposed on an individual who violates economic sanctions laws and/or regulations. For the penalties imposed on a corporation, please see question 4.3 below.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The police and public prosecutors investigate and prosecute those offences as criminal cases.

4.3 Is there both corporate and personal criminal liability?

The FEFTA provides for both corporate and personal criminal liability.

With regard to financial transactions and service transactions, if a violation is committed in connection with the business or assets of a corporation, the corporation (in addition to the offender, as explained in question 4.1 above) will be subject to a fine of not more than one million yen (provided that if three times the value of the subject matter of the violation exceeds one million yen, the fine is not more than three times that value).

With regard to trade in goods, if a violation is committed in connection with the business or assets of a corporation, the corporation (in addition to the offender, as explained in question 4.1 above) will be subject to a fine of not more than 500 million yen (or, if five times the value of the subject matter of the violation exceeds 500 million yen, a fine of not more than five times that value).

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

Please see questions 4.1 and 4.3 above.

4.5 Are there other potential consequences from a criminal law perspective?

No. However, the FEFTA endeavours to ensure the effectiveness of economic sanctions by establishing provisions regarding administrative sanctions in addition to criminal penalties.

To be more specific, in terms of financial transactions and service transactions, the FEFTA states that the Minister in charge may prohibit financial transactions and service transactions by the relevant person for a period not exceeding one year (Article 16-2, Article 22, paragraph (1) and Article 25-2, paragraph (4) of the FEFTA).

In addition, in terms of foreign trade, if a transaction for which approval must be obtained is conducted without such approval, the FEFTA states that the METI may prohibit importation or exportation by the relevant person for a period not exceeding one year (or three years in the case of a sanction independently imposed by Japan) (Article 53, paragraph (2) of the FEFTA).

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

The FEFTA does not provide for civil penalties.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable in Japan.

4.8 Is there both corporate and personal civil liability?

This is not applicable in Japan.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable in Japan.

4.10 Are there other potential consequences from a civil law perspective?

This is not applicable in Japan.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable in Japan.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

This is not applicable in Japan.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Criminal enforcement only exists at the national level.

4.14 What is the statute of limitations for economic sanctions violations?

With respect to the criminal penalties provided in the FEFTA for individuals who violated sanctions on financial transactions and service transactions, the statute of limitations is three years. With respect to the criminal penalties for those who violated sanctions on trade in goods, the statute of limitations is five years.

The statute of limitations for corporate criminal liability provided in the FEFTA is three years, regardless of the type of relevant transaction.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

In response to the growing concern over national security, the Economic Security Act was enacted in Japan in May 2022. The Act introduces new economic security measures in four different areas and parts (i) and (ii) below entered into force in August 2022: (i) ensuring a stable supply of critical goods; (ii) ensuring stable provision of services for core infrastructure; (iii) promoting the development of advanced critical technology; and (iv) introducing secret patent systems. The second area may be relevant in the context of economic sanctions because it aims to prevent foreign interference with the provision of services through core infrastructure in Japan, and, in connection with this, introduces a screening system for critical equipment (including software) used in critical infrastructure. More specifically, when yet-to-be designated private providers of critical infrastructure (i) procure critical equipment from others, or (ii) outsource maintenance or operations of critical equipment to others, those designated companies shall submit a plan for the relevant procurement or outsourcing to the competent minister. Upon screening the plan, if the competent minister believes the critical equipment is likely to be used as a means of interference with stable provision of services for core infrastructure, the competent minister may recommend or order the designated company to take necessary measures to prevent the interference, by changing or suspending the procurement or outsourcing.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

Information about the relevant laws, regulations, administrative actions, and guidance relating to economic sanctions, can be obtained from the following websites (in Japanese) (last accessed 8 August 2023):

- Website of the MOF: https://www.mof.go.jp/international_policy/gaitame_kawase/gaitame/economic_sanctions/index.htm
- Website of the METI: https://www.meti.go.jp/policy/external_economy/trade_control/01_seido/04_seisai/seisai_top.html
- Website of the Center for Information on Security Trade Control ("CISTEC"): http://www.cistec.or.jp/export/keizaiseisai/index.html

English translations of some of the relevant laws and regulations can be found at the following websites (last accessed 8 August 2023):

- FEFTA: https://www.japaneselawtranslation.go.jp/en/laws/view/3700
- Criminal Financing Punishment Law: https://www.japaneselawtranslation.go.jp/en/laws/view/3911

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

EU Sanctions Regulations have direct effect in the Netherlands, meaning that they are binding on Dutch nationals and legal entities incorporated under Dutch law as well as on Dutch territory. Penalisation of violations and enforcement are provided for in a framework act, the Sanctions Act 1977 (*Sanctiewet 1977*), and a corresponding Sanctions Regulation (*Sanctieregeling*) for each sanctions regime. Pursuant to relevant UN Resolutions and EU law and based on the Sanctions Act 1977, the Netherlands operates a national list of designated parties, whose assets are subject to an asset freeze, the National Terrorism Sanctions List (*Nationale sanctielijst terrorisme*). The Netherlands does not operate any further sanctions regimes in addition to UN and EU sanctions.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

Sanctions are administered by the Ministry of Foreign Affairs. Licences are issued and administered by the Central Import and Export Service (*Centrale Dienst In- en Uitvoer, CDIU*) on behalf of, and in consultation with, the Ministry of Foreign Affairs. Supervision of compliance with sanctions is in the hands of Team POSS (Precursors, Strategic Goods and Sanctions Law), which is part of Dutch Customs. Criminal enforcement is entrusted to the Public Prosecution Service (*Openbaar Ministerie, OM*). Certain sanctions compliance obligations imposed on financial institutions, provided in the Regulation on Supervision pursuant to the Sanctions Act 1977 (*Regeling toezicht Sanctiewet 1977*), are enforced by the Dutch Central Bank (*De Nederlandsche Bank, DNB*) and the Dutch Financial Markets Authority (*Autoriteit Financiële Markten, AFM*).

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

The legal framework for the applicable sanctions regime as set out under question 1.1 has not changed as such, but a very significant broadening of the sanctions regime took place following Russia's invasion of Ukraine. There have been 11 waves of new sanctions regulations against Russia decreed by the European Commission since, each one expanding the sanctions to further industries, products and persons.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

The Sanctions Act 1977 provides the legal basis for the implementation and enforcement of UN and EU sanctions, as well as the imposition of national sanctions.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes, UN sanctions are implemented by the EU. EU Sanctions Regulations have direct effect in the Netherlands (see question 1.1).

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

(a) Yes. EU sanctions have direct effect in the Netherlands (see question 1.1).
(b) No, there are none.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Yes. Parties are added to, and removed from, the National Terrorism Sanctions List by a decision of the Minister of Foreign Affairs, based on the Sanctions Act 1977.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Individuals and entities can lodge an administrative appeal against the decision of the Minister of Foreign Affairs adding them to the National Terrorism Sanctions List.

2.6 How does the public access those lists?

The National Terrorism Sanctions List is available at: https://www.government.nl/documents/reports/2016/01/15/national-terrorism-list

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

No, it does not.

2.8 Does your jurisdiction maintain any other sanctions?

The Netherlands does not maintain any sanctions regimes other than those maintained by the EU.

2.9 What is the process for lifting sanctions?

As the Netherlands does not maintain any sanctions regimes other than those maintained by the EU, this is a matter of EU law. If the EU lifts specific sanctions restrictions, this will have direct effect in the Netherlands, requiring no further action on the national level. If the EU lifts an entire sanctions regime, this will have direct effect as well. In addition, the corresponding national Sanctions Regulation (see question 1.1) will be repealed by the Minister of Foreign Affairs.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. Export control of dual-use items is primarily regulated at the EU level, pursuant to the EU Dual-use Regulation 2021/821. Export control of military items is primarily regulated at the national level, while taking into account the EU Common Position 2008/944 and the EU Common Military List. National provisions as to both dual-use and military items are provided in the Strategic Services Act (*Wet Strategische diensten*) and Strategic Items Decree (*Besluit strategische goederen*) and related implementation regulations.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Yes. The EU Blocking Regulation 2271/96, prohibiting adherence to the extra-territorial sanctions regimes imposed by third countries, designated in the Annex to the Regulation, currently including, *inter alia*, US sanctions against Iran and Cuba, has direct effect in the Netherlands (see question 1.1).

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

No, it does not.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

EU sanctions, as applicable in and enforced by the Netherlands, are binding on Dutch nationals and legal entities incorporated under Dutch law, whether acting within or outside the Netherlands, as well as on individuals and legal entities acting in the Netherlands. However, we note that EU-based multinational parent companies which may have subsidiaries outside the EU that generally fall outside of this jurisdictional scope, increasingly tend to align their sanctions policy and preclude their subsidiaries from engaging in sanctioned transactions. Such measures are (at least partly) caused by the fact that certain transactions of subsidiaries may be attributed to EU parent companies and as such can constitute a violation of the sanctions regime by the EU parent. Furthermore, cooperating in or condoning structures that could constitute circumvention of sanctions by such EU parent companies could also result in a violation. As such, although *de jure* no changes to the jurisdictional framework were made, the *de facto* effect of the EU sanctions also reaches outside of the EU territory.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Parties are required to freeze funds and assets of individuals or legal entities designated under any EU sanctions or included in the National Terrorism Sanctions List. No economic resources may be made available to such parties.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

EU Sanctions Regulations, as applicable in and enforced by the Netherlands, provide for limited exemptions, authorising certain transactions with sanctioned parties, generally subject to prior authorisation. Such authorisation must be applied for with the Central Import and Export Service.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Various financial institutions, including banks, investment funds, pension funds and insurers, must notify either the Dutch Central Bank or Dutch Financial Markets Authority when, in brief, the identity of one of their relations corresponds to the identity of a person or legal entity designated as a sanctioned party under any applicable sanctions regulations. The notification must include the identity of the relation. The term "relation" includes everyone involved in a financial service or transaction and thus extends beyond the direct contractual counterparty of the financial institution.

For both financials and non-financials, licences for transactions that would otherwise be restricted pursuant to economic sanctions may provide for reporting obligations. Otherwise, no reporting obligations apply.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

The Ministry of Foreign Affairs has published "Guidelines for compiling an Internal Compliance Programme for Strategic Goods, Torture Goods, Technology and Sanctions" (the "ICP Guidelines"), which are available in both Dutch and English at https://www.rijksoverheid.nl/documenten/richtlijnen/2019/02/22/richtlijnen-opstellen-internal-compliance-programme

The ICP Guidelines are structured around seven core elements: (i) commitment to compliance; (ii) structure and responsibility; (iii) export screening procedure; (iv) shipment control; (v) training; (vi) audit, reporting and improvement measures; and (vii) archiving. An internal compliance programme (ICP) is required to obtain a global licence, which is valid for multiple transactions concerning one or more types of items to one or more destinations.

With respect to the recent waves of sanctions regulations following Russia's invasion of Ukraine, the Ministry of Economic Affairs and Climate Policy created an Information Desk which provides further guidance on compliance with the new sanctions. The Dutch regulators also post updates on their websites regarding their interpretation of the newly implemented sanctions regimes.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes. National Sanctions Regulations, enacted pursuant to the Sanctions Act 1977, prohibit violation of EU Sanctions Regulations. Violation of such National Sanctions Regulations constitutes a violation of the Sanctions Act 1977, which in turn constitutes an economic offence and is punishable under the Economic Offences Act (*Wet op de economische delicten*).

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

Criminal enforcement of sanctions is the responsibility of the Public Prosecution Service. The Public Prosecutor may involve both Team POSS (see question 1.2) and the Fiscal Intelligence and Investigation Service (*Fiscale inlichtingen- en opsporingsdienst, FIOD*) to investigate a matter. The decision to prosecute or not remains with the Public Prosecutor.

4.3 Is there both corporate and personal criminal liability?

Yes. Both individuals and legal entities can be held criminally liable for violations of sanctions.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

If the violation was committed wilfully, it is considered a serious offence (*misdrijf*), in which case the following financial penalties can be imposed:

- On individuals:
  - a fine of the 5th category; or
  - if the value of the relevant goods exceeds one fourth of the maximum fine in the 5th category, a fine of the 6th category.
- On legal entities:
  - a fine of the 6th category; or
  - if a fine can be imposed of the 6th category, but the maximum fine in that category is considered insufficient, a fine of up to 10% of the annual turnover of the legal entity in the year before the imposition of the penalty order (only in relation to offences committed on or after 1 January 2015).

A fine of the 5th category currently amounts to EUR 90,000. A fine of the 6th category currently amounts to EUR 900,000. These amounts are adjusted for inflation every two years. The next adjustment will be implemented on 1 January 2024.

4.5 Are there other potential consequences from a criminal law perspective?

Other potential consequences include:

- imprisonment;
- community service;
- disgorgements;
- debarment; and
- licence revocation.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

This is not applicable as the Netherlands does not have a civil enforcement practice comparable to that of, for example, the U.S.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable.

4.8 Is there both corporate and personal civil liability?

This is not applicable.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable.

4.10 Are there other potential consequences from a civil law perspective?

This is not applicable.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

This is not applicable.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Criminal enforcement of sanctions occurs at national level only. We do note that there has been an increase of initiatives from EU institutions to assist in enforcement. For example, on 4 March 2022, the European Commission announced the introduction of the 'EU Sanctions Whistleblower Tool', designed to be used to report on 'past, ongoing or planned' EU sanctions violations, as well as circumvention attempts. If the Commission considers that the information provided by the whistle-blower is credible, it will share the anonymised report and any additional information gathered during the internal inquiry with the national competent authorities in the relevant Member State or States. The Commission may subsequently provide further assistance to the investigation, as needed, and periodically follow up on the investigation until a conclusion is reached.

4.14 What is the statute of limitations for economic sanctions violations?

Minor offences (*overtredingen*) become time-barred three years after the relevant offence was committed. Serious offences (*misdrijven*), i.e. wilfully committed offences (including conditional intent), only become time-barred 12 years after the relevant offence was committed.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

As indicated under question 1.3, it is currently uncertain whether and if so, when, the EU sanctions with respect to Russia will be expanded or retracted. It appears that the current sanctions against Russia are not likely to be retracted any time soon and that further waves of sanctions can be expected. In the Netherlands, the new sanctions against Russia rekindled an intense political debate on the enforcement of sanctions violations in the Netherlands. Politicians with different political affiliations have openly questioned the approach of the Dutch enforcement authorities, arguing that they have so far been too passive. A report of 12 May 2022 by an appointed National Coordinator confirmed that the Dutch enforcement regime with respect to sanctions needs strengthening.

Following this report and the recommendations made, the Minister of Foreign Affairs has sent a letter to Parliament on 4 November 2022 stating the intentions to modernise the Dutch sanctions regime by, amongst other contemplated measures:

- extending administrative supervision on compliance with sanctions, similar to current supervision by the Dutch Financial Markets Authority and Dutch Central Bank regarding financial institutions, to other 'gatekeepers', notably lawyers, notaries and accountants;
- providing for a reporting obligation that sets legal privilege aside;
- extending supervisory and enforcement powers pursuant to the Sanctions Act 1977, e.g., including a publication regime for enforcement decisions based on the Sanctions Act 1977;
- providing a legal basis for the exchange of information between relevant authorities;
- providing a framework for the long-term management of frozen assets; and
- providing for the possibility of including a registration of frozen assets in relevant registers, e.g., the Commercial Register and Land Registry.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

Relevant laws and regulations can be found at https://wetten.overheid.nl, but are not available in English

Some high-level general information on sanctions, provided by the Dutch government and available in English, can be found at: https://www.government.nl/topics/international-peace-and-security/compliance-with-international-sanctions

Some further information is also provided by the Central Import and Export Service and available in English at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/customs/safety_health_economy_and_environment/cdiu_cluster/sanctions/sanctions

The Information Desk dedicated to the new sanctions against Russia can be contacted via: https://www.rvo.nl/onderwerpen/sanctieloket-rusland

Marlies de Waard advises clients on all aspects of economic sanctions as well as export controls and other international trade matters, ranging from training and compliance advice to the assessment and structuring of actual trade transactions, involving sanctioned countries or strategic items. Marlies has conducted multiple internal investigations into international trade-related matters and represented corporates *vis-à-vis* both national and international enforcement authorities in relation to such matters. She also regularly advises on international trade-related issues in the context of M&A transactions. Her experience includes two years with the firm's New York office, assisting clients subject to US enforcement in a variety of matters, including economic sanctions and export controls.

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De Brauw assists clients with a broad range of cutting-edge complex international trade, economic sanctions and export control matters. In doing so, we provide effective solutions which align business goals with legal requirements.

We advise on the permissibility of transactions and the applicability of license requirements and other restrictions. We regularly conduct internal investigations and have ample experience in assisting clients in economic sanctions and export control related (cross border) enforcement matters.

We offer in depth knowledge of the regulatory and criminal enforcement landscape demonstrated by our extensive experience in assisting clients *vis-à-vis* various authorities, including the Dutch Ministry of Foreign Affairs, Team POSS, the Central Import and Export Service (CDIU) and the Dutch Public Prosecutor (OM), as well as the US Office of Foreign Assets Control (OFAC), the Bureau of Industry and Security (BIS) and the Department of Justice (DoJ).

Together with our M&A and Competition colleagues, we furthermore advise on transactions and foreign direct investment screening relating to strategic investments, notably those involving sensitive technologies.

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Norway maintains a variety of sanctions, ranging from comprehensive to more limited restrictions. Norway generally implements sanctions pursuant to UN and EU sanctions, and also the Organisation for Security and Co-operation in Europe (OSCE) arms embargoes. UN and EU sanctions measures must be implemented in Norwegian legislation before they can be made binding on individuals and legal entities in Norway.

However, the Norwegian Parliament may implement sanctions autonomously and may also implement UN and EU sanctions with national amendments.

Norway also generally extends the application of sanctions to overseas territories such as Svalbard and Dronning Maud Land. Norwegian sanctions do not purport to have an extra-territorial effect on actions outside Norway, although they do apply to Norwegian nationals, companies established under Norwegian law and Norwegian aircraft/vessels, wherever located.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Norwegian Ministry of Foreign Affairs (MFA) administers and enforces the sanctions regime. The MFA has broad oversight for sanctions policy in Norway. A subgroup under the MFA, the Section for Export Control, administers the applications based on Norwegian legislation.

According to the Police Act, the Norwegian Police Security Service (PST) shall prevent, investigate and prosecute violations of the sanction regimes. The Financial Supervisory Authority (FSA) has a mediating role in the work on sanctions and freezing obligations. This entails the dissemination of listing records from the UN and the EU to enterprises that are subject to supervision by the FSA. The Norwegian Customs has tasks regarding the control of goods, enforcement, prevention and investigation of the violation of export regulations.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

In response to Russia's illegal attack on Ukraine, Norway has implemented the most comprehensive and wide-ranging sanctions at any time under Norwegian law. The sanctions against Russia are found in the Norwegian Regulation on restrictive measures against Russia no. 1076 adopted 15 August 2014, which has been in place since Russia's annexation of Crimea in 2014.

On 27 February 2022, the Norwegian Prime Minister announced that Norway would align with the EU's sanctions on Russia and Belarus. Norway has up to this date adopted most of EU's sanctions on Russia, with some exceptions, such as the sanctions imposed on state-owned outlets RT/Russia Today and Sputnik's broadcasting. Thus, the past year has been characterised by a continuous expansion of the sanctions against Russia. The sanctions imposed are divided into financial, geographical and sectorial sanctions. As regards the financial sanctions imposed on listed individuals and entities, hereunder the freezing of assets, Norway has at the time of writing this chapter (June 2023) adopted the EU's sanction list in its entirety. In addition to several sanctions aimed at the financial sector, as well as specific sanctions directed at the areas Crimea, Donetsk, Luhansk and Sevastopol, a range of goods and services are subject to restriction of import and export. This includes, among others, goods and services related to the energy, transport and defence sector. Further, also more specific sanctions have been imposed, such as a ban on certain Russian means of transport, including a ban on vessels flying the Russian flag, with the exception of fishing vessels.

Although Norway has decided to adopt most of EU's sanctions imposed on Russia, there are some special features of such an adoption which must be emphasised. Firstly, a national decision by the government is required before the EU sanctions are adopted as Norwegian law. The EU sanctions are implemented in Norwegian, subject to national adjustments. Consequently, the English text is not binding, and one may not base a legal assessment on EU legislations. As a result of this process of implementation, new EU sanctions, other than listings of individuals and companies, will normally enter into force one to two months after they have been adopted by the EU. Secondly, as EU practice is not legally binding in Norway, local interpretation of the provisions and different policies may result in deviating practices.

Furthermore, since Norway is not a part of the EU, the requirement of an authorisation for exports or exceptions under the sanctions regulations is required to be obtained separately by a Norwegian authority, even if a product is first transferred to another EU Member State before being forwarded to Russia.

The special features of adopting EU sanctions in Norway is particularly evident in the question of whether Russian citizen using drones in Norway for recreational use can be punished. In autumn 2022, several Russian citizens were arrested and detained for flying drones in Norway. Some were suspected of flying in a no-fly zone and taking illegal photos, and others only flying drones for recreational use. The Norwegian Supreme Court concluded in 2023 that a Russian citizen's use of unregistered drones in Norway were sanctioned.

Another sanction imposed in Norway during the last 12 months was the arm embargo imposed on Haiti, as imposed by the UNSC. Norway has also imposed restrictive measures against persons responsible for actions aimed at destabilising, undermining or threatening the sovereignty and independence of the Republic of Moldova.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

The Norwegian sanctions regime is based on national legislation administered by the MFA, Section for Export Control. Sanctions that are adopted by the UN Security Council (UNSC) and EU restrictive measures and other international non-military measures with which Norway has aligned itself are implemented through regulations under the Act of 16 April 2021 No. 18 on the Implementation of International Sanctions (the Sanctions Act).

More detailed provisions laid down by the MFA are found in regulations adopted under the Sanction Act that provide the legal authority for such measures.

In April 2018, the MFA published guidelines on financial sanctions, intended to provide information that will make it easier to understand the financial restrictions in the Norwegian regulations, which are based on UNSC sanctions and EU restrictive measures. The guidelines only provide general information and are not legally binding for the MFA in their interpretation of the current regulation.

Certain types of measures included in UN sanctions and/or EU restrictive measures are implemented under other Norwegian legislation. These include travel restrictions, which are implemented under the immigration legislation, and arms embargoes, which are often implemented under the ordinary export control legislation.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

If the UNSC determines that an act of aggression or a breach of peace has occurred, it may decide what measures Member States must take in order to restore or maintain international peace and security. Norway is obligated under international law to implement UNSC's binding resolutions. UN resolutions do not have a direct effect in Norway and must be implemented in Norwegian legislation before they can be made binding on persons and entities in Norway. Norway's Sanctions Act enables the Government to give effect to decisions passed by the UNSC. Before a resolution is implemented, a Norwegian regulation must be drafted.

As of today, Norway has implemented the current UNSC resolutions.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

Norway is part of the Agreement on the European Economic Area (the EEA Agreement), which brings together the EU Member States and the three EEA EFTA States (Iceland, Lichtenstein and Norway). Foreign policy falls outside the scope of the EEA Agreement, and Norway is therefore not bound by or obligated to implement EU sanctions. When the EU adopts new restrictive measures, the MFA makes an assessment and the Norwegian Government decides whether Norway shall follow EU measures. The Government tends to follow the EU in this regard.

We emphasise that when implementing EU regulations, national adjustments are included, so the implemented regulations are not a blueprint of the EU regulations and establish Norwegian autonomous regimes.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Norway largely adopts the list contained in the corresponding UNSC resolutions and/or EU regulations, which are implemented as described under questions 2.2 and 2.3.

The list of sanctioned individuals and entities is found in Norwegian regulations. The regulations either include a list of designated parties or refer to a list updated by the UN or the EU. Previously, the national regulation included a list of individuals and entities that was updated by the MFA. With effect from 2017, the MFA revised the regulation, and it now only refers to the applicable EU consolidated list of sanctioned persons and entities. An exemption is the Norwegian Regulation of 15 December 2015 No. 2103 on restrictive measures against Venezuela where Norway has adopted a national entity list.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

If a person or entity considers a listing to be unlawful, it is possible to request a "delisting" (to be removed from the list).

A petitioner seeking to submit a request for delisting from the UN sanctions list can do so directly, or through a representative, by contacting the UN Office of the Ombudsperson. In Norway, the MFA may assist any listed persons with requests for the removal from the lists. Such assistance may also be provided by lawyers with relevant expertise.

The EU Council shall warn persons and entities subject to freezing restrictions or travel restrictions under restrictive measures, as well as inform such persons about the possibility of legally testing the validity of a listing. When a person or entity wants to challenge a listing measure, it can either initiate an administrative-review procedure by the Council or challenge the listing in the European Court of Justice. Several individuals and entities have, in recent years, successfully challenged the listing. Most of these court cases involved a lack of respect for procedural fundamental rights (rights of defence, due process), mostly relating to administrative and procedural deficiencies.

It can be questioned whether the listing of an individual or entity can be challenged in front of the national courts. Through its UN membership, Norway is obligated to implement the UNSC's listings. We cannot therefore see how such listings may be challenged in front of the national courts. However, the same obligation does not apply for listing from the EU. Implementations of the EU's listings of individuals or entities are based on a national decision, normally conducted by the MFA. Such a decision shall follow the ordinary rules under the Public Administration Act of 10 February 1967. If procedural rules are not followed, the decision may be challenged in front of the court.

Objections may also be raised against the banks that are freezing assets. Objections may be brought in front of the court, e.g. on the basis that a bank has frozen assets that are not covered by the regulation.

2.6 How does the public access those lists?

There are no consolidated versions of listed persons and entities. The MFA do, however, keep an updated list with references to current legislation on their webpage: https://www.regjeringen.no/no/tema/utenrikssaker/Eksportkontroll/sanksjoner-og-tiltak1/sanksjoner-og-tiltak/id2008477/ (in Norwegian only).

The EU Sanctions Map, including both EU restrictive measures and UN sanctions, is a useful source of information, since Norway essentially has similar sanction rules: https://www.sanctionsmap.eu/ but we do, however, emphasise that it is the Norwegian regulations that apply in case of differences.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Norway maintains comprehensive sanctions against countries and regions, such as Crimea, Donetsk, Luhansk, North Korea, Russia and Sevastopol.

In addition to the comprehensive sanctions, Norway also maintains an arms embargo for 18 countries.

2.8 Does your jurisdiction maintain any other sanctions?

Norway is currently maintaining sanctions against 27 different nations, geographical areas and terrorist organisations. In response to the consequences of comprehensive sanctions on civilians, "targeted" or "smart" sanctions are more often used. These targeted sanctions are conceived to directly affect political leaders or those responsible for human rights violations. Properly targeting sanctions, it is hoped, can eliminate civilian suffering while putting significant pressure on the Government itself, thus bringing sanctioned regimes into compliance with human rights and humanitarian law and increasing their chances of success.

Targeted financial sanctions are most commonly used in Norwegian legislation. This includes freezing the assets of persons or entities listed under national sanctions regulations. Listed persons may also be subject to travel restrictions. Norway also applies trade restrictions on goods, normally those such as arms, dual-use goods and goods which could be used in enrichment-related activities, such as oil, natural gas, petrochemical and petroleum products.

2.9 What is the process for lifting sanctions?

In Norway, the lifting of national sanctions can be quite straightforward. If the sanctions were imposed by a national regulation under the Government's authority, they can be lifted quickly under that same authority. If sanctions are imposed, in whole or in part, on the basis of an act passed by Parliament, the sanctions must be lifted by Parliament and that will normally take longer. It also requires that the majority of parliament accepts to lift the sanctions.

The sanctions which are imposed by the UNSC are binding for Norway under international law. Lifting such sanctions can only be carried out when the UNSC resolution is lifted, otherwise it will be a breach of Norway's obligations as a member of the UN.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Norway has an export control regime applicable to the export of military and dual-use equipment. The export control regime is applicable even when it is exported to "friendly" countries like those in the EU or NATO allies. Such items cannot be exported without a licence from the MFA.

The MFA is the authority responsible for the control of exports of military equipment, dual-use items and relevant technology and services from Norway. The law governing export control is the Act of 18 December 1987 relating to Control of the Export of Strategic Goods, Services, Technology, etc. (the Export Control Act). The Export Control Act provides the authority to regulate exports of all goods, services and technology that may be of significance for another country's development, production or utilisation of products for military use. It also regulates goods, services and technology that may directly serve to develop a country's military capability, including goods and technology that can be used to carry out terrorist acts.

More detailed provisions laid down by the MFA are found in the regulation dated 19 June 2013 relating to the export of defence-related products, dual-use items, technology and services (the Export Control Regulation). The Export Control Regulation provides the operational legal framework for the MFA's implementation of export controls, including licensing requirements.

The control lists form part of the Export Control Regulation and specify the goods and technology for which an export licence is required. The two lists are for defence-related products (List I) and dual-use items (List II). Control of technology also includes control of intangible transfers of technology. In practice, the lists are the result of negotiations in the multilateral export control regimes of which Norway is a member. The lists are regularly maintained. Products that are listed require a licence prior to export.

The Export Control Regulations also provide a regulatory basis to require the MFA's permission to export unlisted items when there is a reason to believe such items are intended for such as biological and nuclear weapons, but it may also cover other purposes of end-use ("catch-all clauses").

In Norway, some of the technology used for oil and gas production and exploration is controlled. However, the Export Regulation considers the continental shelf as a part of Norway and there is no need to apply for a licence when sending technology or equipment from the mainland to installations offshore. A licence is needed when it leaves the Norwegian economic zone. The geographical scope of the export control regulations was expanded in 2021 and now also applies to Svalbard and Jan Mayen.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Norway does not have blocking statutes, for example, such as you find in the EU, which are intended to hinder the application of a law made by a foreign jurisdiction.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Norway does not impose secondary or extraterritorial sanctions which target non-Norwegian entities or persons that transact with sanctions targets outside the Norwegian jurisdiction.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Generally, the Norwegian sanctions regulations apply:

a) within the territory of Norway, including Norwegian airspace;
b) on board any aircraft or vessel under Norwegian jurisdiction;
c) *vis-à-vis* all Norwegian nationals irrespective of their location;
d) *vis-à-vis* all legal persons, entities and bodies established in accordance with Norwegian law; and
e) *vis-à-vis* all legal persons, entities and bodies with regard to the business activities they conduct wholly or partly in Norway.

The type of transactions covered by the sanctions regulations are specified in each regulation, which generally corresponds with the UN sanctions and EU restrictive measures.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Under the Norwegian economic sanction regime, individuals and legal entities are obliged to block and/or freeze funds or other assets which directly or indirectly belong to or are under the control of persons, units or groups listed in the specific sanctions regulations. Generally, these Norwegian regulations correspond with the UN sanction lists and EU restrictive measures. The Norwegian Penal Code also regulates the seizure of assets belonging to individuals or legal entities involved in terrorist acts.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

In addition to the export licences issued by the MFA as described under question 2.10, the Norwegian regulations generally provide the MFA with a right to grant exemptions from the sanction's regulations in accordance with the relevant UN sanctions or EU restrictive measures. The MFA may also grant exemptions in special cases where the regulation has a clear unintended effect, provided that the exemption does not conflict with Norway's international law obligations or the motives behind the measures.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Credit institutions shall report on deposits exceeding EUR 100,000 held by Russian persons or entities.

Under the Norwegian export control and licensing regime, exporters and other persons assisting in the trade of certain goods and services must report certain information regarding its transactions to the MFA in order to obtain an export licence (for instance: the type of goods; the quantity and value; transfer date; the name and address of the supplier and the consignee; and the end-user and end-use of the goods, etc.). Furthermore, suppliers are also obliged to report on all exports and transfers of listed military/defence-related goods. The reports shall be sent to the MFA on a prescribed form each quarter.

Additionally, for some of the sanctions imposed on Russia, a wind-down period for existing contracts applies, provided that the MFA has been notified within a time limit in advance of the fulfilment of the contract.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

Generally, legal entities are not required by law to maintain a compliance programme. The exceptions are banks, insurance companies, investment funds, accountants and other financial institutions which are required to have a compliance programme that must include internal regulations on screening customers and customer databases against persons, units or groups listed in the sanctions regulations (know-your-customer requirements).

Entities who are exposed to different sanctions regimes on a more regular basis are, however, expected to have internal guidelines, instructions, training, checks or other measures in place to ensure compliance with the sanctions regulations. This follows on from the fact that the use of such measures is considered when assessing the size of a financial penalty (see question 4.4 below). The Norwegian authorities have also issued non-binding guidelines regarding the obligation to block and freeze funds or other property that violate sanctions prohibitions. The Government has also published guidance regarding which standards apply for the due diligence assessment required for persons and entities to comply with the sanctions regime.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

A violation of economic sanction laws and regulations is punishable by imprisonment (of up to three or five years), financial penalties and/or confiscation. A legal entity found guilty of violating economic sanctions can also lose the right to operate its business, or may be prohibited from operating in certain forms. Depending on the act, a violation of economic sanction laws and regulations could also be covered by sections of the Norwegian Penal Code with higher maximum penalties.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The PST is responsible for investigating and prosecuting criminal economic sanctions offences. Criminal sanction cases are often referred to the PST by the MFA.

4.3 Is there both corporate and personal criminal liability?

In accordance with Norwegian criminal law, both legal entities and individuals may be found liable for breach of economic sanctions regulations.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

There are no fixed maximum levels of financial penalties for individuals or legal entities convicted of criminal violation of sanctions. The financial penalties are set by a court of law based on an overall assessment.

The main factors in assessing the size of financial penalties are: the preventative effect; the severity of the offence; proportionality; and the individual or entity's financial situation or capacity. Further, for legal entities, the following circumstances shall be taken into consideration as part of the overall assessment:

a) whether the entity could have prevented the offence by use of guidelines, instruction, training, checks or other measures;
b) whether the offence has been committed in order to promote the interests of the legal entity;
c) whether the legal entity has had or could have obtained any advantage by the offence;
d) whether other sanctions arising from the offence are imposed on the legal entity or a person who has acted on its behalf, including whether a penalty is imposed on any individual person; and
e) whether agreements with foreign states prescribe the use of enterprise penalties.

4.5 Are there other potential consequences from a criminal law perspective?

Yes. An example is withdrawal of proceeds from criminal action.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

In Norway, violations of economic sanction laws and regulations are penalised through criminal penalties and the criminal justice system (*cf.* questions 4.1–4.4 above). There is no civil enforcement institute in Norway. There are, however, certain consequences that are not considered criminal penalties under Norwegian law:

- The MFA may revoke, suspend or restrict an already issued export licence if the licence is abused, the terms of the licence are breached and/or in case of violation of the export control regulations. A breach of the economic sanctions regulations can also affect a company's ability to obtain another export licence.
- The MFA may issue a daily fine if a legal entity or person does not comply with the duty to provide information to the MFA.
- A court of law may also seize goods that have been exported, imported or sought to be exported/imported in violation of the UN sanctions regulations. The same applies to means of payment and securities used. If the goods, funds or securities cannot be confiscated, the value may be seized.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable in Norway.

4.8 Is there both corporate and personal civil liability?

This is not applicable in Norway.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable in Norway.

4.10 Are there other potential consequences from a civil law perspective?

This is not applicable in Norway.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable in Norway.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

In Norway, if you wish to appeal a criminal conviction handed down by the district court, the appeal should be submitted within one month after the judgment. A judgment made by the court of appeal may be appealed to the Supreme Court. The Supreme Court cannot evaluate the evidence as to the question of the accused's guilt; here the court of appeal has the final say.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Criminal enforcement of economic sanctions laws and regulations is handled at a national level by the PST, the MFA and the Norwegian Customs.

4.14 What is the statute of limitations for economic sanctions violations?

The statute of limitations for criminal enforcement of economic sanctions violations depends on the maximum statutory penalty prescribed. The limitations period is five years when the maximum statutory penalty is imprisonment for three years. The limitation period is generally calculated from the day the offence ceased. If a person or legal entity has committed several offences of the Norwegian Penal Code through the same act, the longest limitation period applies to all the offences.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

The Norwegian sanctions regime generally corresponds with the UN sanctions list and EU restrictive measures. There are currently no indications that the Norwegian Government will propose any unilateral sanctions.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

The Norwegian Government has prepared a list of relevant sanction laws and regulations on their website (https://www.regjeringen.no/no/tema/utenrikssaker/Eksportkontroll/sanksjoner-og-tiltak1/sanksjoner-og-tiltak/id2008477/). The sanction laws and regulations are available in Norwegian on the Norwegian public database for legal resources – https://www.lovdata.no

The Norwegian sanctions regime is, however, largely based on EU restrictive measures and the UN sanctions regime. The EU web portal (https://www.sanctionsmap.eu/#/main), which provides a visual overview of EU and UN restrictions, is therefore recommended as a useful source of information. The MFA also issues an annual white paper to the Norwegian Parliament on Norwegian Exports of Defence-related Products, Export Control and International Non-proliferation Cooperation. A summary of this paper is available in English at https://www.regjeringen.no/globalassets/departementene/ud/dokumenter/rapporter/meldst14_20212022_eng.pdf

Useful information regarding the Norwegian export control regime is also available at the following government website: https://www.regjeringen.no/en/topics/foreign-affairs/eksportkontroll/id754301/

Ronny Rosenvold is an experienced lawyer dedicated to providing legal assistance within the field of export control and sanctions regulations. Mr. Rosenvold is one of few Norwegian lawyers who have significant experience within international trade, sanctions and export control. He has considerable experience representing individuals facing restrictive measures, as well as corporations requiring compliance and litigious advice arising from the enforcement of sanctions.
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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Singapore is a member of the United Nations ("**UN**") and implements the sanctions imposed by the UN Security Council through domestic legislation and administrative measures. In particular, the United Nations Act 2001 ("**UN Act**") imposes sanctions requirements on non-financial institutions, and the Financial Services and Markets Act 2022 ("**FSMA**") imposes sanctions requirements on financial institutions. Variable capital companies ("**VCCs**"), which are a corporate structure for investment funds, are subject to sanctions requirements under the Variable Capital Companies Act 2018 ("**VCC Act**"). In addition, the Terrorism (Suppression of Financing) Act 2002 ("**TSOFA**") prohibits dealings with persons and entities designated as terrorists by the UN Security Council and the Singapore Government.

In addition, in response to Russia's invasion of Ukraine, the Monetary Authority of Singapore (the "**MAS**") imposed targeted financial sanctions at designated Russian banks, entities and activities in Russia, and fund-raising activities benefitting the Russian government. These financial sanctions apply to financial institutions in Singapore.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Singapore Police Force primarily administers and enforces the UN Act and the TSOFA. The Police may cooperate with other governmental agencies; for example, Singapore Customs and the Maritime and Port Authority of Singapore. The MAS administers and enforces the FSMA.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

Sanctions requirements on financial institutions have been shifted from the Monetary Authority of Singapore Act 1970 (the "**MAS Act**") to the FSMA (which is a new omnibus statute for the sector-wide regulation of financial services and markets) with effect from 28 April 2023.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

The UN Act was enacted specifically to "*enable Singapore to fulfil its obligations respecting Article 41 of the Charter of the United Nations*": see Preamble of the UN Act. Under the UN Act, the Minister is empowered to make regulations for the purpose of enabling resolutions passed by the UN Security Council pursuant to Article 41 of the Charter of the United Nations to be "*effectively applied*": see Section 2(1) of the UN Act. The UN Act applies extraterritorially to Singapore citizens, and offences committed by Singapore citizens outside of Singapore: see Section 6(1) of the UN Act. The UN Act does not apply to financial institutions that are subject to the FSMA: see Section 2(2) of the UN Act.

The UN Security Council's sanctions regime applies to financial institutions in Singapore through directions and regulations issued under Section 15 of the FSMA. The said section empowers the MAS to issue directions to financial institutions, and make regulations concerning financial institutions, to give effect to decisions of the UN Security Council. MAS has similar powers to issue directions to and make regulations concerning VCCs under Section 83 of the VCC Act.

The sanctions against Russia were issued pursuant to the previous Section 27(1) of the Monetary Authority of Singapore Act 1970 (as then in force in March 2022). Such sanctions continue to remain in force pursuant to saving provisions under Section 219 of the FSMA.

The TSOFA was enacted to give effect to the International Convention for the Suppression of the Financing of Terrorism. The TSOFA prohibits dealings with designated terrorists.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes. See questions 1.1 and 2.1 above.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

Singapore is part of the Association of Southeast Asian Nations ("**ASEAN**"). ASEAN has not issued sanctions. ASEAN is

committed to adhering to the principles of the UN Charter, and therefore the decisions of the UN Security Council.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Singapore adopts the UN Sanctions Lists. In addition, the TSOFA sets out a list of designated terrorists not included in the UN Sanctions Lists for persons and entities belonging to or associated with the Taliban and the Al-Qaida organisation: see paragraph 2 of the First Schedule of the TSOFA. The Minister may "*amend, add to or vary the First Schedule*" by an order published in the Singapore Government Gazette: see Section 38 of the TSOFA.

In relation to the sanctions against Russia, MAS imposed targeted financial sanctions against four designated Russian banks. When the sanctions against Russia were issued in March 2022, it was also anticipated that MAS would release a list of sanctioned Designated Entities. However, to-date, no such list has been issued.

From time to time, the MAS issues private control lists of designated individuals and entities to financial institutions. These lists are not publicly available.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

A Singapore citizen or Singapore-incorporated entity seeking to be delisted from the UN Sanctions Lists may send a request through the MAS. If the Singapore Government is of the view that the applicant no longer meets the criteria for designation, the Singapore Ministry of Foreign Affairs will submit a de-listing request to the relevant UN Security Council Committee for its assessment and approval. This procedure is not available to designated terrorists under UN Security Council Resolutions 1267/1989 and 1988, *i.e.* the Al-Qaida List and the Taliban List.

Persons and entities designated under the Al-Qaida List or the ISIL List may submit de-listing requests directly to an Ombudsperson appointed by the UN Secretary General.

Persons or entities listed under the First Schedule of the TSOFA who are domestically designated may make a request for de-listing to the Ministry of Home Affairs. The request will be assessed by the Inter-Ministry Committee on Terrorist Designation.

2.6 How does the public access those lists?

Singapore's government agencies generally do not separately publish sanctions lists but make references to the UN Sanctions Lists (except for the sanctioned Russian banks, which are listed in the relevant MAS Notice). The TSOFA is accessible through the Singapore Statutes Online website.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Apart from implementing the abovementioned sanctions, Singapore does not maintain any comprehensive sanctions or embargoes against countries or regions.

2.8 Does your jurisdiction maintain any other sanctions?

Apart from implementing UN sanctions and the sanctions imposed against Russia in response to Russia's invasion of Ukraine, Singapore does not maintain any other sanctions.

2.9 What is the process for lifting sanctions?

This is not applicable. See questions 2.7 and 2.8 above.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes; for instance, the Regulation of Imports and Exports Act 1995, Strategic Goods (Control) Act 2002 and Chemical Weapons (Prohibition) Act 2000 regulate the import and export of specified goods.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Singapore does not have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions embargoes.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Singapore has not imposed any secondary sanctions.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

The UN Act and the TSOFA apply to transactions in Singapore and also provide for extraterritorial application.

The UN Act expressly applies to all Singapore citizens, whether outside or within Singapore: see Section 6(1) of the UN Act.

Under the TSOFA, any person who provides or collects property for terrorists, provides property or services for terrorist purposes, or uses or possesses property for terrorist purposes outside Singapore in contravention of Sections 3, 4 or 5 of the TSOFA, is deemed to have contravened the said provisions in Singapore and may be dealt with accordingly: see Section 34(1) of the TSOFA. Further, Singapore citizens who deal with property of terrorists, or fail to disclose information concerning property of terrorists in contravention of Sections 6 or 8 of the TSOFA outside Singapore, will be dealt with as if the offence has been committed in Singapore: see Section 34(2) of the TSOFA.

The sanctions regulations made under the FSMA are applicable to persons falling under the definition of "*financial institution*"; this includes banks licensed under the Banking Act 1970

("**Banking Act**"), insurers licensed under the Insurance Act 1966, trust companies licensed under the Trust Companies Act 2005, *etc.*: see Section 2 of the FSMA read with the Financial Services and Markets Regulations. The sanctions regulations made under the VCC Act apply to VCCs incorporated in Singapore and foreign branches of VCCs incorporated in Singapore: see Section 83 of the VCC Act and Regulation 3 of the Variable Capital Companies (Sanctions and Freezing of Assets of Persons) Regulations 2020.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Section 54(2) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 ("**CDSA**") makes it an offence for a person to, *inter alia*, convert or transfer property which he knows or has reasonable grounds to believe represents another person's benefits from "*criminal conduct*". "*Criminal conduct*" includes contravention of the TSOFA, and the sanctions regulations established under the UN Act and the MAS Act.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

The various regulations made pursuant to the UN Act generally allow the Minister to grant an exemption where such exemption is consistent with the intention of the UN Security Council, and where the Minister considers it appropriate in the circumstances to grant the exemption.

The TSOFA also empowers the Minister to grant exemptions from the prohibition against the provision of property and services for terrorist purposes, and dealing with property of terrorists in respect of any or a class of specified activity or transaction: see Section 7 of the TSOFA.

A financial institution may apply to the MAS to be exempted from the sanctions regulations under the FSMA: see Section 189 of the FSMA.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

The various regulations made pursuant to the UN Act generally impose an obligation on persons in Singapore, and Singapore citizens outside Singapore, to provide the Police with information concerning the property of, and transactions with, designated persons and entities; and breaches of the regulations.

Under the TSOFA, persons in Singapore, and Singapore citizens outside Singapore, must inform the Police of information on property belonging to, or transactions with, designated terrorists: see Section 8(1) of the TSOFA.

The various regulations made pursuant to the FSMA generally require financial institutions to inform the MAS of the funds, financial assets, or economic resources in their possession, custody or control which is owned or controlled by any designated person; and any information they have about any transaction or proposed transaction in respect of any funds, financial assets, or economic resources which is owned or controlled by any designated person.

Additionally, Section 45 of the CDSA imposes a duty to report information on property which is reasonably suspected to be associated with, *inter alia*, "*criminal conduct*", to the Suspicious Transaction Reporting Office. "*Criminal conduct*" includes contravention of the TSOFA, and the sanctions regulations established under the UN Act and the MAS Act.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

The MAS has issued Notice 626 (Prevention of Money Laundering and Countering the Financing of Terrorism), which applies to all banks in Singapore. Paragraph 6.39 of Notice 626 requires a bank to screen a customer, natural persons appointed to act on behalf of the customer, connected parties of the customer and beneficial owners of the customer against relevant money laundering and terrorism financing information sources, as well as lists and information provided by the MAS or other relevant authorities in Singapore for the purposes of determining if there are any money laundering or terrorism financing risks in relation to the customer. Failure to comply with Notice 626 attracts a fine not exceeding S$1 million: see Section 16(4) of the FSMA. Similar requirements apply to other financial institutions, as well as entities in certain other non-financial sectors (e.g. real estate agents and dealers in precious stones and precious metals).

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes. See further details in question 4.4 below.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

Investigating authorities include the Commercial Affairs Department, which is a department within the Singapore Police Force responsible for investigating white-collar crime, and the MAS. The Attorney-General, as Public Prosecutor, will direct and control prosecutions for offences.

4.3 Is there both corporate and personal criminal liability?

Yes. See question 4.4 below.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

Each breach of the sanctions regulations under the UN Act attracts a fine not exceeding S$500,000 and/or imprisonment for a term not exceeding 10 years where the breach is committed by an individual; and a fine not exceeding S$1 million where the breach is committed by a non-natural person: Section 5(1) of the UN Act.

An individual who contravenes the provisions of the TSOFA will be liable on conviction to a fine not exceeding S$500,000 and/or imprisonment for a term not exceeding 10 years. A non-natural person which contravenes the TSOFA will be liable on conviction to a fine not exceeding the higher of S$1 million

or twice the value of the property (including funds derived or generated from the property), financial services or other related services, or financial transaction in respect of which the offence was committed: Section 6A of the TSOFA.

A financial institution which fails to comply with a sanctions direction or regulation issued under the FSMA will be liable on conviction to a fine not exceeding S$1 million: Section 15(5) of the FSMA.

4.5 Are there other potential consequences from a criminal law perspective?

The MAS generally has the power to revoke the licence of a financial institution where a financial institution has contravened laws or MAS considers that such revocation "*is in the public interest*": see, for example, Section 20(1) of the Banking Act 1970.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

There is no civil penalty regime for violations of Singapore's sanctions laws and regulations. However, for completeness, a Deferred Prosecution Agreement can be entered into between the Public Prosecutor and a person charged with (or whom the Public Prosecutor is considering prosecuting) an offence involving a breach of the MAS' regulations issued in respect of money laundering or the financing of terrorism (which includes targeted financial sanctions effected by the MAS).

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable in Singapore.

4.8 Is there both corporate and personal civil liability?

This is not applicable in Singapore.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable in Singapore.

4.10 Are there other potential consequences from a civil law perspective?

This is not applicable in Singapore.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable in Singapore.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

This is not applicable in Singapore.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

The enforcement regime operates at the national level. There is no division between the state and local levels.

4.14 What is the statute of limitations for economic sanctions violations?

There is no limitation period for criminal offences in Singapore.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

This is not applicable in Singapore.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

Information on:

(a) the UN Act, TSOFA, the FSMA, and other statutes referred to above may be found at the Singapore Statutes Online website at https://sso.agc.gov.sg/

(b) the MAS's financial sanctions requirements may be found at https://www.mas.gov.sg/regulation/anti-money-laundering/targeted-financial-sanctions

(c) the Inter-ministry Committee on Terrorist Designation may be found at https://www.mha.gov.sg/what-we-do/managing-security-threats/countering-the-financing-of-terrorism

(d) import and export regulation may be found at Singapore Customs' website at https://www.customs.gov.sg/

All materials are available in English.

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Sweden does not issue any sanctions of its own. Sanctions that apply in Sweden are sanctions decided by the United Nations or the European Union. To the extent such sanctions are not automatically binding in Sweden because of a treaty or public international law principles, such sanctions are enacted by way of a legislative process provided for in §3 of the Act (1996:95) on certain international sanctions (hereinafter the Swedish Sanctions Act) pursuant to which an Ordinance is issued.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

There is no general sanctions authority in Sweden. Instead, several government agencies are involved in the administration and enforcement of sanctions.

The Inspectorate of Strategic Products (Sw: *Inspektionen för strategiska produkter*) deals with issues pertaining to weapon embargoes, dual-use products, prohibitions regarding equipment used for internal repression and the release of frozen assets.

The National Board of Trade Sweden (Sw: *Kommerskollegium*) deals with licence requirements pertaining to sanctions and the export of products and services.

In addition, various agencies, such as the Swedish Financial Supervisory Authority (Sw: *Finansinspektionen*) and the Swedish Customs (Sw: *Tullverket*), supervise and enforce compliance within their areas of responsibility.

The respective agency's responsibilities are often described in the relevant Ordinance pertaining to the particular sanctions (although an Ordinance is not always issued, see question 1.1). For instance, following the Ordinance that the Swedish government issued implementing the sanctions which were imposed against Russia by way of Council Decision 2014/512, five different agencies are charged to perform various tasks.

Criminal enforcement is entrusted to the prosecutor-general, which is why the Swedish Prosecution Authority has an important role regarding the enforcement of sanctions and which also can involve the Swedish Security Services (Sw: *Säkerhetspolisen*).

Finally, the Swedish foreign ministry has the overall responsibility for "coordinating Sweden's sanctions policy" as expressed on their website.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

During the past 12 months, almost all focus in the sanctions field has been towards Russia's ongoing war against Ukraine. Since July 2022, the European Union has issued four additional sanctions packages adopting a wide range of restrictive measures against Russia, Belarus and the separatist regions of Ukraine. The restrictive measures continue to target goods and services, such as dual-use goods, that can facilitate Russia's aggression as well as targeting individuals supporting or benefitting from the war through asset freezes and travel restrictions. Focus during the last 12 months has been put, *inter alia,* on:

- Measures to ensure the sanctions *effectiveness*. For example, a lot of focus has been put on countering circumventions of sanctions. Companies shall refrain from activities where the object and effect are to circumvent prohibitions, e.g., through sales of goods targeted by sanctions to countries with close connection to Russia.
- For the purpose of harmonising the implementation and enforcement of sanctions, the European Council has added violation of restrictive measures in the list of EU crimes in the Treaty on the Functioning of the European Union. Following this decision, the European Union is currently working on an EU directive that will ensure minimum standards for all Member States regarding definitions and penalties on violations of restrictive measures. This might trigger the need for legislative amendments in the Swedish Sanctions Act, such as amendments in the provision stipulating the maximum prison sentence.
- Besides targeting goods and services that can facilitate Russia's aggression as well as asset freeze of individuals, there are a wide range of goods and services being targeted that *indirectly* facilitates Russia's aggression. This includes sanctions on, e.g., luxury goods such as tobacco, perfumes, spirits and handbags. Consequently, the scope of EU sanctions directed towards Russia, Belarus and the separate regions of Ukraine has broadened, thus making the sanctions landscape harder to navigate in, causing a need for

companies to thoroughly assess its sanctions risk exposure and adopt a sanctions compliance programme.

From a Swedish perspective, the development is dramatic. Sanctions have historically been a fairly unknown occurrence in Swedish business life, meaning the learning curve for many companies and not least agencies is steep.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Sanctions in Sweden (i.e. sanctions imposed by the European Union and United Nations) are imposed pursuant to the Swedish Sanctions Act. In addition, the European Union has the power to impose sanctions against third countries which have direct binding effect on all Member States (see question 2.3).

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Sweden's policy is to implement sanctions which have been decided or recommended by the United Nation's Security Council in accordance with the Charter of the United Nations, see §1 of the Swedish Sanctions Act. In practice, United Nations sanctions are generally imposed within the European Union – and consequently Sweden – through instruments issued by the European Union (see question 2.3). There are no significant ways in which Sweden fails to implement United Nations sanctions.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

Sweden is a member of the European Union.

(a) The Council of the European Union issues restrictive measures through CFSP Council decisions under Article 29 of the TEU. Certain measures, such as arms embargoes or restrictions on admission, are implemented on a national level by the European Union Member States. When national measures are required for implementation, the Swedish government makes a legislative proposal to the parliament for approval of an Ordinance in line with the process described in the Swedish Sanctions Act. Other measures, including measures freezing funds and export bans, are generally implemented directly by the Council, acting by qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, by way of a regulation (Article 215 of the TFEU). Such regulations are binding and directly applicable on all European Union Member States.

(b) No, there are none.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Sweden does not administer a sanctions list of its own. Instead, the Swedish government refers to the consolidated sanctions lists provided by the United Nations and the European Union.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

A challenge of a listing by the European Union can be made before a Swedish court. It can also be made by way of a challenge before the General Court of the European Union or by way of submitting a de-listing request to the General Secretariat of the Council of the European Union.

United Nations sanctions can be challenged by way of a de-listing request to the United Nations organisation. In the event the listing is related to the ISIL (Da'esh) and Al-Qaida sanctions list; the request can also be sent to the United Nations ombudsman.

There is no formal procedure in place imposing obligations on the Swedish government to assist Swedish citizens in challenging sanctions listings, although there are examples where such assistance has been provided.

2.6 How does the public access those lists?

Sanctions lists provided by the European Union and United Nations are publicly available on the internet, https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en and https://www.un.org/securitycouncil/content/un-sc-consolidated-list The best way to search the EU sanctions list, however, is by using the search tool at EU sanctions map, https://www.sanctionsmap.eu/#/main

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

As mentioned under question 1.1, only sanctions imposed by the United Nations and the European Union apply in Sweden. Following those sanctions regimes, the most comprehensive sanction programmes in Sweden at the time of writing are against Russia, Belarus, separatist regions of Ukraine (Luhansk, Donetsk, Cherson, Zaporizjzja, Crimea and Sevastopol), Iran, North Korea and Syria.

2.8 Does your jurisdiction maintain any other sanctions?

Following the United Nations and European Union sanction regimes, Sweden has, as of July 2023, sanctions against 29 countries and maintains in addition four other sanctions programmes pertaining to human rights, cyber attacks, chemical weapons and terrorism.

2.9 What is the process for lifting sanctions?

There is no process in Sweden for revoking or lifting sanctions imposed by the European Union or United Nations since the decision to lift sanctions rests with the legal or administrative authority which first enacted the sanction. Regarding the possibilities for a listed entity to remove a particular listing, please refer to the answer under question 2.5 above.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. Export control matters in Sweden are based on Council Regulation 2021/821, as amended.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Yes. The European Union's Blocking Statute, Council Regulation (EC) No 2271/96, applies in Sweden.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

No, it does not.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Violations committed within the Swedish territory, or by a Swedish citizen abroad, is subject to the Swedish Sanctions Act.

The European Union sanctions apply:

- within EU territory, including its airspace;
- to EU nationals, whether or not they are in the EU;
- to companies and organisations incorporated under the law of a Member State, whether or not they are in the EU (including branches of EU companies in third countries);
- to any business carried out in whole or in part within the European Union; and
- on board aircrafts or vessels under the jurisdiction of a Member State.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

To what extent parties are required to block funds or other property in relation to sanctions prohibitions will depend on the relevant sanctions regime. To this end, an asset freeze is a common feature in the sanctions regimes applying in Sweden, e.g., sanctions issued by the European Union and the United Nations. When freezing measures apply, no funds or economic resources may be made available to the listed individual or entity.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Yes, provided such remedy is possible according to the text of the relevant sanctions regime. Applications regarding export licences and exceptions from asset freeze provisions are made to the National Board of Trade Sweden. During 2022, the National Board of Trade Sweden registered a total of 59 cases concerning applications to be exempted from restrictive measures such as prohibitions on certain export and import of goods, services and technique. Overall, the National Board of Trade Sweden registered a total of 285 cases during 2022, a significant increase compared to 49 cases during 2021 and 47 cases during 2020.

Furthermore, applications regarding the release of frozen funds shall be made to the Inspectorate of Strategic Products, the Swedish Financial Supervisory Authority or to the Swedish Social Insurance Agency (Sw: *Försäkringskassan*) depending on the circumstances.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

According to Swedish law, there are no general reporting requirements although a licence (see question 3.3) may be issued subject to such a requirement. Furthermore, frozen funds shall be reported to the Swedish Financial Supervisory Authority. However, European Union sanctions regulations typically contain a general, although vague, obligation requiring all natural or legal persons, entities and bodies subject to the regulations to report any information which would "facilitate compliance" with financial sanctions.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

The Swedish government has not provided any sanctions compliance guidance such as the guidance provided by, e.g., OFAC and OFSI. The European Union has, however, provided some guidance which is available on the European Commission's website (to which the Swedish government's website refer). As to due diligence expectations, the European Union generally refers to the following document pertaining to business with Iran https://finance.ec.europa.eu/system/files/2020-01/faqs-restrictive-measures-iran_en.pdf The European Union also has a due diligence helpdesk for small- and medium-sized corporations dealing with Iran. Furthermore, the European Union has published – and updates on a regular basis – an FAQ about the implementation of the sanctions adopted following Russia's military aggression against Ukraine with Belarus involvement in it. The FAQ contains some guidance regarding due diligence for EU operators https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine/frequently-asked-questions-sanctions-against-russia_en

Notably, sanctions screening of individuals against sanction lists that are not legally binding in Sweden, for instance the SDN list, requires a permit from the Swedish Authority for Privacy Protection (Sw: *Integritetsskyddsmyndigheten*) for GDPR reasons. The authority currently appears to grant such permits only to financial institutions which are subject to AML requirements. The Swedish permit requirement makes global sanctions compliance difficult for Swedish companies.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes. A sanctions offence may result in fines or imprisonment. Please see question 1.3 regarding violation of restrictive measures being added to the list of EU crimes in the Treaty on the Functioning of the European Union.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The Swedish Prosecution Authority (Sw: *Åklagarmyndigheten*) is responsible for investigating and prosecuting criminal economic sanctions offences. When national security aspects are at hand, the matter is subject to prosecution by the National Security Unit (Sw: *Riksenheten för säkerhetsmål*) together with investigations conducted by the Swedish Security Service (Sw. *Säkerhetspolisen*).

4.3 Is there both corporate and personal criminal liability?

Natural persons are exposed to criminal liability pursuant to the Swedish Sanctions Act §8.

According to Swedish law, legal persons cannot be subject to criminal liability as such, i.e. a legal person cannot commit a crime. However, if a natural person has committed an offence in the exercise of a company's business activities, the company may be subject to a corporate fine, constituting a so-called "special legal consequence of offence" (Sw: *särskild rättsverkan av brott*), according to the Swedish Penal Code Chapter 36 §§ 7-10a. These rules do not only apply in relation to sanction breaches specifically, but to all criminal activities committed within a corporations' business activities. The determining factor in deciding the level of the corporate fine is the offence itself or the severity of the offence, i.e. how serious the offence is and the extent to which criticism can be levelled against the company. The financial situation of the company may also be taken into account in setting the level of the corporate fine where the situation involves particularly serious offences ("increased corporate fines").

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

Legal entities (including sole proprietorship) may be subject to a corporate fine amounting to a maximum of SEK 500,000,000. The maximum financial criminal liability for individuals is SEK 150,000.

4.5 Are there other potential consequences from a criminal law perspective?

Pursuant to §8 of the Swedish Sanctions Act, a breach of sanction laws may entail a prison sentence of a maximum of two years, or if the breach is gross, four years. If the breach is caused by gross negligence, the prison sentence equals a maximum of six months.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

There is no particular regime for civil penalties. However, breach of sanctions undertakings in contracts may of course lead to an obligation to pay damages depending on the contract terms. Also, note that legal persons may be subject to corporate fines (see question 4.3 above).

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable; see question 4.6 above.

4.8 Is there both corporate and personal civil liability?

This is not applicable; see question 4.6 above.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable; see question 4.6 above. As to the penalties for criminal liability, see question 4.4 above.

4.10 Are there other potential consequences from a civil law perspective?

This is not applicable; see question 4.6 above.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable; see question 4.6 above.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

Appeal of a criminal conviction decided by the District Court (i.e. generally the court of first instance) is made pursuant to the process described in Chapter 49 §1 and Chapter 51 of the Swedish Code of Judicial Procedure. The appeal is made to the District Court and should be made within three weeks. After having verified fulfilment of certain formal requirements, the District Court passes on the appeal to the Court of Appeal which try the case. Appeal of a judgment by the Court of Appeal to the Supreme Court will require a review permit.

Appeal of a corporate fine (see question 4.3) follows the same procedure; however, a permit is required from the Court of Appeal in the event no individual has been convicted in relation to the fine.

There is no established practice regarding the level of penalties for sanction breaches in Sweden. Likewise, there are few court decisions pertaining to sanction breaches. At least one decision suggests that sanction breaches generally should be considered as relatively severe crimes (see RH 1998:18).

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

This is at national level only.

4.14 What is the statute of limitations for economic sanctions violations?

The statute of limitations for economic sanctions violations is 10 years.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

We are not aware of any proposed unilateral Swedish measures although significant changes are expected on an EU level which will have direct impact on Sweden (see question 1.3)

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

The main information source about sanctions in Sweden is the Swedish government website (English version), https://www.government.se/government-policy/foreign-and-security-policy/international-sanctions/

The prime information source as to European Union sanctions is EU's sanctions map, https://www.sanctionsmap.eu/#/main

The English version of the website of the Inspectorate of Strategic Products is https://isp.se/eng (information about sanctions including applications forms for the release of frozen funds is, however, only available on the Swedish version of the website).

The English version of the website of the National Board of Trade Sweden is https://www.kommerskollegium.se/en/ Again, however, information about sanctions only seem to be available on the Swedish version of the website.

Information from the United Nations regarding how to submit a de-listing request can be found here: https://www.un.org/securitycouncil/sanctions/delisting

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

The Swiss sanctions regime is governed by the Federal Act on the Implementation of International Sanctions, also known as the Embargo Act (EmbA).

The EmbA is a framework law that authorises the Swiss Federal government, the Federal Council, to impose non-military measures in order to implement sanctions that have been imposed by the United Nations, the Organisation for Security and Cooperation in Europe (OSCE) or by Switzerland's most significant trade partners (e.g., the European Union (EU)) for the enforcement of international law, in particular, human rights.

Possible sanctions under the EmbA include direct or indirect restrictions of transactions involving goods and services, payment and capital transfers, the movement of persons, scientific, technological and cultural exchange, as well as prohibitions, licensing and reporting obligations and other restrictions of rights.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The State Secretariat for Economic Affairs (SECO) is the main authority responsible for implementing and enforcing sanctions. For specific sanction types, other agencies may be responsible (e.g., the State Secretariat for Migration for travel bans, the Federal Office of Civil Aviation for air traffic restrictions or the Federal Customs Administration for border controls).

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

No. However, on February 28, 2022, in a remarkable u-turn from its previous policy traditionally driven by the country's state of neutrality, the Federal Council decided to implement the sanctions imposed by the EU against Russia and Belarus in connection with Russia's military intervention in Ukraine. While Switzerland does not automatically adopt each further EU sanctions package against Russia and Belarus, the Federal Council has so far relatively consistently revised the Swiss sanctions regime to substantially reflect additional EU sanctions packages enacted in the meantime.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

The Federal Council is responsible for implementing sanctions imposed by international organisations (e.g., United Nations, OSCE and the EU).

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes. Between 1990 and 2002, Switzerland participated autonomously in non-military sanctions imposed by the United Nations. Since 2002, when Switzerland became a Member State of the United Nations, Switzerland has been required to implement non-military sanctions of the United Nations.

Once the United Nations has established a sanctions regime under Chapter VII of the United Nations Charter, the Federal Council will issue an ordinance implementing the non-military sanctions imposed by the United Nations. Depending on the circumstances, the implementation usually takes between a few days and several weeks.

Switzerland has currently implemented all relevant United Nations sanctions.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

The Federal Council is authorised to implement sanctions issued by the OSCE (of which Switzerland is a Member State) and Switzerland's most significant trade partners (e.g., the EU).

Currently, there are no significant ways in which Switzerland fails to implement sanctions of the OSCE and the EU. We note, however, that Switzerland is not legally bound to implement EU sanctions and, therefore, has, for example, not implemented the EU's "thematic" sanctions regimes (e.g., with regard to chemical weapons, cyber security and human rights).

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Yes. The lists of sanctioned individuals and entities are maintained and updated by the SECO (see the answer to question 2.6 below). However, the decision of whether individuals and entities will be added to or removed from a sanctions list lies with the Federal Council (see the answer to question 2.1 above). In general, the sanctions lists will be updated in accordance with the corresponding lists issued by the United Nations (or, in case of the sanctions lists pertaining to Russia and Belarus, the EU).

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Individuals or entities may challenge their addition to a sanctions list. In practice, however, the responsible agencies and courts generally reject the delisting as long as the individual or entity concerned is mentioned on sanctions lists issued by the United Nations (or, in case of the sanctions lists pertaining to Russia and Belarus, the EU).

2.6 How does the public access those lists?

The lists of sanctioned individuals and entities can be found on the website of the SECO: https://www.seco.admin.ch/seco/de/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen.html

The SECO also provides an online tool in order to search for sanctioned individuals and entities. The search tool, including a user guide, can be found on the following website: https://www.seco.admin.ch/seco/de/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/suche_sanktionsadressaten.html

In addition, updates regarding sanctioned individuals and entities can be received via the newsletter service of the Swiss government and the Swiss Financial Market Supervisory Authority FINMA (FINMA).

Finally, the sanctions lists are published in the Systematic Compilation of Federal Legislation.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Comprehensive sanctions have become less important due to their negative effects on the civilian population. Nowadays, the focus is on so-called smart sanctions limited to the political and military leadership or strategically important goods.

Switzerland has imposed sanctions on different countries, including but not limited to Belarus, Lebanon, Iraq, Iran, Myanmar, North Korea, Venezuela and several African countries (e.g., Zimbabwe) and since February 28, 2022, Russia.

Whereas some of the sanctions are targeted at the political and military leadership and affiliated individuals and entities of these countries (e.g., asset blocks and travel bans), other sanctions relate to specific goods (e.g., armaments, goods for repression or surveillance, luxury goods).

2.8 Does your jurisdiction maintain any other sanctions?

Yes. Switzerland has also imposed sanctions on individuals and organisations with connections to Usama bin Laden, the "Al-Qaida" group and the Taliban, as well as on specific individuals that were involved in the attack on Rafik Hariri.

In addition, Switzerland has implemented the Kimberly Process (based on the United Nations General Assembly Resolution 55/56 and United Nations Security Council Resolution 1459) by issuing the ordinance on the international trade of rough diamonds in order to prevent so-called blood or conflict diamonds from entering the markets.

2.9 What is the process for lifting sanctions?

The Federal Council may lift sanctions by abolishing or amending the ordinance that imposed the sanctions.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. For war materiel, military equipment and related technology, as well as for goods that are usable for both civilian and military purposes (dual-use goods), the Federal Act on War Material (War Material Act, WMA) and the Federal Act on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods (Goods Control Act, GCA), respectively, are applicable. The Swiss export control regime implements requirements from international treaties and export control regimes (e.g., Arms Trade Treaty, Australia Group, Biological Weapons Convention, Chemical Weapons Convention, Missile Technology Control Regime, Nuclear Suppliers Group, Treaty on the Non-Proliferation of Nuclear Weapons, Wassenaar Arrangement).

Both acts stipulate a licensing regime with special requirements. Materiel and technology subject to the WMA may not, *inter alia*, be produced, traded with, brokered, imported, exported or transited unless the applicable licence has been granted. In addition, the WMA prohibits the development, production and trade of weapons of mass destruction (nuclear, biological and chemical weapons), anti-personnel mines and cluster munition, as well as the direct and indirect financing of such activities. The export of goods that are subject to the GCA is also restricted unless the applicable licence has been granted. In addition, each export must be reported. In general, the SECO is the responsible licensing and reporting authority. For licences regarding nuclear goods, however, the Swiss Federal Office of Energy is responsible.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Switzerland does not have restrictions in place that prohibit adherence to other jurisdictions' sanctions or embargoes, with the exception of blocking statutes and secrecy and data

protection regulations that may restrict compliance with foreign reporting obligations related to sanctions.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Currently, Switzerland does not have a regime for so-called "secondary sanctions".

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Neither the EmbA nor the implementing ordinances define the territorial reach/scope of Swiss sanctions regimes. Therefore, in accordance with general principles of administrative law, the principle of territoriality applies, meaning that Swiss sanctions are – from a territorial perspective – applicable to facts occurring within and actions taken in Switzerland. Consequently, in contrast to other sanctions regimes (e.g., EU, UK, etc.), Swiss sanctions generally do not extend to the worldwide conduct (i.e., outside of Switzerland) of Swiss nationals or residents.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Yes. Most Swiss sanctions regimes require that assets owned or directly or indirectly controlled by sanctioned/listed individuals or entities must be blocked or frozen.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Yes. Generally speaking, the Federal Council may stipulate exceptions in order to support humanitarian activities or to safeguard Swiss interests, in particular for the provision of food supplies, medicines and therapeutic products for humanitarian purposes. In addition, the Federal Council may, in the relevant implementing ordinance, delegate the authorisation to grant an exception to the SECO or another agency.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Yes. Most Swiss sanctions regimes require individuals or institutions that hold or manage assets owned or directly or indirectly controlled by sanctioned/listed individuals or entities, or have knowledge of the existence of such assets, to report to the SECO. The report must generally include the names of the beneficiaries as well as the specification and value of the assets. In addition, under certain Swiss sanctions regimes, additional reporting obligations may apply (e.g., certain deposits and oil transactions in the case of Russia).

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

The SECO has published best practices for an Internal Control Program for Export Controls (ICP) and a fact sheet for the ICP. According to these best practices, an ICP shall include the following elements:

1. management commitment and policy statement regarding export controls and sanctions;
2. a definition of roles and responsibilities to guarantee compliance with export controls and sanctions;
3. compliance with licensing requirements (i.e., classification of goods, software and technology to be exported);
4. "know your customer" as well as checks of end-user and end-use;
5. training and information of employees involved; and
6. internal audits.

Also, the SECO has published a red flag checklist for exports and a questionnaire for qualifying products as war materiel, as well as a non-binding overview of the export control regulations ("export control in a nutshell").

In addition, limited sectoral governmental guidance may be available (e.g. by FINMA in the case of banks and financial institutions).

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Both intentional and negligent violations constitute criminal offences. An intentional breach of Swiss sanctions may result in a fine of up to CHF 540,000 or imprisonment of up to five years. Merely negligent breaches of Swiss sanctions are subject to a fine of up to CHF 100,000.

Furthermore, any refusal to cooperate with the supervisory authorities and other misdemeanours may lead to a fine of up to CHF 100,000.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The supervisory authority, which is in general the SECO, is responsible for investigating and prosecuting economic sanctions offences. In case of a serious violation, the responsible supervisory authority may ask the Office of the Attorney General of Switzerland to initiate an investigation.

4.3 Is there both corporate and personal criminal liability?

Primarily, the individual committing the violation is personally liable. In addition, board members, directors, employers, delegators or principals who intentionally or negligently fail to prevent a breach committed by a subordinate or employee may be held liable. Additionally, there is corporate liability if it is not possible to attribute the violation to a specific individual due to the inadequate organisation of the corporation.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

See the answer to question 4.1 above.

4.5 Are there other potential consequences from a criminal law perspective?

Yes. Assets acquired and income generated by violating sanctions provisions may be confiscated.

The SECO or other competent agencies may take further measures (including the suspension or revocation of authorisations previously granted) due to sanctions law violations. Furthermore, the depth and frequency of governmental audits may increase.

Additionally, potential consequences can be negative effects on the reputation of the corporations and individuals involved in the sanctions violation. They may also be excluded from public tenders due to the sanctions violation and contracts may include a termination clause for serious violations of laws, including sanctions laws. Finally, FINMA may initiate enforcement proceedings against supervised entities and individuals that have been involved in (alleged) sanctions violations.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

No. There are currently no civil penalties for violating economic sanctions laws and/or regulations in Switzerland.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable (see the answer to question 4.6).

4.8 Is there both corporate and personal civil liability?

This is not applicable (see the answer to question 4.6).

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable (see the answer to question 4.6).

4.10 Are there other potential consequences from a civil law perspective?

From a Swiss law perspective, new contractual agreements which are in breach of applicable sanctions may be (partially) null and void. In case of pre-existing contractual agreements, provisions therein which are not compliant with applicable sanctions may be contractually suspended and the performance thereof is generally not enforceable.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable (see the answer to question 4.6).

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

This is not applicable (see the answer to question 4.6).

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Criminal enforcement is only at the national level. However, the responsible national supervisory authorities may involve the cantonal or communal police as well as investigating officers from the Federal Customs Administration for assistance in connection with inspections, searches and seizures.

4.14 What is the statute of limitations for economic sanctions violations?

For serious economic sanctions violations, the statute of limitations is 15 years. For other economic sanctions violations, the statute of limitations is seven years. For refusal to cooperate with the supervisory authorities and other misdemeanours, the statute of limitations is three years.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

Switzerland is currently discussing whether the EU's "thematic" sanctions regimes (e.g. with regard to chemical weapons, cyber security and human rights) are to be implemented. Switzerland has so far refrained from the implementation of any "thematic" sanctions regimes due to their different nature and scope (compared to the traditional sanctions regimes which generally embrace a "geographic" approach). Furthermore, the discussions in respect of a potential expropriation of Russian funds to finance the reconstruction of the Ukraine are, in close collaboration with international partners (such as the EU, the UK and the US), ongoing on the political level.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

The SECO maintains a public website with information and guidance on export controls and sanctions in French, German and Italian. Some of the information is also available in English. The link to the website in English is as follows: https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos.html

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Turkey

EB LEGAL

Prof. Av. Esra Bicen

1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Turkey adopts United Nations targeted financial sanctions (TFS) regimes regarding the prevention of terrorist financing and proliferation financing. More specifically: (i) regarding TFS for terrorist financing, Turkey implemented UN Security Council Resolutions (UNSCR) 1267/1989/2253 sanctions against ISIL, Da'esh, Al-Qaida, and the 1988 sanction regime for Taliban; and (ii) regarding TFS for proliferation financing, Turkey implemented UNSCR 1718 and subsequent resolutions on economic and financial sanctions against the Democratic People's Republic of Korea (DPRK).

Terrorist Financing Sanctions Regime: Turkey's terrorist financing sanctions regime is based on the adoption of the UN Security Council Resolutions against ISIL, Da'esh, Al-Qaida and the Taliban.

- The 1267/1989/2253 sanctions regime for ISIL, Da'esh and Al-Qaida comprises an arms embargo, a travel ban and an assets freeze for individuals and entities. The asset freeze also applies to trade in petroleum products, natural resources, chemical and agricultural products, weapons, antiquities by listed individuals, groups undertakings and entities. The designation criteria includes the following:
  - participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, under the name of, in conjunction with, on behalf of, or in support of Al-Qaida, ISIL or affiliates;
  - supplying, selling, transferring arms and related material to Al-Qaida, ISIL or affiliates;
  - recruiting for Al-Qaida, ISIL or affiliates; and/or
  - otherwise supporting acts or activities of Al-Qaida, ISIL or affiliates.
- The 1988 sanctions regime for the Taliban comprises three measures against the designated individuals and entities: freezing of assets; imposing a travel ban; and embargoes. The designation criteria for individuals, entities and groups includes the following:
  - participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities of Taliban;
  - supplying, selling, transferring arms and related material to Taiban;
  - recruiting for the Taliban; and
  - otherwise supporting acts or activities of those designated or other individuals or groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan.

Proliferation Financing Sanctions regime: In response to nuclear tests and missile launches of North Korea, the UN Security Council adopted 10 resolutions. The 1718 sanctions regime comprises an arms and related embargo, nuclear and ballistic missile and weapons of mass destruction embargo, sectoral sanctions which ban coal, minerals, fuel, food, industrial machinery, transportation vehicles, seafood, textile, luxury goods, limits and jurisdiction restrictions on DPRK's access to crude oil and petroleum products, financial sanctions, a travel ban and an asset freeze on designated individuals and entities, a ban on providing work authorisations on DPRK nationals, a ban on supply, sale and transfer of new helicopters and ships from DPRK and sanctions provisions targeted at proliferation networks.

The designation criteria for individuals and entities includes:

- engaging in or providing support for DPRK's nuclear related, other weapons of mass destruction related and ballistic missile related programmes; and/or
- being responsible for, including through supporting or promoting, DPRK's policies in relation to the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Ministry of Foreign Affairs (MOFA) is the competent authority with responsibility for proposing persons and entities to the 1267/1989 Committee for designation and for proposing persons and entities to the 1988 Committee for designation.

The President of Turkey is the competent authority for designating persons and entities under UNSC resolutions. The financial crimes investigation board (*Mali Suçlar Araştırma Kurulu*, MASAK) of Turkey is the responsible authority for handling incoming foreign requests. A foreign request can also be made to the MOFA or Ministry of Justice which will then forward it to MASAK for further review. The Assessment Commission for the freezing of assets considers proposals for designations.

The Assessment Committee is composed of a member assigned by President, a member by the National Intelligence Agency (NIA), General Director of Public Finance, Ministry of Treasury and Finance (MOTF), Deputy Minister of the Ministry of Interior, General Director of Criminal Affairs, Ministry of Justice, General Director of Research and Security Affairs, MOFA and Head of MASAK.

Designations are published in the Official Gazette. The MASAK is required to notify the General Directorate of Land Registry, Ministry of Transport and Infrastructure, Ministry for Maritime Affairs and Communications, Ministry of Interior, General Directorate of Civil Aviation, relevant banks and

other financial institutions, the relevant trade registry, Ministry of Trade (MOT) and natural and legal persons as well as public institutions and bodies.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

There have been no significant changes/developments in the last 12 months.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

The administrative authorities include:

- The United Nations – International Convention for Suppression of the Financing of Terrorism (ratified by Law No.4738, published in the Official Gazette January 10, 2002).
- Law No. 6415 Law regarding Prevention of the Financing of Terrorism, published in the Official Gazette February 16, 2013.
- Regulation for the implementation of Law No. 6415 published in the Official Gazette May 31, 2013.
- Law No. 7262 Law regarding Prevention of the Financing of Weapons of Mass Destruction, published in the Official Gazette December 31, 2020.
- Regulation for the implementation of Law No. 7262 published in the Official Gazette February 26, 2021.
- Circular of Prime Minister No. 2006/36 implementing UNSCR 1718 sanctions against DPRK.
- Circular of Prime Minister No. 2009/17 implementing UNSCR 1874 increased sanctions against DPRK.
- Council of Ministers Decision No. 2017/9950 requiring the implementation of targeted financial sanctions increased listings against DPRK under UNSCR 2087, 2094, 2270, 2321.
- Council of Ministers Decision No. 2018/11480 requiring the implementation of targeted financial sanctions increased listings against DPRK under UNSCR 2087, 2094, 2270, 2321, 2356, 2371, 2375, 2397.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes. The Council of Ministers pass decisions that requires implementation of the targeted financial sanctions with immediate effect as from the date of publishing in the Official Gazette. However, the implementation of UNSC resolutions into law needs Presidential ratification. The ratification process can create certain delays in the implementation process.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

No, it is not.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Yes. Under Council of Ministers Decision No. 2017/9950 and Council of Ministers Decision No. 2018/11480, Council of Ministers Decision No. 2018/11480 designated persons and entities are listed within the scope of DPRK targeted financial sanctions.

a) Adding individuals or entities to sanctions lists:
The MOFA is the competent authority with responsibility for proposing persons and entities to the 1267/1989 Committee for designation and for proposing persons and entities to the 1988 Committee for designation.
The President of Turkey is the competent authority for designating persons and entities under UNSC resolutions. The MASAK is the responsible authority to handle incoming foreign requests. A foreign request can also be made to the MOFA or Ministry of Justice which will then forward it to the MASAK for further review. The Assessment Commission for the freezing of assets considers proposals for designations. The Assessment Committee is composed of a member assigned by the President, a member by the NIA, the General Director of Public Finance, the MOTF, the Deputy Minister of the Ministry of Interior, the General Director of Criminal Affairs, the Ministry of Justice, the General Director of Research and Security Affairs, the MOFA and the Head of MASAK.
Designations are published in the Official Gazette. The MASAK is required to notify the General Directorate of Land Registry, the Ministry of Transport and Infrastructure, the Ministry for Maritime Affairs and Communications, the Ministry of Interior, the General Directorate of Civil Aviation, relevant banks and other financial institutions, the relevant trade registry, the MOT and natural and legal persons as well as public institutions and bodies.

b) Removing individuals or entities from sanctions lists:
Administrative Law governs the judicial review process domestically. Individuals and entities aggrieved by the acts and decisions of the administration can file a judicial review request with the administrative court of first instance.
The Council of State deals with administrative cases of annulment of decisions of the President at the administrative court of first instance. Listed individuals and entities can bring an action for annulment before the Council of State within 60 days after the notification of designation is published in the Official Gazette.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

The President has the ability to convey a delisting proposal to the UN Security Council; the President conveys such proposal via the MOFA. UN delisting mechanisms govern the delisting process. The Office of the Ombudsperson is authorised to review delisting requests under UNSCR 1267/1989/2253 sanctions regime. For other delisting requests, the UN Focal Point reviews requests.

2.6 How does the public access those lists?

The Official Gazette online website publishes the Presidential decisions and decrees and lists appended to the decisions are available online for the public.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Other than the DPRK, no it does not.

2.8 Does your jurisdiction maintain any other sanctions?

No, it does not.

2.9 What is the process for lifting sanctions?

The UN Security Council resolutions to lift sanctions is implemented by the Presidential ratification circulars and published in the Official Gazette.

The President has the ability to convey a delisting proposal to the UN Security Council; the President conveys such proposal via the MOFA.

Domestically, in the case where there are reasonable grounds to lift an asset freeze decision, upon proposal of the Assessment Commission, the Minister of Treasury and Finance and the Minister of Interior jointly decides to lift an asset freeze decision. The Assessment Commission maintains a six-month periodic review of asset freeze decisions.

Individuals with interest can apply to the Assessment Commission with a request to lift an asset freeze decision. The Commission shall make a review and submit its proposal to the Minister of Treasury and the Finance and Minister of Interior. In the case where a decision is to continue the asset freeze, the decision shall be submitted to the Ankara criminal court of first instance for a review within 48 hours. Individuals can file an appeal against the Ankara criminal court decisions.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

No, it does not.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

No, it does not.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

No, it does not.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

All government agencies, financial institutions and designated non-financial businesses and professions are subject to Turkey's sanctions laws as from publication of the implementation decisions in the Official Gazette.

Other than the DPRK sanctions regime, there is no restrictions as to the nationality or transaction location in the sanctions regimes.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

For non-designated individuals and entities, the execution of an asset freeze is conditional upon the request of the MASAK. Individuals and entities are required to inform the MASAK of assets in their possession within seven days starting from the MASAK's request.

For designated persons, such as financial institutions, these institutions are required to inform the MASAK of assets, claims and debts in their possession within 30 days of publication in the Official Gazette.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Any licences or exemptions that are declared in the UNSCR will apply.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Financial institutions, designated non-financial businesses and entities, individuals, institutions and organisations are required to report to competent authorities any assets related to listed individuals or transactions under the UNSCR within seven days.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

Law No. 5549 on Prevention of Laundering Proceeds of Crime and Regulation on Compliance Program for Prevention of Laundering of Proceeds of Crime and Financing of Terrorism (ROC) requires certain obliged institutions to implement compliance programmes developed with a sectoral risk-based approach.

Obliged institutions include banks, capital markets intermediary institutions, insurance and pension companies, financing and factoring companies, portfolio management companies, precious metal dealers, electronic payment systems, payment institutions.

The scope of the mandatory compliance programme shall include:

- developing a set of institutional policy and procedures for compliance;
- developing a risk management policy;
- developing and implementing monitoring and control mechanisms;
- designating a compliance officer and creating a compliance department;
- implementing internal audits; and
- procuring trainings at appropriate levels for the personnel.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Terrorist Financing Sanctions Regime (Law No. 6415/ a.15): Individuals who do not conform to, or who neglect, delay to obey asset freezing decisions taken in line with UNSCR 1267/1988/1989 are subject to imprisonment from six months to two years or to a judicial fine applied to the respective jail term. If these individuals have responsibility within legal entities, including directors or representatives or individuals acting on behalf of the legal entity, their failure to act shall subject the legal entity to an administrative fine from 10,000–100,000 TL.

Individuals who raise funds or provide financial services to persons, entities or organisations subject to an asset freeze decision shall be punished by imprisonment from one year to three years or by a judicial fine applied to the respective jail term. If these individuals have responsibility within legal entities, including directors or representatives or individuals acting on behalf of the legal entity, their failure to act shall subject the legal entity to administrative fine from 10,000–2,000,000 TL, but not less than the determinable transaction amount.

Proliferation Financing Sanctions regime (Law No.7262/a.5): Individuals who fail to comply with financial sanctions shall be subject to imprisonment from one to five years or to a judicial fine applied to the respective jail term.

Individuals who fail to comply with a ban on the procurement of materials shall be subject to imprisonment from two to eight years or to a judicial fine applied to the respective jail term.

Individuals who do not conform to, or who neglect, delay to obey asset freezing decisions are subject to imprisonment from six months to two years or to a judicial fine applied to the respective jail term.

If these individuals have responsibility within legal entities, including directors or representatives or individuals acting on behalf of the legal entity, their failure to act shall subject the legal entity to an administrative fine from 10,000–2,000,000 TL. In addition, the legal entity shall be subject to security measures.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The Ministry of Interior, the MASAK and office of the public prosecutor.

4.3 Is there both corporate and personal criminal liability?

Please see question 4.1 above. Legal entities shall be subject to administrative fines if the individual who fails to comply with a sanctions decision is a director or representative of such entity. Legal entities shall be subject to security measures in the event an individual who fails to comply with a sanctions decision acts within the scope of activity of the legal entity.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

Please see question 4.1 above. In addition, the maximum administrative fine applicable to violation of asset freeze decisions that concerns a non-public legal entity is 50,000,000 TL.

4.5 Are there other potential consequences from a criminal law perspective?

In the event sanctions violations are committed by misuse of public authority, respective punishment shall be increased by one-half. As for sanctions violations committed through a criminal organisation, the respective punishment shall be doubled.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

The Associations Law (Law No. 5253) prohibits individuals convicted from sanctions violations from serving on all organs of the association other than the general assembly. The Ministry of Interior has the power to remove individuals under investigation from their positions as director or a representative as a security measure. Other security measures include replacement of the directors and representatives and temporary suspension of activity of the association. The Ministry of Interior shall apply to the court for an approval of its suspension decision within 48 hours.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

At present Turkey observes criminal economic sanctions regimes as described under question 1.1.

4.8 Is there both corporate and personal civil liability?

This is not applicable.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable.

4.10 Are there other potential consequences from a civil law perspective?

This is not applicable.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

This is not applicable.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Turkey observes territoriality, reciprocity and dual criminality principles in criminal enforcement. Criminal enforcement is executed at the national level only.

4.14 What is the statute of limitations for economic sanctions violations?

Under Anti-Money Laundering Law article 13.6, the statute of limitations for levying administrative fines is five years from the date of violation of the obligations.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

There are none.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

UN Security Council Resolutions are available online at the official United Nations website. UNSCR ratification decrees are available online in Turkish at the Turkish Official Gazette website https://www.resmigazete.gov.tr/ and in addition, domestic legislation governing AML/CFT regimes and Terrorist Financing and Proliferation Financing is available in Turkish on the Financial Intelligence Unit MASAK website at http://www.masak.hmb.gov.tr/

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

The UK implements sanctions imposed autonomously (in accordance with its foreign policy objectives) and United Nations ("**UN**") sanctions (which it is obliged to do as a UN Member State).

The Sanctions and Anti-Money Laundering Act 2018 ("**SAMLA**") provides the legislative framework for UK sanctions.

SAMLA gives certain UK government ministers ("**Ministers**") the power to make sanctions regulations and designations. Sanctions regimes are categorised on a geographic (i.e., relating to a country or region, e.g., Iran or Russia) or thematic (i.e., relating to an issue, e.g., chemical weapons or counter-terrorism) basis.

Sanctions regulations may impose: (i) financial sanctions (e.g., asset freezes); (ii) immigration sanctions (e.g., travel bans); (iii) trade sanctions (e.g., prohibitions relating to certain goods and technology); (iv) aircraft sanctions (e.g., restrictions on the movement of certain aircraft); (v) shipping sanctions (e.g., restrictions on the movement of certain ships); and (vi) "other sanctions for purposes of UN obligations". Certain sanctions (such as asset freezes and travel bans) apply to "designated persons" (i.e., named individuals, entities, bodies, or groups), whereas others (such as trade prohibitions) relate to a particular country, territory or sector.

UK sanctions legislation is extended by statutory instrument to the majority of British Overseas Territories, whilst Bermuda, Gibraltar, and the Crown Dependencies (i.e., Jersey, Guernsey, and the Isle of Man) pass their own legislation that is aligned with UK sanctions legislation, although there are some differences in application.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

Several government departments and agencies are responsible for overseeing sanctions, in particular:

- the Foreign, Commonwealth & Development Office ("**FCDO**") has responsibility for sanctions policy and negotiates international sanctions;
- the Office of Financial Sanctions Implementation ("**OFSI**") implements financial sanctions on behalf of HM Treasury and investigates and imposes civil monetary penalties for breaches of financial sanctions;
- the Department for Business and Trade ("**DBT**") (through the Export Control Joint Unit ("**ECJU**") and the Import Licensing Branch ("**ILB**")) implements trade sanctions and embargoes, whilst HM Revenue and Customs ("**HMRC**") investigates and enforces breaches of trade sanctions (using criminal enforcement powers);
- UK Border Force ("**UKBF**") enforces import and export sanctions at the UK border;
- the Office of Communications ("**OFCOM**") monitors compliance with and enforces trade sanctions concerning internet services;
- the Department for Transport implements transport sanctions (including aircraft and shipping sanctions); and
- the Home Office implements travel bans.

Law enforcement agencies such as the National Crime Agency ("**NCA**"), Serious Fraud Office ("**SFO**"), and Crown Prosecution Service ("**CPS**") can investigate and prosecute criminal breaches of financial sanctions. HMRC may also refer prosecutions for trade sanctions to the CPS.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

The war in Ukraine continues to significantly impact the sanctions landscape. Since February 2022, the UK has designated numerous individuals and entities, including financial institutions, under the Russia (Sanctions) (EU Exit) Regulations 2019 (the "**Russia Regulations**"). The UK has also regularly introduced new financial and trade sanctions restrictions, including by: expanding the categories of goods and activities that are subject to trade sanctions, including in relation to the maritime transportation of certain oil and oil products (subject to a price cap); prohibiting certain investments in relation to Russia; and prohibiting the direct or indirect provision of trust services, professional services and legal advisory services in certain circumstances. The prohibitions on trust services, professional services and legal advisory services represent an increasing focus by the UK and its allies on sanctions facilitation/circumvention and the targeting of professional "enablers" of sanctions breaches. Sanctions relating to Belarus have also been expanded, although remain narrower than those imposed on Russia.

The UK also introduced new sanctions on Haiti in December 2022 to implement the UN's Haiti sanctions regime (per UN Security Council Resolution 2653), and provided for a dedicated humanitarian exception in various sanctions regimes.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

SAMLA empowers Ministers to make sanctions regulations relating to specific sanctions regimes (see question 1.1).

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

The UK implements all sanctions imposed by the UN Security Council through UN Security Council Resolutions (as required by international law).

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

No. However, in accordance with the Windsor Framework (formerly known as the Protocol on Ireland/Northern Ireland), certain EU sanctions measures apply in Northern Ireland insofar as they relate to trade in goods between the EU (to be read as including Northern Ireland for these purposes) and third countries.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

The UK has three designation lists:

- OFSI maintains the "Consolidated List", which lists all individuals and entities subject to an asset freeze under UK and UN sanctions;
- OFSI also maintains a list of entities subject to capital market restrictions under the Russia sanctions regime. The regime has extended these capital market restrictions to a wider group of persons who are not named on the list but rather identified by description; and
- the FCDO maintains the "UK Sanctions List", which lists all designations made under UK sanctions.

SAMLA gives Ministers the power to designate, and outlines the requirements for designating, individuals or entities by name or description. The designation may be varied or revoked by the Minister that made the designation.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

SAMLA gives designated individuals and entities the right to request that the relevant Minister varies or revokes their designation. If the relevant Minister decides not to vary or revoke a designation following a request to do so, SAMLA gives the individual or entity the right to challenge this decision in court.

For individuals and entities subject to a UN designation, a request must be made to the relevant Minister to use their "best endeavours" to persuade the UN that they should be removed from the relevant list. If the relevant Minister decides not to comply with the request, SAMLA gives the individual or entity the right to challenge this decision in court.

2.6 How does the public access those lists?

The lists are accessible on the UK government website (OFSI's "Consolidated List" is available at https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets%20or%20searched%20here:%20https:/sanctionssearchapp.ofsi.hmtreasury.gov.uk). OFSI's list of entities subject to capital market restrictions under the Russia sanctions regime is available at https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/ukraine-list-of-persons-subject-to-restrictive-measures-in-view-of-russias-actions-destabilising-the-situation-in-ukraine and the FCDO's "UK Sanctions List" is available at https://www.gov.uk/government/publications/the-uk-sanctions-list

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

No. UK sanctions are targeted (i.e., they restrict certain activities involving specific individuals, entities, groups, sectors, goods, technologies or services in relation to certain regions or countries). The UK does not impose any comprehensive sanctions or embargoes (i.e., that generally prohibit individuals and entities from engaging in transactions, collaborations and activities involving certain regions or countries, absent authorisation).

2.8 Does your jurisdiction maintain any other sanctions?

The main types of sanctions imposed in the UK are financial and trade sanctions. Trade sanctions can be broad and not just limited to the export or import of goods. For example, under the Russia sanctions regime, there are restrictions on the provision of certain internet services to or for the benefit of designated persons and of certain professional and business services to persons connected with Russia. Additionally, as noted in question 1.1 above, the UK also imposes immigration, aircraft and shipping sanctions.

2.9 What is the process for lifting sanctions?

Ministers have the power to revoke or amend sanctions regulations by further regulations.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. The UK's strategic export control regime is set out in:

- the Export Control Act 2002, the Export Control Order 2008 and the Export of Radioactive Sources (Control) Order 2006;
- retained EU law, including retained Council Regulation (EC) No. 428/2009 (the UK Dual-Use Regulation), retained Regulation (EU) 2019/125 (the UK Torture Regulation), and retained Regulation (EU) No. 258/2012 (the UK Firearms Regulation); and
- EU legislation that applies directly in Northern Ireland in accordance with the Windsor Framework, including Regulation (EU) 2021/821 (the EU Dual-Use Regulation), Regulation (EU) 2019/125 (the EU Torture Regulation), and Regulation (EU) No. 258/2012 (the EU Firearms Regulation).

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

Yes, pursuant to the Protection of Trading Interests Act 1981, the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996, retained Council Regulation (EC) No 2271/96 (the UK Blocking Regulation), and retained Commission Implementing Regulation (EU) 2018/1101. The legislation aims to protect UK individuals and entities from the effects of the extraterritorial application of US sanctions that are currently imposed against Iran and Cuba. The DBT recently published guidance on this (available at https://www.gov.uk/guidance/protection-of-trading-interests).

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

No, the United Kingdom does not.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

UK sanctions apply to conduct by all UK persons (meaning UK nationals and UK-incorporated or constituted bodies) anywhere in the world or by any individual or entity in the UK.

UK sanctions (as applied by or automatically extended to British Overseas Territories and Crown Dependencies – see question 1.1 above) also apply to individuals or entities from British Overseas Territories and Crown Dependencies (and conduct by any individual or entity in those territories).

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Yes. A person ("**P**") must not deal with funds or economic resources owned, held or controlled by a designated person (or an entity that is owned or controlled (directly or indirectly) by a designated person) if P knows, or has reasonable cause to suspect, that it is dealing with such funds or economic resources.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Sanctions regulations may allow licences to be granted to permit conduct that would otherwise be in breach of sanctions.

There are "specific licences", which are granted to an individual or entity that has applied for a licence in respect of a specified activity. When a specific licence is granted, it may be subject to certain conditions and reporting requirements.

A specific licence for financial sanctions may only be granted where one of the licensing grounds contained within the relevant sanctions regulations is applicable and the criteria in those grounds have been met.

There is more flexibility with specific licences for trade sanctions. Instead of specific licensing grounds set out in the regulations (as there are for financial sanctions), specific licences for trade sanctions will be granted where the licence is deemed consistent with the stated purposes of the particular sanctions regime and any UN or other relevant international law obligations. Guidance may provide descriptions of activities which are likely to be consistent with the aims of the sanctions and in respect of which a licence may be granted.

There are also "general licences", which may be relied on by any person in respect of a specified activity without needing to apply to do so. Any person relying on a general licence must ensure that their activities fall within the terms of the licence and comply with any licence conditions. General licences may also include requirements for record-keeping, reporting, and prior notification of use.

Both specific and general licences can have effect for a defined or indefinite duration.

OFSI is responsible for issuing licences in connection with financial sanctions and ECJU is responsible for issuing licences in connection with trade sanctions, except those trade sanctions relating to imports which are administered by the DBT Import Licensing Branch.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Certain firms (including law firms, accountancy firms, and regulated financial institutions) are required to report to OFSI as soon as practicable if they know or have reasonable cause to suspect that a person is a designated person or has breached financial sanctions regulations, and the information on which that knowledge or suspicion is based came to them in the course of carrying on their business.

In its report to OFSI, the reporting firm must state the information underlying the knowledge or suspicion, any information identifying the designated person, and (where the designated person is a customer of the reporting firm) the nature and amount or quantity of any funds or economic resources held (for the customer) by the reporting firm.

Since a breach of sanctions may be a criminal offence, any property that constitutes or represents a benefit obtained as a result of a breach (and where there is knowledge or suspicion that this is the case) would be considered criminal property for the purposes of the Proceeds of Crime Act 2002 ("**POCA**"). Dealing in criminal property may result in a money laundering offence. Those in the regulated sector should be aware of their obligation under POCA to make a Suspicious Activity Report to the NCA where they know or suspect, or have reasonable grounds for knowing or suspecting, that another person is engaged in money laundering (and that knowledge or suspicion came to them in their course of their business).

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

Sanctions and related guidance are widely publicised and businesses, particularly those operating internationally, should routinely consider whether sanctions might affect their operations and transactions.

OFSI says that it takes a "holistic approach" to ensure compliance with financial sanctions, rather than waiting until the law has been broken. OFSI states that it will: (i) promote compliance by publicising financial sanctions; (ii) enable compliance by publishing guidance and alerts; (iii) respond to non-compliance by intervening to disrupt attempted breaches; and (iv) change behaviour in order to prevent future non-compliance.

The Financial Conduct Authority (the "**FCA**") does not impose requirements relating to sanctions on regulated entities and is not responsible for enforcing sanctions. However, it expects regulated entities to have systems and controls to mitigate the risk of financial crime, including financial sanctions breaches. The FCA's expectations of regulated entities' systems and controls in relation to compliance with financial sanctions are set out in Chapter 7 (*Sanctions and asset freezes*) of the FCA's Financial Crime Guide. Where the FCA identifies failings in such systems and controls, it can impose restrictions and/or take enforcement action. In August 2010, the precursor to the FCA fined the Royal Bank of Scotland £5.6m for deficiencies in its systems and controls to prevent breaches of UK financial sanctions.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Criminal penalties for violating sanctions are set out within the relevant regulations.

Primary sanctions offences are punishable upon conviction on indictment by a fine and/or imprisonment for up to 10 years. Record-keeping and licensing offences are punishable upon conviction on indictment by a fine and/or imprisonment for up to two years. Reporting and information offences are generally punishable upon summary conviction by a fine and/or imprisonment for up to 12 months, although the maximum term contained in the various regulations is set at six months.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

Law enforcement agencies such as the NCA, SFO, and CPS can investigate and enforce breaches of sanctions, as can HMRC in relation to most trade sanctions, and OFCOM in relation to the Russian internet services sanctions. OFSI investigates breaches of financial sanctions, but only has civil enforcement powers.

The NCA, HMRC and OFSI refer cases to the CPS for criminal prosecution, whereas the SFO may prosecute cases where serious or complex fraud, bribery or corruption is involved.

4.3 Is there both corporate and personal criminal liability?

Both individuals and entities may be criminally liable for breaches of sanctions.

Additionally, where an offence under certain sanctions regulations is committed by an entity with the consent or connivance of, or is attributable to the neglect of, any director, manager, secretary or other similar officer of the entity or an individual acting in such a capacity, that individual is guilty of the offence in addition to the corporation and is liable to prosecution.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

Criminal financial penalties for sanctions violations are set out within the regulations of the relevant sanctions regime, and may be unlimited.

4.5 Are there other potential consequences from a criminal law perspective?

Other consequences of criminal proceedings for breaches of sanctions may include the recovery of property through confiscation proceedings following conviction or in separate civil proceedings, and debarment from tendering for public contracts in the UK and elsewhere.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

OFSI can impose civil monetary penalties for breaches of certain financial sanctions (such as asset freezes).

OFSI may issue penalties on effectively a strict liability basis for financial sanctions breaches (i.e., without needing to prove that the person knew or had reasonable cause to suspect that their conduct would breach financial sanctions). However, according to OFSI's guidance, due diligence (and knowledge or reasonable cause for suspicion) will continue to be a relevant consideration when deciding whether to issue a penalty.

UK trade sanctions are generally not accompanied by such penalties, except in relation to the Russian oil price cap and internet services sanctions. Civil monetary penalties for the oil price cap sanctions may be issued on effectively a strict liability basis.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

OFSI is responsible for investigating and issuing penalties for breaches of financial sanctions, as well as the oil price cap sanctions relating to Russia.

OFCOM is responsible for investigating breaches and issuing penalties for the internet services sanctions relating to Russia.

None of the sanctions regimes provide for the civil enforcement of trade sanctions (other than the Russian oil price cap and internet services sanctions as above).

4.8 Is there both corporate and personal civil liability?

Civil monetary penalties for breaches of financial sanctions, the Russian oil price cap sanctions, and the Russian internet services sanctions, may be imposed on both individuals and entities.

Additionally, where a civil monetary penalty has been issued against an entity in relation to a violation of financial sanctions, OFSI may impose a civil monetary penalty on an officer of the entity if it is satisfied, on the balance of probabilities, that the entity's breach or failure took place with the consent or connivance of the officer or was attributable to any neglect by the officer.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

For breaches of financial sanctions (and the Russian oil price cap sanctions), if OFSI can estimate the value of the breach, the maximum penalty is the greater of £1 million or 50% of the estimated value. Otherwise, the maximum penalty is £1 million.

For breaches of the internet services sanctions relating to Russia, the maximum penalty is £1 million.

4.10 Are there other potential consequences from a civil law perspective?

OFSI must publish reports of all civil monetary penalties that it imposes. These reports include the name of the person against whom the penalty has been issued and the reason for the penalty. OFSI may also publish reports where a penalty has not been imposed but it is nevertheless satisfied, on the balance of probabilities, that a person has breached a sanctions regulation.

Serious Crime Prevention Orders ("**SCPOs**") are civil orders that can be made against individuals or entities in respect of sanctions. SCPOs may impose prohibitions, restrictions, or requirements on the relevant individual or entity as considered appropriate to prevent, restrict, or disrupt involvement in serious crime. Breach of an SCPO is a criminal offence punishable by up to five years' imprisonment and an unlimited fine.

A SCPO will be imposed by a court if it is satisfied that a person has been involved in serious crime (whether in the UK or elsewhere) and it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in the UK.

SCPOs can be made in the Crown Court following a conviction for a specified offence or in separate civil proceedings in the High Court. Proceedings in both the Crown Court and High Court are civil proceedings, and so the civil standard of proof applies in relation to SCPOs.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

OFSI can respond to potential breaches of financial sanctions in several ways, including by issuing a warning, referring regulated professionals or bodies to their relevant professional body or regulator, publishing information pertaining to a breach (even where no penalty is imposed), imposing a civil monetary penalty, or referring the case to law enforcement agencies for criminal investigation.

OFSI will take into account, among other things: the value of the breach; the harm or risk of harm to the objectives of the relevant sanctions regime; the level of actual and expected knowledge of financial sanctions of the person alleged to have breached them; such person's behaviour (e.g., whether the breach is deliberate, a result of negligence or failure to take reasonable care, or a simple mistake); repeated, persistent or extended breaches; voluntary self-disclosure of suspected breaches; and the public interest in responding to the breaches.

OFSI has a three-part civil monetary penalty-decision process: first, OFSI determines whether, on the balance of probabilities, there has been a breach and a penalty is appropriate and proportionate; second, OFSI calculates the baseline penalty by working out the statutory maximum and then assessing what level of penalty is reasonable and proportionate based on the seriousness of the case (with reductions available (of up to 50%) where a person has given prompt and complete voluntary disclosure of a breach); and finally, OFSI will make a penalty recommendation.

If OFSI, following the three-part penalty-decision process, decides to impose a penalty, it must first inform the person on whom it intends to impose the penalty of its intention to do so, and that person will have 28 working days (from the date of OFSI's initial letter informing of its intention to impose a penalty) (although this may be extended upon request) to make representations in order to change OFSI's view on (i) whether a monetary penalty should be imposed, or (ii) the value of the monetary penalty.

As discussed in question 4.10 above, OFSI must publish reports of all penalties that it imposes, and may also publish reports when a penalty has not been imposed but it is nevertheless satisfied, on the balance of probabilities, that a person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions regulations.

Before imposing a monetary penalty in relation to the internet services sanctions relating to Russia, OFCOM must also first inform the person on whom it intends to impose the penalty of its intention to do so. It must also explain the grounds for imposing the penalty, specify the amount of the penalty, explain that the person is entitled to make representations, and specify the period within which any such representations must be made. OFCOM must also inform the person of any decision to impose a penalty.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

In relation to OFSI's decisions regarding financial sanctions, once the period for making representations (see question 4.11) has expired and either no representations have been made, or following representations OFSI upholds a monetary penalty, OFSI will issue a written notice stating the penalty amount.

The recipient will have 28 working days upon receipt to inform OFSI that it wants a ministerial review of OFSI's decision. Upon review, the penalty will either be upheld (with the amount either upheld or altered) or cancelled.

If, following the review, the decision is made to uphold the penalty (with the amount either upheld or altered), the person subject to the penalty has the right to appeal to the Upper Tribunal (within 28 days of the review decision), which may result in the monetary penalty being quashed or upheld (with the penalty amount either upheld or altered).

Four companies have challenged a monetary penalty decision through ministerial reviews: Telia Carrier UK Limited (the penalty was reduced from £300,000 to £146,341); Standard Chartered (the penalty was reduced from £31.5 million to £20.5 million); TransferGo Limited (the minister upheld OFSI's decisions both to impose the penalty and the amount of the penalty); and Hong Kong International Wine and Spirits Competition Ltd (the minister upheld OFSI's decisions both to impose the penalty and the amount of the penalty).

Decisions by OFSI to impose civil monetary penalties for the Russian oil price cap sanctions, and decisions by OFCOM to impose civil monetary penalties for the Russian internet services sanctions, may be appealed to the Upper Tribunal. The appeal must be made within 28 days of the decision and may result in the monetary penalty being quashed or upheld (again with the penalty amount either upheld or altered). There is no provision for ministerial review of OFSI's or OFCOM's decisions on these matters.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Criminal and civil enforcement of sanctions is conducted at a national level only.

4.14 What is the statute of limitations for economic sanctions violations?

There is no limitation period for bringing civil or criminal proceedings for breaches of sanctions.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

We anticipate further sanctions being introduced regarding Russia, although the quantity will likely be less than in 2022. We expect further designations of individuals and entities on the asset freeze list as the UK tries to prevent Russian state-owned entities and Russian businesspersons from using the UK financial system to access capital, including through the targeting of financial intermediaries in third countries, professional and business service providers and legal services providers.

For trade, new restrictions on iron and steel processed in third countries will take effect as of 30 September 2023. The UK has also recently announced that it intends to introduce legislation requiring those holding assets in the UK on behalf of the Central Bank of Russia, Russian Ministry of Finance or Russian National Wealth Fund) to disclose them to the Treasury; and that it also intends to introduce a new voluntary route for frozen Russian assets to be released if donated for Ukrainian reconstruction.

We can also expect further measures (including enforcement action) intended to tackle circumvention of financial and trade sanctions, in particular those sanctions imposed in response to Russia's invasion of Ukraine.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

SAMLA can be accessed at https://www.legislation.gov.uk/ukpga/2018/13/contents

The UK government website lists the UK sanctions regimes currently in force, which can be accessed at https://www.gov.uk/government/collections/uk-sanctions-regimes-under-the-sanctions-act

OFSI's guidance on financial sanctions and the oil price cap can be accessed at https://www.gov.uk/government/publications/financial-sanctions-faqs

The UK government website provides details of OFSI's civil enforcement actions, which can be accessed at https://www.gov.uk/government/collections/enforcement-of-financial-sanctions

Information relating to ECJU, including notices to exporters, can be accessed at https://www.gov.uk/government/organisations/export-control-joint-unit

The statutory guidance document for each specific sanctions regime may provide guidance on the trade sanctions imposed by that regime. These are all available from https://www.gov.uk

Any views expressed in this publication are strictly those of the authors and should not be attributed in any way to White & Case LLP.

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

The U.S. Government maintains a range of economic sanctions, administered primarily by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC").

Most U.S. sanctions are considered "primary sanctions". To violate U.S. primary sanctions, a transaction must generally involve both (i) a U.S. nexus, and (ii) a sanctioned person (entities or individuals) or a sanctioned jurisdiction. A transaction can have a U.S. nexus if it involves a U.S. person or U.S.-origin products, software, or technology, or if it causes or involves activity within U.S. territory. Importantly, non-U.S. companies and individuals can engage in U.S.-nexus transactions and thereby violate U.S. sanctions.

Primary sanctions encompass several types of sanctions:

- **List-based blocking sanctions** generally prohibit U.S.-nexus transactions with designated persons (individuals, entities, vessels, aircraft, etc.), which OFAC has placed on its Specially Designated Nationals ("SDN") List. OFAC maintains a number of sanctions programmes, including country-specific programmes and programmes targeting international narcotics trafficking, proliferation, malicious cyber activity, human rights abuses and corruption, and other illicit activity. OFAC has authority to designate persons that satisfy a programme's criteria and then add those persons to the SDN List. Any property or property interests of SDNs that come within U.S. jurisdiction must be "blocked" or frozen. The blocked funds must be placed into separate suspense accounts and cannot be released absent specific authorisation from OFAC. (List-based sanctions are discussed below in question 2.4.)
- **Targeted sanctions** generally prohibit *specified* U.S.-nexus dealings with particular persons. As a result of Russia's invasion of Ukraine, the U.S. government imposed a number of sanctions restricting U.S. persons from engaging in certain activities related to Russia. OFAC also maintains so-called "sectoral sanctions", which prohibit certain categories of activity with persons designated on the Sectoral Sanctions Identification ("SSI") List. (These sanctions are discussed further below in question 2.8.)
- **Comprehensive country or region sanctions** broadly target countries or regions (together, "jurisdictions") and generally prohibit almost all U.S.-nexus transactions with those jurisdictions. Currently, there are seven jurisdictions subject to comprehensive U.S. sanctions: Cuba; Iran; North Korea; Syria; and three regions of Ukraine (the Crimea region, the so-called Donetsk People's Republic, and the so-called Luhansk People's Republic).

In addition, pursuant to "secondary sanctions", the U.S. government has threatened to sanction non-U.S. persons that engage in specific activities involving targeted countries, industries, and/or persons, even in the absence of a U.S. nexus. Secondary sanctions are discussed further below at question 2.12.

These various forms of U.S. sanctions can co-exist. For example, with respect to Russia, there is a U.S. embargo on the Crimea region and so-called Donetsk and Luhansk People's Republics, various Russian companies and individuals have been designated SDNs or SSIs, and specified activities relating to Russia are prohibited for U.S. persons and/or subject to the threat of secondary sanctions for non-U.S. persons.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

OFAC administers and enforces economic sanctions based on U.S. foreign policy and national security goals.

Jurisdictions become the target of U.S. sanctions by means of executive orders signed by the President of the United States ("the President"). Persons can become the target of U.S. sanctions by being named in executive orders or by OFAC's exercise of authority delegated by the President (where the President provides criteria for imposing sanctions), in consultation with the U.S. State Department and sometimes other agencies (such as the U.S. Department of Justice ("DOJ")). OFAC also has primary responsibility for licensing transactions that would otherwise be prohibited by U.S. sanctions. Additionally, OFAC has the power to investigate and impose civil monetary penalties against persons (including non-U.S. persons) that violate U.S. sanctions laws and regulations.

The DOJ criminally investigates and prosecutes "wilful" violations of U.S. sanctions. The federal banking agencies, including the Office of the Comptroller of the Currency and the Federal Reserve Board of Governors, also have the authority to impose civil penalties for violations of U.S. sanctions laws and regulations. The New York Department of Financial Services (which supervises certain financial institutions operating in New York) also plays a high-profile role in sanctions enforcement under New York state-law requirements.

Finally, the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") administers and enforces U.S. anti-money laundering laws. Its Section 311 authority under the USA PATRIOT Act to designate a jurisdiction or non-U.S. entity as of "primary money laundering concern" can have effects similar to sanctions.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

There have been a number of developments and updates to U.S. sanctions over the course of the last year. The most notable have been the waves of sanctions targeting Russia (and, to a lesser extent, Belarus) as a result of the invasion of Ukraine in February 2022. As a result of these sanctions, over 1,000 individuals and entities in Russia and Belarus, including most major Russian and Belarussian financial institutions and a number of major Russian manufacturing and state-owned companies, have been added to the SDN List, broadly cutting off their ability to do U.S.-nexus transactions. Blocking sanctions were also imposed on a number of prominent Russians and Belarussians and their family members, including, among others, President Putin, his two adult daughters, various oligarchs and government officials, including Russian Duma members.

On the one-year anniversary of Russia's invasion of Ukraine, OFAC designated dozens of additional Russian financial institutions and wealth management companies as SDNs and estimated that over 80 per cent of the Russian banking sector's assets have now been targeted by U.S. sanctions. Beyond the financial sector, OFAC has also issued determinations during the last year that over a dozen other sectors of the Russian economy shall be the target of U.S. sanctions, recently including the architecture, engineering, construction, manufacturing, transportation, metals and mining, and quantum computing sectors of the Russian economy. While these determinations do not automatically make every company in these sectors an SDN, they provide notice that anyone active in these sectors could soon become an SDN (and they are also often accompanied by at least an initial tranche of newly sanctioned SDNs in the relevant sector). The U.S. government has also imposed prohibition on U.S. persons providing various types of services (including, *e.g.*, accounting, management consulting, trust and corporate formation, architecture, and engineering, among others). Additionally, the U.S. government entered into an agreement with members of the G7, European Union, and Australia to impose restrictions on the import of Russian-origin oil and petroleum products and to impose a price cap on Russian crude oil and petroleum products.

Given the broad targeting of the Russian financial and other sectors by U.S. sanctions since the start of Russia's invasion of Ukraine, in 2023 OFAC has been particularly focused on attempts to circumvent or evade existing U.S. sanctions targeting Russia and OFAC has added hundreds of individuals and entities located outside of Russia to the SDN List for their participation in or support of various Russia sanctions evasion schemes. The U.S. Department of Justice has also announced the formation of a dedicated team of dozens of prosecutors focusing on and investigating potential criminal sanctions and export control evasion schemes (including, but not limited to, such schemes in the context of Russia sanctions).

OFAC has also actively been making designations of individuals and entities onto the SDN List beyond Russia and Belarus, and has been particularly active in making designations pursuant to the Iran, North Korea, Counter Terrorism, and Global Magnitsky (human rights and anti-corruption) sanctions programmes.

Finally, OFAC has continued to increase its focus on the digital assets space, including by bringing enforcement actions against crypto companies, as well as by designating crypto exchanges and other companies onto the SDN List for allegedly processing illicit transactions.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Under various statutory authorities, the President has broad discretion to regulate commerce where there is an unusual and extraordinary threat from outside the United States to the United States' national security, foreign policy or economy. The President imposes new sanctions programmes and exercises his sanctions-related powers by means of executive orders and then delegates administration of specific sanctions programmes to U.S. agencies, with much of this administration being delegated to the U.S. Treasury Department. Executive orders sometimes have an annex in which the President himself sanctions certain persons, in addition to providing criteria for further designations. Executive orders can also prohibit certain activities, such as imports or exports to certain countries or regions. In some instances, Congress will enact or codify certain sanctions, which then limits the President's discretion.

The International Emergency Economic Powers Act ("IEEPA"), Title II of Pub. L. 95–223, 91 Stat. 1626, codified at 50 U.S.C. §§ 1701 *et seq.*, is the main source of statutory authority for most U.S. sanctions programmes. Other statutory authorities include the Trading with the Enemy Act, which is the basis of the Cuba sanctions programme, and the Foreign Narcotics Kingpin Designation Act. Congress has also passed a series of laws authorising or requiring sanctions targeting particular jurisdictions or activities. For example, in 2017, Congress passed and the President signed the Countering America's Adversaries Through Sanctions Act ("CAATSA"), which expands sanctions targeting Iran, North Korea and Russia.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Generally, yes. Almost all jurisdictions and persons that are the target of United Nations sanctions are also the target of U.S. sanctions. The imposition of U.S. sanctions on U.N.-designated parties follows OFAC's standard process of making such designations under existing sanctions programmes or, in some cases, the President issues an executive order empowering OFAC to make such designations.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

The United States is a member of numerous regional bodies. To the extent such bodies call upon members to impose sanctions (which, to date, has been rare), the United States is normally a participant.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

OFAC maintains a number of lists of sanctioned individuals and

entities, the most significant of which is the SDN List. These lists include:

- **SDN List**: U.S. law generally prohibits U.S.-nexus transactions with the thousands of individuals, companies, vessels, and other entities on the SDN List. Also, U.S. persons (including, in the case of Cuba and Iran sanctions, non-U.S. companies owned or controlled by U.S. companies) are required to "block" the property and property interests of SDNs. "Blocking" is discussed further at question 3.2, below. The SDN List is available on OFAC's website (https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx).
- **Foreign Sanctions Evaders ("FSE") List**: OFAC may designate persons for violating, attempting to violate, conspiring to violate, or causing a violation of U.S. sanctions imposed on Syria or Iran, and such persons are placed on the Foreign Sanctions Evaders List. This list also includes non-U.S. persons determined by OFAC to have facilitated deceptive transactions for or on behalf of sanctioned persons. U.S.-nexus transactions with persons on the FSE list are generally prohibited, however, unlike the SDN List, there are no blocking requirements.
- **SSI List**: This list contains entities from four sectors of the Russian economy (financial, energy, defence, and oil exploration/production). Certain categories of U.S.-nexus dealings with entities on the SSI List are generally prohibited. The SSI List is discussed further at question 2.8 below.
- **2022 Russia-related Sanctions Directives**: OFAC issued four directives targeting various Russian entities and government agencies for specified sanctions. These directives include the following prohibitions for U.S. persons: (i) dealings in the primary or secondary market for Russian sovereign debt; (ii) maintaining correspondent or payable-through accounts for listed Russian financial institutions; (iii) dealings in the new debt of greater than 14 days maturity or new equity of listed Russian entities; and (iv) dealings with the Central Bank, National Wealth Fund, or Ministry of Finance of Russia. OFAC's 50 per cent rule also applies to several of these directives.
- **Chinese Military-Industrial Complex Companies ("CMIC") List**: This list contains dozens of Chinese companies, the publicly traded securities of which U.S. persons are prohibited from buying or selling, subject to a divestment period from the date of such entities' designation onto the CMIC List.
- **The Correspondent Account or Payable-Through Account Sanctions ("CAPTA") List**: This list contains non-U.S. financial institutions for which the opening or maintaining of a correspondent account or a payable-through account in the United States is prohibited or is subject to one or more strict conditions, pursuant to Russia/Ukraine, North Korea, Iran, and Hizballah-related sanctions. The specific sanctions applying to each sanctioned entity are enumerated within the CAPTA List.

Notably, under OFAC's "50 per cent rule", any entity that is 50 per cent or more owned directly or indirectly by one or more SDNs is considered blocked (*i.e.*, treated as an SDN) even though it does not appear on the list. The ownership interests of multiple SDNs in a single entity are aggregated for the purposes of this rule. For example, if SDN X owns 25 per cent of Entity A, and SDN Y owns another 25 per cent of Entity A, Entity A is treated as an SDN. The 50 per cent rule also applies to SSI entities.

The U.S. Department of State also maintains sanctions lists, including certain non-proliferation sanctions, which it coordinates with OFAC such that entities designated are also designated on OFAC's sanctions lists.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Yes. Individuals or entities that are designated on an OFAC sanctions list may submit a request for removal to OFAC that provides reasons why the circumstances resulting in the designation no longer apply and/or the designation was in error. In the case of the SDN List, such requests for removal are governed by 31 C.F.R. § 501.807. If OFAC declines, this decision may be challenged in court.

2.6 How does the public access those lists?

OFAC maintains copies of its sanctions lists on its website and has a consolidated search function for all of the lists available (https://sanctionssearch.ofac.treas.gov/). OFAC also publishes notices of additions or removals to its sanctions list on its website and distributes them by email. This information is also published in the Federal Register.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

The United States maintains comprehensive sanctions against Cuba, Iran, North Korea, the Crimea region, Syria, and the so-called Donetsk and Luhansk People's Republics in Ukraine. With limited exceptions, U.S.-nexus transactions with these countries or regions are prohibited.

2.8 Does your jurisdiction maintain any other sanctions?

Yes, following Russia's invasion of Ukraine, OFAC has imposed a series of activity-based sanctions prohibitions targeting specified activities by U.S. persons that relate to Russia. These include the following prohibitions for U.S. persons (each of which is subject to various exceptions): (i) "new investment" in Russia after April 6, 2022 ("new investment" is defined to mean "the commitment of capital or other assets for the purpose of generating returns or appreciation"; OFAC published extensive Frequently Asked Questions about this prohibition on June 6, 2022); (ii) the importation of Russia-origin energy products (*e.g.*, oil, liquified natural gas, coal, and related products), fish, seafood, alcohol, or diamonds into the United States; and (iii) the export of a variety of U.S.-origin services (including accounting services, trust and corporate formation services, management consulting services, and architecture and engineering services) to Russia. The U.S. government has also imposed prohibitions on U.S. persons engaging in activity that facilitates non-U.S. person' provision of these services to Russia. Additionally, in coordination with allied governments, the U.S. government has imposed a multinational price cap on Russian crude oil and petroleum products.

OFAC also maintains certain "sectoral sanctions" under the Russia/Ukraine sanctions programme. Sectoral sanctions were designed to impose a "targeted" impact on the Russian economy, as compared to more traditional OFAC sanctions. These sanctions prohibit certain categories of dealings involving U.S. persons or U.S. territory with parties named on OFAC's SSI List. OFAC has issued four directives (the "SSI Directives"), with each directive targeting a different sector of the Russian economy: financial; energy; defence; and oil exploration/production. Generally, the SSI Directives prohibit U.S.-nexus

transactions that involve certain *enumerated activities* with SSIs designated from these four sectors of the Russian economy. For the first three sectors, the prohibited transactions involve certain equity and debt transactions. OFAC applies its 50 per cent rule (discussed above at question 2.4) to SSIs.

The U.S. Government has also imposed a series of sanctions targeted at the Maduro regime in Venezuela, the most significant of which imposed a blocking order on the Government of Venezuela (including entities owned or controlled by the Government of Venezuela), with certain limited exceptions.

2.9 What is the process for lifting sanctions?

Generally, the President has the authority to rescind or amend an executive order to change the nature of, or completely remove, a sanctions programme. However, some sanctions programmes (such as the U.S. embargo against Cuba) are set by statute either in whole or in part, and Congress would have to pass new legislation for such sanctions to be fully lifted.

As for sanctions against specific individuals or entities, OFAC normally has the authority to remove persons from its sanctions lists, subject to interagency consultation.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

The United States has two main export control regimes: (i) the Export Administration Regulations ("EAR") administered by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"); and (ii) the International Traffic in Arms Regulations ("ITAR") administered by the U.S. Department of State's Directorate of Defense Trade Controls ("DDTC"). The EAR controls the export, reexport, and in-country transfer of most U.S. origin items, software, and technology (including items manufactured outside the United States that contain a certain amount of controlled U.S.-origin content). The ITAR controls the export and retransfer of, as well as brokering in, U.S. defence articles and technologies listed on the U.S. Munitions List. Violations of the EAR and ITAR are subject to civil and criminal penalties.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

The United States has certain "anti-boycott" laws and regulations, administered by BIS, that prohibit U.S. persons from participating in non-U.S.-sanctioned boycotts (*i.e.*, boycotts of which the U.S. Government does not approve). Currently, the most notable such boycott is the Arab League's boycott of Israel.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

The U.S. government utilises "secondary sanctions" to discourage certain specified activities by non-U.S. persons that do not involve a U.S. nexus. These sanctions threaten to place a non-U.S. person on the SDN List (or impose other, lesser sanctions) if the non-U.S. person engages in certain identified activities. For example, under Executive Order 13810, non-U.S. persons that engage in a range of activities involving North Korea – whether or not those transactions have a U.S. nexus – may be added to the SDN List. In these situations, the U.S. government effectively forces non-U.S. persons to choose between engaging with the United States and engaging in activity with the sanctions target. Importantly, while the consequences of violating primary sanctions is a potential enforcement action, secondary sanctions cannot be "violated" because they are threats, not legal prohibitions. The consequence for engaging in activities that are the subject of these threats is designation on the SDN List or the imposition of some other trade restriction with the United States.

Secondary sanctions can be threatened by the President through an executive order or can be threatened by Congress in legislation that either requires or authorises the President to impose sanctions on parties that engage in certain types of activities. The President maintains significant discretion even with respect to imposing "mandatory" secondary sanctions because such authorities require the President to sanction persons that the President determines have engaged in certain activities, and the President enjoys discretion as to whether to make such determinations.

Currently, the U.S. government threatens secondary sanctions against non-U.S. persons for specified activities involving Hizballah, Iran, North Korea, Russia, and Venezuela. The U.S. government also threatens certain secondary sanctions against non-U.S. financial institutions that conduct certain "significant" transactions with persons that are the target of certain terrorism-related sanctions. Due to the enactment of the Hong Kong Autonomy Act in July 2020, secondary sanctions are also threatened against non-U.S. financial institutions that participate in certain "significant" transactions with persons identified as having contributed to the undermining of Hong Kong's autonomy. Non-U.S. companies with activities involving these countries, entities, or individuals should carefully evaluate any applicable secondary sanctions.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

To violate U.S. primary sanctions, a transaction must generally involve both (i) a U.S. nexus, and (ii) a sanctioned person or jurisdiction. A U.S. nexus can arise in a variety of ways, including the involvement of U.S. persons (defined below), the involvement of U.S.-origin products, software, or technology, or causing or involving activity within U.S. territory (such as the use of U.S. dollar transactions that transit the U.S. financial system).

OFAC generally defines "U.S. person" to include: any U.S. citizen, wherever located; any U.S. permanent resident alien, wherever located; any entity organised under the laws of the United States or any jurisdiction within the United States (including non-U.S. branches of U.S. banks); or any person while present in the United States. With respect to the Cuba and Iran sanctions programmes, non-U.S. entities owned or controlled by U.S. persons are also considered to be "U.S. persons".

Accordingly, any U.S.-nexus transactions with parties listed on the SDN or FSE lists are generally prohibited. It is also generally prohibited to engage in U.S.-nexus transactions that directly or indirectly involve comprehensively sanctioned

jurisdictions, including companies organised under the laws of a sanctioned jurisdiction, the governments of sanctioned jurisdictions, persons usually resident in sanctioned jurisdictions, and third-country entities or individuals (including so-called "front companies") where the benefits of the transaction will flow to a sanctioned jurisdiction.

Importantly, non-U.S. persons can conduct transactions that have a U.S. nexus and can thereby violate U.S. sanctions. Examples include transactions involving U.S. person employees or U.S. business partners, transactions (whether in U.S. dollars or other currencies, including cryptocurrencies) that are processed through the United States (including non-U.S. branches of U.S. banks), or the export or reexport of U.S.-origin goods. Further, OFAC's sanctions programmes generally prohibit transactions that evade or avoid, have the purpose of evading or avoiding, cause a violation of, or attempt to violate prohibitions imposed by OFAC. Non-U.S. persons may expose themselves to U.S. sanctions liability by "causing" a violation of primary sanctions by U.S. persons or involving U.S. territory. By contrast, when non-U.S. persons conduct business that does not involve a U.S. nexus, primary sanctions do not apply.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

U.S. persons are required to block the funds or other assets of persons listed on the SDN List and persons captured by the 50 per cent rule. Any blocked funds must be placed into separate suspense accounts and cannot be released without specific authorisation from OFAC.

The fact that a particular transaction is prohibited under OFAC regulations does not necessarily mean that it is subject to a blocking requirement. In many cases, the transaction must simply be rejected. For example, a U.S. bank would have to reject a wire transfer between two third-country companies (non-SDNs) involving an export to a non-SDN located in Syria. Because U.S. sanctions prohibit the U.S. bank from indirectly providing financial services to Syria, the bank would not be able to assist in the wire transfer.

There are also reporting requirements associated with blocked and rejected funds, as described in question 3.4.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Yes, OFAC maintains a number of exemptions and general licences under its various sanctions programmes. These exemptions and general licences can be found in OFAC's regulations and on OFAC's website (https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx). For transactions or activities not expressly permitted by an exemption or general licence, parties can submit specific licence requests to OFAC.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Generally, U.S. persons who come into possession or control of blocked property or who reject a transaction must submit a blocked property or reject report to OFAC within 10 days of blocking the property or rejecting the transaction. Holders of blocked property must also submit an annual report to OFAC detailing all blocked property in their possession.

Additionally, parties making use of certain general licences must report the specifics of such use to OFAC as required by the particular licence (*e.g.*, annually).

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

OFAC regularly publishes guidance and FAQs regarding sanctions restrictions and compliance expectations on its website. In addition, in May 2019, OFAC published "A Framework for OFAC Compliance Commitments", which describes the elements of an effective sanctions compliance programme – for both U.S. and non-U.S. entities – organised around five "essential components of compliance": (i) management commitment; (ii) risk assessment; (iii) internal controls; (iv) testing and auditing; and (v) training. In October 2021, OFAC published guidance that discusses these compliance expectations in the context of cryptocurrencies and the digital assets space.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes, there are criminal penalties for "wilfully" violating U.S. economic sanctions laws and regulations.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The DOJ has responsibility for the prosecution of criminal sanctions offences. The DOJ and OFAC often pursue parallel investigations, and violations can be subject to both criminal and civil penalties. State criminal authorities can also prosecute conduct related to sanctions violations (for example, sanctions-related violations of state banking laws).

4.3 Is there both corporate and personal criminal liability?

Yes. U.S. and non-U.S. corporations and individuals can be held criminally liable for violations of U.S. sanctions laws and regulations.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

The maximum criminal fine for violations of most U.S. sanctions programmes is $1 million or 20 years in prison for each violation. Under the Kingpin Act, certain narcotics-related sanctions violations can trigger criminal fines of up to $5 million or 30 years in prison per violation. Funds related to sanctions violations can also be subject to criminal forfeiture. There is no statutory ceiling on the size of the total penalty or forfeiture that could be imposed, and there have been several recent criminal sanctions enforcement actions that resulted in penalties and/or forfeitures of hundreds of millions and even billions of dollars.

4.5 Are there other potential consequences from a criminal law perspective?

Yes. For example, a corporate compliance monitor can be imposed as part of a guilty plea or other resolution, such as a deferred prosecution agreement.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

Yes, monetary penalties can be imposed for civil violations of U.S. sanctions. Civil violations are "strict liability" offences, meaning that a person can be liable for committing a civil violation of OFAC sanctions regardless of that person's knowledge or degree of fault.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

OFAC is primarily responsible for investigating and enforcing civil economic sanctions violations.

4.8 Is there both corporate and personal civil liability?

Yes. U.S. and non-U.S. corporations and individuals can be held civilly liable for violations of U.S. sanctions laws and regulations.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

OFAC has authority to impose significant civil fines. Currently, for OFAC sanctions programmes authorised under IEEPA, OFAC may impose a maximum civil fine of $356,579 per violation. For TWEA violations (involving Cuba sanctions), the current maximum civil fine is $105,083 per violation. Violations of the Kingpin Act are currently subject to a maximum civil fine of $1,771,754 per violation. These amounts are subject to periodic inflation adjustments.

4.10 Are there other potential consequences from a civil law perspective?

Yes. For example, to the extent that an entity or individual found to have civilly violated sanctions laws or regulations has a specific licence from OFAC or is applying for one, OFAC may withhold, deny, suspend, modify, or revoke licence authorisations as a result of the civil violation. Where appropriate, OFAC may also refer a matter to the DOJ for criminal prosecution.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

OFAC may initiate an investigation of a potential sanctions law violation based on a number of sources, including press reports, leads from other agencies (domestic and international), blocking and reject reports, suspicious activity reports, voluntary self-disclosures, and "tips" from employee whistleblowers or competitors.

OFAC's Economic Sanctions Enforcement Guidelines (the "Guidelines") set forth the ways in which OFAC may resolve a sanctions investigation, ranging from non-public "no action" letters or cautionary letters to public civil monetary penalties or findings of violation (in which OFAC determines a violation has occurred but that imposition of a monetary penalty is not appropriate). In particularly important cases, OFAC also publicly releases the settlement agreement. The vast majority of OFAC investigations are resolved with cautionary letters, which serve as "warnings" but refrain from determining that a sanctions violation has occurred. The Guidelines describe the "General Factors" OFAC uses in determining the appropriate enforcement action and any appropriate civil penalty.

The Guidelines also describe the process by which OFAC calculates penalty amounts. The process generally consists of three steps: first, a determination of whether the violations were "egregious" and whether they were "voluntarily self-disclosed"; second, a determination of the "base penalty" amount; and third, an upward or downward adjustment of the base penalty amount based on applicable General Factors. The General Factors include the person's wilfulness or recklessness, the person's awareness of the conduct at issue, the harm to sanctions programme objectives, and the existence and adequacy of the person's OFAC compliance programme. Other factors include the person's remedial response, the person's cooperation with OFAC, the timing of the violations in relation to the imposition of sanctions, other related enforcement actions taken by other agencies for the same or similar conduct, the impact OFAC's enforcement response may have on promoting future compliance with U.S. sanctions by the person or similarly situated persons, and other relevant factors on a case-by-case basis, including the proportionality of OFAC's enforcement response to the nature of the underlying conduct.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

Final OFAC actions (civil penalties and findings of violation) may be challenged in federal court. These challenges proceed in the same manner and with the same standard of review as other challenges to a final agency action under relevant U.S. laws, including the Administrative Procedure Act (5 U.S.C. §§ 551–559).

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Enforcement of economic sanctions is primarily handled at the federal level; however, there are some state regulatory agencies (particularly financial services regulators such as the New York Department of Financial Services) and local prosecutors that can investigate and impose fines for violations of state laws and regulations that relate to federal sanctions violations (*e.g.*, failing to have an effective sanctions compliance programme as required by state banking laws and regulations).

4.14 What is the statute of limitations for economic sanctions violations?

The applicable federal statute of limitations is generally five years from the date of the violation.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

In general, there is no advance notice of the imposition of new U.S. sanctions by the President or OFAC. There are various pieces of proposed legislation involving sanctions pending in Congress.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

These materials are publicly available in English on OFAC's website (https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx).

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