



*HF***W**

COMMODITIES

TAX LEGAL AND COMPLIANCE – FOCUS ON SANCTIONS

CASPIAN WEEK PLATFORM FOR GLOBAL IDEAS
PROMENADE 61, 7270
DAVOS PLATZ, DAVOS

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FOCUS ON EU AND US SANCTIONS :

- Be aware of where your business is organised to understand where and how sanctions “bite” - Know Your Business / KYB and KYC;
 - Russia and EU Sanctions in Response to Events in the Ukraine;
 - US lifts sanctions against RUSAL;
 - Iran and the EU Blocking Regulation;
 - A Special Purpose Vehicle to enable Iranian Crude to be traded without touching the US jurisdiction – will it work?
 - General know how: know your customer, e.g. Tripoli vs Benghazi NOC;
 - Can I export softs into Iran – banking difficulties;
 - Time Limits applicable to Sectorally Sanctioned Identification List Entities;
 - Business Tools, Systems and Training are important internally to ensure sanctions are respected
 - How will Brexit impact future sanctions issued by the UK?
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GENERAL ISSUES BUSINESSES OUGHT TO BE CONCERNED ABOUT WHEN DEALING WITH SANCTIONS INCLUDE:

- Be aware of where your business is organised (know your own business vs know your customer)
 - Be informed who you are trading with including where your buyers intend to sell your product
 - Note that US sanctions regulator, the Office of Foreign Asset Control (“OFAC”) will block funds where there is an end-destination that breaches any sanctions
 - Take into account the nationality of your directors and ultimate beneficial owners
 - Note that US sanctions “bite” where there is a US director or Ultimate Beneficial Owner (“UBO”), US dollars, employee or airspace are involved;
 - Note that all EU passport holders are subject to EU sanctions.
 - Conduct sufficient due diligence to be able to confidently say you know your counterparty;
 - Using technology-appropriate tools such as WorldCheck, WorldCompliance or similar sanctions listing tracking systems as well as additional checks if needed (additional due diligence may include a company search, complete corporate ownership information, additional intelligence, or legal opinion);
 - Being aware of specific sanctions applicable to particular products including cargoes you are carrying as a shipowner and associated insurance issues;
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- Understanding trade flows and how sanctions change from one country to another.



RUSSIA: US AND EU SANCTIONS IN RESPONSE TO EVENTS IN THE UKRAINE

Historically, the pattern of EU and US sanctions against Russia responding to events in the Ukraine has followed a broadly common direction, starting with the US Blocking Property of Additional Persons Contributing to the Situation in Ukraine (Executive Order 13662 of 20 March 2014) and the corresponding EC Regulation No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine as amended.

However, with the implementation of CAATSA, Countering America's Adversaries Through Sanctions Act on 2 August 2017 and its 6 April 2018 amendment ("the 6 April Sanctions"), more extensive steps were taken by the US to respond to Russia's actions than were taken by the EU. Most notably, the April 6 sanctions, which listed **Rusal** (Russian Aluminium Company) as an SDN, imposed secondary US sanctions on non-US citizens and companies.

Secondary Sanctions are penalties for breaches of US sanctions applying to non-US actors including fines, imprisonment and possible listing as an SDN. The 6 April sanctions extended the definition of those sanctions to "knowingly facilitating significant transactions" on behalf of an SDN and incorporated a very broad definition of "significant transactions", such that banks now often refuse to process transactions involving related SDNs (or their spouse, child, parent or sibling).



US LIFTS SANCTIONS AGAINST RUSAL

Despite the listing of Rusal and Oleg Deripaska as SDNs on April 6 2018, the US government appears set to lift its sanctions against Rusal and EN+ towards end January 2019.

Did the US government fail to fully anticipate the dramatic impact the April 6 sanctions would have on the aluminium trading market and various world economies – including the US government?

US actions against Rusal were a stark illustration of the power of sanctions – representing the interface of politics, commerce and law – to move the market. They caught many traders by surprise and prompted large swings in the market.

The lifting of sanctions against Rusal would be a welcome development for the aluminium market. It would bring to an end a prolonged period of uncertainty about Rusal's long-term status, and mean that traders will once again be able to work with the company and its related entities.

Note: currently OFAC licences are still in place and allow trading with Rusal for existing contracts; the latest licence extensions for General Licence 13J, 14E and 16E will expire on 28 January 2019, at which point the position may clarify depending on the US Government position.



Iran and the EU Blocking Regulation – see HFW's briefing at <http://www.hfw.com/Iran-Sanctions-Steering-a-course-through-difficult-waters-August-2018>

The US re-issued a complex raft of Iranian sanctions when it withdrew from the Joint Comprehensive Plan of Action on 8 May 2018, steering a different course from the EU.

On 7 August 2018 the EU issued its Blocking Regulation (EC Regulation 2271/96) to counter the effects of the US re-imposition of Iranian sanctions.

The EU Blocking Regulation requires EU operators to report to their relevant member state authority any events that would affect their economic interests arising out of the Annex to the Blocking Regulation, prohibiting compliance with the US sanctions against Iran.

Penalties for non-compliance with the EU Blocking Regulation include fines.



SPECIAL PURPOSE VEHICLE ("SPV")

The EU continues to make plans for an SPV to enable crude to be traded without touching the US jurisdiction, with the EU Foreign Affairs Council (FAC) meeting in Brussels to examine options for an SPV.

It is hard to see how a barter trade is not caught by US sanctions provisions, however the plan has certainly received significant backing from the European Union, with EU member states promising to set up an SPV to "facilitate legitimate financial transactions with Iran, in accordance with European Union law" according to Federica Mogherini, the EU High Representative for Foreign Affairs in September 2018.

The difficulty the SPV project faces is that no matter how much protection is offered by the EU, the US still has the power to list individuals and companies as SDNs (Specially Designated Nationals), for which there is little protection.

Hence a "deal" with OFAC may be the safer bet, as was done with Rusal.

Note that the US has allowed 8 countries exemptions allowed to buy Iranian crude in November 2018: China, Greece, India, Italy, Japan, South Korea, Taiwan and Turkey, on the basis that limited amounts of Iranian oil may be imported for up to 6 months



Know your customer:

Know the difference between a Tripoli and a Benghazi oil supplier; only the National Oil Corporation in Tripoli is recognized by UN Security Council Resolution 2362 and adopting EU regulation 2016/44.

Can I export softs into Iran? Yes under OFAC's General Licence (CFR section 560.530) as long as the product is not expressly prohibited by one of the exceptions to the sale of agricultural commodities and food set out in the US Code of Federal Regulations and US sanctions do not otherwise adversely "bite," (e.g.: customer is not an SDN). However, given most Iranian banks are now listed (some are subject to secondary sanctions) getting paid is extremely difficult.

Time limits applicable to Sectorally Sanctioned Identification (“SSI”) entities

Time limits of 14, 30 or 60 days depending on whether EU regulations and/or US sanctions under EO 13662 apply to new debt issued in favour of SSIs.

SSI time limits need to be taken into account when considering both i) contractual pre-payments to SSIs when buying from SSIs and ii) payment terms by SSIs when selling product (or providing services), which should not exceed the applicable time limits.



KYC / KYB

Business tools for banks include receiving appropriate sanctions red flags in conjunction with an internal compliance department that has authority to veto a non-compliant trade, effectively using tools such as Worldcheck.

Training, culture of compliance, good internal check lists and a solid process for regularly updating them. Where a particular issue is too difficult, take legal advice.

Finally on Brexit:

- As almost all UN and EU sanctions are currently adopted in the UK through directly applicable EU Regulations, Brexit will have a significant impact on sanctions in the UK. The UK will need a new legal framework in place to continue to enforce sanctions, whether they originate from the UK or the UN.
 - The key sanctions risks for businesses post-Brexit are (a) that the UK regime will add another layer of complexity where previously only EU and UN sanctions applied and (b) that where the UK imposes sanctions independently of the UN or EU, it may do so quickly.
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SARAH HUNT



Sarah acts for a range of trading companies, charterers and owners in shipping and international trade disputes. Her work involves petroleum products, gasoil, cement, coal, bitumen, steel and other metals, ethanol and soft commodities. She has particular experience in sale contracts, charterparties, bills of lading, LC / trade finance issues and has been successful in numerous claims involving arbitration or litigation. Her recent matters include the widely reported *Taurus v SOMO*, in which the Supreme Court overturned the *Power Curber* decision and held that there is no special rule relating to debts represented by LCs.

Henceforth, an LC can be arrested where the debtor is, i.e. where the LC is opened; see:

<http://www.hfw.com/Supreme-Court-clarifies-situs-of-debts-represented-by-letters-of-credit>.

Sarah frequently deals with trading cases involving banking or physical fraud. She arrests assets and bank accounts as part of multi-jurisdictional solutions using English, Swiss and other legal remedies to bring criminal and civil claims against defaulting and/or fraudulent counterparties misusing contracts, final and binding certificates or financial instruments.

She advises banks, shipping and trading companies on a range of complex compliance and export control issues focusing on US, EU and Swiss sanctions. She was part of the HFW team awarded the World ECR Sanction Law Firm of the Year (Europe) in 2017.

Sarah is qualified in New South Wales (Australia) and is registered with the Foreign Section of the Ordre des Avocats de Genève.