



# AN INTRODUCTION TO SANCTIONS

OCTOBER 2018

*"Anyone doing business with Iran will NOT be doing business with the United States. I am asking for WORLD PEACE, nothing less!"*

- 7 August 2018, Donald J Trump (Twitter)

## What are economic sanctions and why are they imposed?

Economic sanctions are not a modern invention. Academics have traced the technique back to ancient Greece, and Pericles' Megarian decree, enacted in 432 BC in response to the kidnapping of three Aspasian women, an event that may or may not have triggered The Peloponnesian War.

The purpose of economic sanctions is simple, to bring about change in a policy or conduct of those targeted.

These days economic sanctions are rarely out of the news and are increasingly deployed to respond to major geopolitical challenges, from counter-terrorism to conflict resolution. The reluctance to deploy military action is a major factor in their growing popularity. In the words of Sir Jeremy Greenstock, a former UK ambassador to the UN, in interview with the BBC "there is nothing else between words and military action if you want to bring pressure upon a government". He continues, "Military action is increasingly unpopular and in many ways ineffective in modern legitimacy-oriented world, and words don't work with hard regimes. So something in between these is necessary. What else is there?"

## The European Union

The EU Common Foreign and Security Policy ("CFSP") consider the ability to impose sanctions an essential tool in their tool kit, deployed as part of its integrated and comprehensive policy approach, allowing them to target:

- governments of non-EU countries because of their policies;
- entities providing the means to conduct the targeted policies;
- groups or organisations such as terrorist groups; and
- individuals supporting the targeted policies, involved in terrorist activities.

The EU is clear in its statement that sanctions are developed in such a way as to "minimise adverse consequences" for those not responsible for the policies or actions leading to their adoption, in order to avoid historic criticisms and concerns that often those worst

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impacted by sanctions have been innocent civilians rather than those in power, who are often the intended targets for pressure.

The CFSP states its key objectives when adopting sanctions are:

- safeguarding EU's values, fundamental interests, and security;
- preserving peace;
- consolidating and supporting democracy, the rule of law, human rights and the principles of international law; and
- preventing conflicts and strengthening international security.

### **The Bailiwick of Guernsey**

Guernsey currently has sanctions measures that impact a wide range of regimes from Afghanistan to Zimbabwe. Predominantly it is ordinances created pursuant to European Communities (Implementation) (Bailiwick of Guernsey) Law 1994 that give local effect to economic sanctions imposed by the European Union, and ordinarily United Nations sanctions are implemented by Orders of Council.

It is the responsibility of each individual or institution to comply with the Guernsey sanction regimes, with the penalty for non-compliance potentially devastating. To date, we are not aware of a sanctions prosecution being brought in the Guernsey courts.

Currently, there is no similar Guernsey law giving effect to US sanctions. Notwithstanding, there is a risk of exposure to Guernsey entities to US sanctions through OFAC secondary sanctions (see below).

### **The United Kingdom**

In May 2018, and with Brexit on the horizon, the UK parliament enacted the Sanctions and Anti-Money Laundering Act 2018. While its prospective force is yet to be felt, it has extraterritorial reach and if made effective through future Order of Council could potentially impact the Channel Islands.

### **The United States of America**

In recent years, and certainly under the watch of Mr Trump, the US has not held back in (the publicity at least of) its deployment of sanctions.

The Office of Foreign Assets Control (**OFAC**) website sets out its mission:

"The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments."

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It is important to note, that some US sanctions will have extraterritorial reach. These are referred to by OFAC as secondary sanctions as, unlike the primary sanctions, they authorise the imposition of sanctions on non-US persons for engaging in certain sanctionable activity that involves no US persons, US-origin goods or other US elements. The US re-imposed Iran sanctions are a prime example and have necessitated the EU taking countermeasures in order to shield the EU businesses (EU subsidiaries of US companies as well as EU businesses falling outside the US jurisdiction) from the extraterritorial impact of US sanctions and ensure EU business continuity with Iran.

It is also worth considering the reach of US sanctions where non-US transactions could be potentially prohibited by US sanctions result in payments being denominated in US dollars and/or going through the US financial system. The risk is such transactions involving US financial institutions (or their foreign branches) may be rejected and reported to OFAC.

### **When it goes wrong**

Most systems and controls of Guernsey entities are sophisticated enough to identify whether EU sanctions may impact a proposed action or transaction and for some the identification of risk in that first line of defence may be enough for it to turn the business away.

However for others, risk tolerances may be higher and/or their business model and target market puts them in the business of doing business with individuals or entities with potential exposure to one or more sanctions regimes. While those Guernsey entities are likely to have sophisticated systems to deal with this, given the fact specific application of economic sanctions, it will almost certainly require employees to have knowledge of potentially applicable sanction(s) or at least the overarching regimes and will require human intervention to determine whether in fact sanctions would be breached by entering into a particular action or transaction.

It is without doubt, when these systems and controls fail or are overridden and/or breached, things can go very wrong.

On 26 February 2018, the FT reported that the value of UK financial sanctions breaches had risen to £1.4 billion in 2017, almost 20 times higher than in 2016. The increase in reporting could well be due to the new powers that the Office of Financial Sanctions Implementation (OFSI) gained in April 2018. OFSI now has the ability to impose monetary penalties for breaches of financial sanctions in the UK. These penalties are wide reaching and may be imposed on individuals within a company, as well as the company itself: up to £1 million or 50% of the value of the breach, whichever is higher. The penalty can be heavily reduced (up to 50%) where an entity has self reported an apparent violation. We await sight of evidence of the sorts of fines that the UK is willing to impose for breaches.

The US is known for taking a tough approach. On 3 July 2018, weeks after Glencore had settled a dispute in the DRC by agreeing to pay US-sanctioned Israeli businessman Dan Gertler (Glencore's former business partner in the DRC) in euros rather than US dollars to comply with US sanction (it thought), for money owed from copper and cobalt mines, it announced that it has received a subpoena from the US Department of Justice to produce documents relating to compliance with the Foreign Corrupt Practices Act and US money laundering and sanctions legislation.

On 4 September 2018 Société Générale issued a statement that it was working with US authorities regarding certain US dollar transactions processed by Société Générale involving countries that are the subject of US economic sanctions with a view to reaching a resolution of this matter within the coming weeks. It said that it had made a provision of approximately €1.1 billion and at that stage,

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expected that the amount of the penalties would be almost entirely covered by this provision.

### Sanctions Explained by Collas Crill

The team at Collas Crill regularly advise on the impact and applicability of international sanctions regimes on a Guernsey company, individual or other entity as a matter of Guernsey law. We also have excellent connections with firms outside of Guernsey who can advise on how sanctions or other measures may be effective in other jurisdictions or how they may affect a transaction operative outside of the bounds of Guernsey law.

We have great pleasure in welcoming Maya Lester QC to Guernsey to deliver a [Sanctions Explained Breakfast Seminar](#) on Friday 19 October at the Duke of Richmond Hotel. A limited number of spaces remain. If you would like to attend, please register [here](#).

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