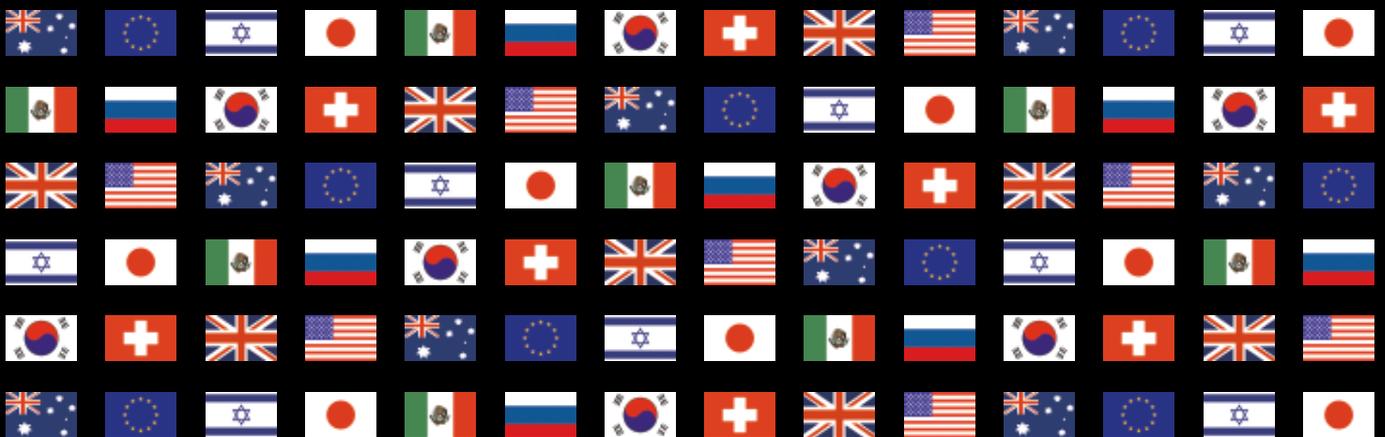


SANCTIONS 2022

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SANCTIONS 2022

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Lexology Getting the Deal Through is delighted to publish the second edition of *Simmons & Simmons*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting the Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Cherie Spinks and Alexandra Webster of Simmons & Simmons, for their continued assistance with this volume.

 LEXOLOGY
Getting the Deal Through

London
April 2022

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Introduction

Cherie Spinks

Simmons & Simmons

Sanctions are not new and, in fact, date back to classical Greece. Their purpose has always been to influence countries or individuals to change their behaviour through peaceful means. In modern times, their roots can be traced to sea blockades in which naval forces restricted access to ports as a means to apply pressure on countries during peacetime. The use of trade sanctions as a coordinated approach between several countries, developed during the twentieth century with the creation of the League of Nations and then the United Nations (UN).

During the twentieth century, the imposition of economic (or financial) sanctions on jurisdictions and has grown and has become the principal tool in the UN's and European Union's armoury and also for jurisdictions such as the US that make active use of sanctions. Economic sanctions are intended to restrict access to financial markets or certain goods or activities to influence change of some form, for example, to bring about an end to human rights atrocities or nuclear proliferation. They can be comprehensive in nature, although more commonly restrict certain activities or certain dealing with specified individuals or entities (blocked or designated persons). They have become a mainstay of international diplomacy.

The Arab Spring across the Middle East in 2011 saw a flurry of trade and economic sanctions imposed at speed, some of which remain in place 10 plus years later. New designations of individuals under Libyan sanctions, for example, continue to be made. It is anticipated that the Libyan sanctions will remain in place until political stability has been achieved.

Sanctions on Libya and others made in 2011 necessitated a greater awareness by businesses globally of restrictions under sanctions regimes as a whole and implementation of frameworks to ensure compliance with their terms. Businesses operating across borders are now very familiar with conducting due diligence and have in place sophisticated methods for screening business partners and transactions to detect potential sanctions issues. The threat of significant penalties being imposed for breaches of sanctions, in particular by US agencies, no doubt encourages adoption of preventative frameworks too.

In 2014, the EU and a number of governments around the world first adopted sanctions against Russian officials and entities in response to their actions relating to misuse of state funds, human rights abuses and steps taken to threaten the territorial integrity, sovereignty and independence of Ukraine following Russian annexation of Crimea. Along with asset freeze restrictions, those measures also included sectoral provisions prohibiting certain trade-related activities in Crimea and Sevastopol. Measures were also put into place to limit access to financial markets for specified banks, energy companies and defence companies by prohibiting the dealing in particular transferable securities and money market instruments issued by those entities, and by also limiting the ability for those entities to obtain loans and new credit arrangements. Recently, in February and March 2022, these sanctions have been significantly expanded to cover a greater range of Russian entities as a result of the war in Ukraine.

Following the lead of the 'Magnitsky' sanctions that were strengthened by the US in 2016, a number of countries, including Canada and the UK, have adopted non-country specific regimes. These enable asset freeze (and other) restrictions to be imposed against individuals and entities in response to human rights atrocities. For example, measures including

asset freezes have been imposed on persons involved in the killing of Jamal Khashoggi, the mistreatment of Sergei Magnitsky and officials involved in perpetrating gross human rights violations taking place against Uyghurs and other minorities in Xinjiang. The US Magnitsky sanctions also enable measures to be imposed on persons involved in corruption. The UK also implemented similar corruption provisions in 2021.

There is an increasing move by governments upon whom sanctions have been imposed to take retaliatory action. This is not a new development. Blocking and other anti-boycott legislation has been adopted by the EU and individual nations in the past to limit the impact of sanctions imposed by other governments on their nationals.

In 2018, following US withdrawal from the Joint Comprehensive Plan of Action (on Iran), a renewed focus was given to the impact of the EU Blocking Regulation. The Regulation seeks to protect EU persons against the effects of the extraterritorial application of legislation adopted by a third country that damages the interests of the EU. Currently, the Regulation only counters US sanctions against Iran and Cuba – the measures to which it applies were extended in 2018 to cover those reintroduced by the US on Iran. The provisions make it unlawful for UK persons to comply with the relevant US sanctions. These blocking measures potentially create a difficult conflict for multinational companies that must comply with both EU and US sanctions.

China and Russia took direct retaliatory action in response to the imposition of sanctions by the EU, US and other countries by imposing counter-sanctions. In March 2021, in response to restrictions imposed on four Chinese officials under the human rights sanctions, China quickly imposed sanctions on politicians, lawyers and academics who have been publicly critical of activities in Xinjiang.

China also issued its own blocking measures at the start of 2021, which prevent Chinese companies and individuals from complying with measures imposed by other governments. This came in response to the US government's increasing moves to restrict Chinese trade, particularly telecommunications companies, such as Huawei, and social media companies, as well as restricting US financial institutions and investors from holding relationships with particular Chinese entities. The US has operated alone in respect of these trade measures. However, we saw with the Magnitsky measures adopted by the US that other countries eventually followed suit, and it is possible that other countries will join the US-China trade 'war' in the future.

Enforcement of sanctions is another area in which the US stands out from other jurisdictions. As with other areas of criminal law, the US takes a long-arm approach to enforcement of sanctions violations and imposes significant financial penalties. The UK, by contrast, has so far taken limited action for financial sanctions breaches with just six penalties having been imposed by the Office of Financial Sanctions Implementation since 2017 under new civil enforcement powers. The highest penalty imposed so far fails to reach anywhere near the consistently high fines imposed on companies by the Office of Foreign Assets Control. However, with the advent of a new autonomous sanctions regime in the UK, the Office of Financial Sanctions Implementation may start to flex its muscles.

It is clear that sanctions as foreign policy tool are here to stay.

Australia

Avryl Lattin, Jacob Smit and Cynthia Constantin

Clyde & Co LLP

GENERAL FRAMEWORK

Legislation

1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

Australia's economic, financial and trade sanctions legislative framework is divided into two categories:

- sanctions implemented pursuant to United Nations Security Council (UNSC) resolutions. These sanctions are primarily enabled through the Charter of the United Nations Act 1945 (Cth), the Charter of the United Nations (Dealing with Assets) Regulations (Cth) and specific regulations that implement UNSC sanctions resolutions relating to particular countries or issues; and
- autonomous sanctions that the Australian government imposes as a matter of foreign policy to address situations of international concern. These sanctions are primarily enabled through the Autonomous Sanctions Act 2011 (Cth), Autonomous Sanctions Regulations 2011 (Cth) and various specifications, designations and lists relevant to particular countries or issues.

The following legislation is also relied upon to implement certain sanctions regimes:

- Customs Act 1901 (Cth), Customs (Prohibited Exports) Regulations 1958 (Cth) and Customs (Prohibited Imports) Regulations 1956 (Cth); and
- Migration Regulations 1994 (Cth) and Migration (United Nations Security Council Regulations) Regulations 2007 (Cth).

In addition to the above, there are other laws that support and sit alongside the operation of Australia's sanctions regime including:

- Defence Trade Controls Act 2012 (Cth);
- Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 (Cth); and
- Criminal Code Act 1995 (Cth).

Autonomous versus international regimes

2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

Australia's domestic legislation has a specific framework to implement autonomous sanctions. The Autonomous Sanctions Act 2011 (Cth) and Autonomous Sanctions Regulations 2011 (Cth) empower the Australian government to implement autonomous sanctions separately from those adopted by international institutions and organisations.

The Autonomous Sanctions Regulations 2011 (Cth) enable the Minister for Foreign Affairs to proscribe persons or entities for targeted

financial sanctions, and declare a person subject to a travel ban. Persons or entities that are listed by the Minister are a 'designated person or entity'.

Types of sanction imposed

3 | What types of sanction are imposed in your jurisdiction?

Australia imposes the following types of sanctions:

- prohibitions on trade in certain goods and provision of services to a certain country, region or group or entity (including arms embargoes);
- targeted financial sanctions against a person or entity. These targeted sanctions operate to prohibit making assets, directly or indirectly, available to a designated person or entity. Additionally, these sanctions prohibit dealing with an asset that is controlled or owned by a designated person or entity (ie, freezing assets); and
- travel bans prohibiting the entry or transit through Australia of a designated person.

Countries subject to sanctions

4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

A number of countries are currently the subject of sanctions in Australia. These countries are listed on the Australian government's Department of Foreign Affairs and Trade (DFAT) website. The Australian Sanctions Office (ASO) (a part of DFAT) also maintains a 'Consolidated List' of all designated persons and entities under Australian sanctions law.

Non-country specific regimes

5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

In addition to country specific sanctions and counter-terrorism sanctions, the Autonomous Sanctions Act 2011 (Cth) was amended in December 2021 to enable the Australian government to introduce 'Magnitsky-style' and thematic sanctions. The amendments introduce criteria to empower the Minister to designate a person or entity that:

- has caused, assisted, or were complicit in a cyber incident or an attempted cyber incident that is significant, or which had it occurred, would have been significant;
- has engaged in, been responsible for, or been complicit in serious violations or serious abuses of human rights including the right to life, the right to be free from torture or cruel, inhumane or degrading treatment or punishment and the right to be free from slavery;
- has engaged in, been responsible for, or been complicit in a serious act of corruption;
- is an immediate family member of a person who has been listed under the human rights or corruption listing criteria; and

- has obtained a benefit as a result of another's act, being an act for which that other person or entity has been listed under the human rights or corruption listing criteria.

Counter-terrorism sanctions

6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

Australia has implemented UNSC sanctions in respect of counter-terrorist financing and various terrorist organisations (including ISL (Da'esh), Al-Qaida and the Taliban).

Part 4 of the Charter of the United Nations Act 1945 (Cth) (COTUNA) provides the basis for the Minister of Foreign Affairs to implement UNSC decisions that relate to terrorism and dealings with assets.

Section 15 of COTUNA and section 20(1) of the Charter of the United Nations (Dealing with Assets) Regulations (Cth) oblige the Minister to list a person or entity for counter-terrorism financial sanctions, if they are mentioned in paragraph 1(c) of UNSC Resolution 1373 [2001] (UNSCR 1373) (ie, a person who commits, attempts to commit, or participates in or facilitates the commission of, terrorist acts; an entity owned or controlled by such persons; or a person or entity acting on behalf of, or at the direction of, such persons and entities).

Section 15 of COTUNA also gives the Minister the power to list an asset, or a class of asset, if the Minister is satisfied that the asset, or class of asset, is owned or controlled by a person or entity mentioned in paragraph 1(c) of UNSCR 1373. This listing must be done by legislative instrument.

Additionally, Australia's prohibitions on terrorist activities (engaged in Australia or abroad) are set out in Parts 5.3 and 5.5 of the Criminal Code Act 1995 (Cth) (Criminal Code). Terrorist organisations are defined by the Criminal Code as organisations:

- directly or indirectly engaged in, preparing, planning, assisting in, or fostering a terrorist activity, irrespective of whether one occurs; or
- that have been proscribed as terrorist organisations by the Attorney-General.

These laws address:

- acts of terrorism including providing or receiving training connected with these acts;
- participating in terrorist organisations;
- preventing the financing of terrorism;
- inciting, urging for or advocating violence or terrorism offences;
- foreign incursions and terrorist recruitment;
- imposition of control orders to protect the public from a terrorist act or prevent the support or facilitation of a terrorist act; and
- preventative detention orders permitting detention to prevent a terrorist act from occurring or preserve evidence of, or relating to, a recent terrorist act.

Finally, Australian law requires businesses that operate in the financial, bullion and gambling sectors to have in place systems to prevent money laundering and terrorist financing. The main legislation is the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).

Anti-boycott laws

7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

Australia does not have blocking or anti-boycott laws in place to block the effect of other sanctions regimes.

Scope of application

8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

Australia's sanctions regime has extraterritorial application pursuant to section 15.1 of the Criminal Code Act 1995 (Cth) (Criminal Code).

Australian sanctions laws apply to all Australian citizens. Conduct that occurs wholly outside Australia can constitute an offence if at the time of the alleged offence the person is an Australian citizen.

In relation to bodies corporate, Australia's sanctions laws apply to:

- all bodies corporate that are incorporated in Australia, regardless of where the offending conduct occurs; and
- foreign bodies corporate, where:
 - the conduct that contravenes the sanctions regime occurs wholly or partly in Australia, on board an Australian aircraft or an Australian ship; or
 - the conduct occurs wholly outside Australia but a result of the conduct that contravenes the sanctions regime occurs wholly or partly in Australia, on board an Australian aircraft or an Australian ship.

Competent sanctions authorities

9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

The ASO is the Australian government's sanctions regulator. It is part of the Department of Foreign Affairs and Trade.

The ASO works closely with the Department of Defence (in particular, Defence Export Controls), the Department of Home Affairs, Australian Border Force, the Australian Transaction Reports and Analysis Centre and Australia Federal Police to implement and administer Australia's sanctions laws.

Business compliance

10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

There is no law requiring businesses to put in place systems or controls to ensure compliance with sanctions. However, for bodies corporate there is a due diligence defence available where the body corporate can show that it took 'reasonable precautions' and 'exercised due diligence' to avoid breaching sanctions laws including dealing with a sanctioned person or entity, or providing sanctioned goods or services.

In practice, businesses are advised to have the following control systems in place:

- sanctions policies and procedures;
- screening processes to review client names (and other relevant parties) against the ASO (a part of the Department of Foreign Affairs and Trade) Consolidated List;
- training on sanctions risk and compliance; and
- compliance process for escalation of sanctions issues.

Guidance

11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

The ASO provides information and guidance on the nature of the various Autonomous and UNSC sanctions regimes, compliance and self-reporting on the ASO website. Additionally, any person may submit a question, seek an interim approval and apply for a sanctions permit online via the ASO portal 'Pax'.

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

Australia's targeted financial sanctions prohibit the supply of any asset whatsoever to a designated person or entity. A designated person may be an Australian citizen, foreign national or resident in Australia or overseas. Targeted financial sanctions prohibit directly or indirectly making an asset available to (or for the benefit of) a designated person or entity or an asset-holder using or dealing with an asset that is owned or controlled by a designated person or entity.

The Australian Sanctions Office (part of the Department of Foreign Affairs and Trade) maintains a Consolidated List of all persons and entities subject to Australia's targeted financial sanctions. If someone is, or believes they are, using or dealing with an asset owned or controlled by a designated person or entity (ie, a freezable or controlled asset), they must immediately hold or 'freeze' the asset and inform the Australian Federal Police as soon as possible.

General carve-outs and exemptions

13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

There are no general carve-outs or exemptions to the asset freeze provisions in Australia. However, a permit may be obtained in advance to allow an activity that would otherwise be a prohibited sanctions activity. Each sanctions regime is slightly different; however, in general, an application to deal with a controlled asset or the assets of a designated person can only be made for:

- a basic expense dealing;
- a legally required dealing; and
- an extraordinary expense dealing.

The definitions of basic expense dealing, legally required dealing and extraordinary expense dealing are set out in Regulation 5 of the Charter of the United Nations (Dealing with Assets) Regulations 2008 and regulation 20 of the Autonomous Sanctions Regulations 2011 (Cth).

The ASO sets out information on applying for a permit under Sanctions Permits. A permit application is made online.

If a person or entity is designated on the Consolidated List, they can make a Request to be De-Listed.

If someone owns or controls a frozen asset and believes that it has been frozen in error, a request to unfreeze the asset can be made by contacting the ASO about Wrongly Frozen Assets.

List of targeted individuals and entities

14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

The ASO (a part of the Department of Foreign Affairs and Trade) maintains a consolidated list of all persons and entities subject to Australia's targeted financial sanctions. The Consolidated List is available on the ASO website.

Other restrictions

15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

Australia implements United Nations Security Council sanctions and autonomous sanctions on a number of specific sectors in relation to commercial activities in the Democratic People's Republic of Korea (eg, restrictions on financial services and joint ventures) and Iran (eg, sanctions relating to nuclear technology, uranium extraction and other weapons technology or materials).

Australia's autonomous sanctions also target specific sectors in relation to Russia and Ukraine, and Crimea and Sevastopol. In relation to these regions, there are restrictions on certain commercial activities and restrictions on the provision of certain services. For example, it is prohibited to grant loans, credit or establish joint ventures in relation to the transport, telecommunications or energy sectors and the exploitation of oil or gas, or of specified mineral resources, in Crimea or Sevastopol. Australia also targets the petrochemical and oil and gas industries pursuant to its autonomous sanctions against Syria.

Exemption licensing – scope

16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

The various Australian sanctions regimes have different criteria for permitting trade in goods and services that are subject to sanctions.

To grant a permit, the Minister for Foreign Affairs must be satisfied it would be in the national interest to grant a permit. The ASO website provides that factors relevant to considerations in the 'national interest' include: the broader objectives of a particular sanctions regime, whether the activity is in the interests of, or would be advantageous to Australia as a whole (which may include economic, security, and any other relevant foreign policy considerations), and any effect on Australia's international reputation, standing or external relations.

In relation to United Nations Security Council (UNSC) sanctions, the Minister of Foreign Affairs may need to notify or receive the approval of the UNSC before granting a sanctions permit.

Exemption licensing – application process

17 | What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

The application process for a sanctions permit is explained in detail on the ASO website. In summary, the application is made online via the ASO portal 'Pax'. To obtain a permit, the applicant must detail all information about the proposed trade activity. This includes:

- details and specifications of the goods;
- information on the end use of the goods; and
- details on the consignee, third party transport providers, intermediaries, brokers and, of course, the end user. End user certification may also be required.

The ASO endeavours to process permits as quickly as possible; however, it provides an estimated timeline of six to eight weeks to process an application submitted online via Pax and recommend allowing three months for the entire process. This is because the application process might take longer than six to eight weeks depending on a range of factors including the complexity of the application and the current workload of the ASO.

Approaching the authorities

18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

The ASO website encourages businesses and individuals to engage with their office via Pax or email in relation to permits, and compliance. The ASO welcomes questions, and applications for indicative assessments in relation to whether a proposed activity may be affected by Australian sanctions law.

Additionally, businesses and individuals can request help from the Australian Federal Police to assist with the determination as to whether or not an asset is owned or controlled by a designated person or entity (see Regulation 41 Charter of the United Nations (Dealing with Assets) Regulations 2008 (Cth) and Regulation 23 Autonomous Sanctions Regulations 2011 (Cth)).

Reporting requirements

19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

Individuals and entities that hold frozen assets under targeted financial sanctions are required to report to the Australian Federal Police (AFP). They must report as soon as practicable after realising that the asset is 'frozen' (ie, that the asset is owned or controlled by a designated person or entity). The following information must be provided to the AFP:

- as much information about the asset (including information about the owner or controller of the asset) as is known to the person; and
- the reasons for why they believe the asset is frozen.

See Regulation 42 of the Charter of the United Nations (Dealing with Assets) Regulations 2008 (Cth) and Regulation 24 of the Autonomous Sanctions Regulations 2011 (Cth).

There may also be additional reporting obligations if the relevant business is:

- a cash dealer under section 16 of the Financial Transaction Reports Act 1988 (Cth) to report a suspicious transaction; or
- a reporting entity under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).

TRADE SANCTIONS

General restrictions

20 | What restrictions apply in relation to the trade of goods, technology and services?

There are a number of trade sanctions imposed in Australia that prohibit the export and/or import of certain goods and the provision of certain services. The sanctions typically apply to the provision of goods or services to a particular country but, in some cases, may also apply to specific persons or entities.

In addition to restrictions imposed by sanctions, the Department of Defence (through Defence Export Controls) administers and regulates the 'supply, export, publication, and brokering' of military and dual-use goods and technology (listed on the Defence and Strategic Goods List. Activities in relation to these goods are generally prohibited but may be permissible by permit.

General exemptions

21 | Do any exemptions apply to the general trade restrictions?

Yes, different sanctions regimes impose different criteria for the grant of a permit, which will allow a person to undertake an activity that would

otherwise not be permitted by an Australian sanctions law. Permits are granted by the Minister for Foreign Affairs.

In respect of sanctions implemented in Australia under the Charter of the United Nations Act 1945 (Cth), Australia also applies any general exemptions under the relevant sanctions regime. For example, the United Nations Security Council (UNSC) adopted Resolution 2615 on 22 December 2021 establishing a humanitarian exemption to the UNSC sanctions regime in relation to the Taliban. Pending amendment of the Charter of the United Nations (Sanctions – the Taliban) Regulation 2013 (Cth) to reflect the humanitarian exemption, Australia is implementing the exemption immediately relying on section 2B of the Charter of the United Nations Act 1945 (Cth).

In addition to the exemptions that apply to goods subject to sanctions, the Defence and Strategic Goods List allows for the transfer of military and dual-use goods in certain circumstances.

Targeted restrictions

22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

Yes, the Australian government has applied trade sanctions against specific individuals and entities both under the United Nations Security Council and autonomous sanctions regimes. These targeted sanctions are set out in a consolidated list maintained by the Australian Sanctions Office (ASO) (part of the Department of Foreign Affairs and Trade) called the 'Consolidated List'. For example, under the Syria sanctions regime, various commercial activities are prohibited with entities in the petrochemical, oil and gas industries and to the financial sector.

See Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Syria) List 2017 (Cth).

Exemption licensing – scope

23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

Australia's different sanctions regimes have different criteria for the licensing and permit of trade in goods and services that are subject to sanctions. For activities that would otherwise be subject to sanctions, the Minister for Foreign Affairs may grant a 'permit' authorising the activity.

Pursuant to Australia's autonomous sanctions regime, permits can be issued in relation to 'authorised imports' and 'authorised supplies' (see Regulation 18 Autonomous Sanctions Regulations 2011 (Cth)).

A permit will not be granted unless it can be established to the satisfaction of the Minister of Foreign Affairs that it would be in the national interest to grant the permit. The term 'national interest' is not defined in the legislation and is intended to be broad. The ASO guidance provides that relevant factors to consider when assessing 'national interest' include the objectives of the sanctions regime (eg, to prevent continued human rights abuses), whether the activity is in the interests of Australia as a whole (eg, economic, security or other foreign policy considerations) and any effect on Australia's international reputation.

In respect of sanctions implemented pursuant to United Nations Security Council resolutions, permits can only be issued where specific criteria, unique to the sanctions regime, have been met. Additionally, the Minister for Foreign Affairs may have to obtain UN approval prior to granting the permit.

Permits, including indicative assessments for permits, can be applied for online using Pax.

In respect of controlled goods and technology listed on the Defence and Strategic Goods List (DSGL), additional permits and licences may be required to be provided by the Department of Defence (Defence Export Controls).

DEC permit

If a company's goods, services or technologies are controlled under the DSGL, a permit can be applied for to export, supply or publish military or dual-use goods or technology. In summary, these can be for the following:

- export, supply or publication of military or dual-use goods or technology (including for transshipment through Australia and for repair or return purposes); and
- multi-party (project) permits and permits aligned with contracts.

A permit may be granted provided the Minister is satisfied that it will not prejudice the 'security, defence or international relations of Australia' (see section 11 Defence Trade Controls Act 2012 (Cth)).

AUSGEL

The Department of Defence also issues Australian General Export Licences (AUSGELs) for specific pre-approved activities (ie, trade or transfer of DSGL goods and technology). These include:

- export and supply of certain dual use and DSGL software and technology to specified destinations;
- export of certain military and dual use goods to specified destinations for repair or return;
- export of certain military and dual use goods to the Australian government;
- the temporary export of certain goods for the purpose of marketing demonstration; and
- export of certain military goods for return after marketing demonstration.

These AUSGELs, as described by the Department of Defence, permit the licence holder to supply goods to specific destinations and purposes for five years' duration, or longer if required. They are a broader type of licence compared to a DEC Permit. However, they are generally not available for export or supply of 'sensitive goods or technologies' (see Category 1 DSGL).

Exemption licensing – application process

24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

The application process for a sanctions permit is online via a dedicated portal called 'Pax' that is operated by the ASO. To obtain a permit, the applicant must detail all information about the proposed trade activity. This includes:

- details and specifications of the goods;
- information on the end use of the goods; and
- details on the consignee, third-party transport providers, intermediaries, brokers and, of course, the end user. End user certification may also be required.

The ASO endeavours to process the permit applications as quickly as possible however, they advise allowing three months for processing. This is especially so if the trade is complicated or if it involves high risk countries or regions. Generally speaking, the ASO expects it will take six to eight weeks to process a Pax application.

Finally, permits are usually issued for a period of 180 days, but they can be issued for up to two years, depending on the nature of the trade activity and risk profile.

Approaching the authorities

25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

The ASO welcomes questions about sanctions compliance, and feedback on the ASO guidance. Additionally, to determine whether or not you may be affected by sanctions law, you can request an 'Indicative Assessment'. The ASO also provides free presentations on Australian sanctions law and provides speakers to present at seminars hosted by industry groups, professional associations and peak bodies. Everything from asking questions, to requesting an indicative assessment can be done via the online portal Pax.

The Department of Defence also has a dedicated telephone hotline and email address for questions on the permits and licences issued by Defence Export Controls. Additionally, it is possible to obtain a preliminary assessment and an 'in principle' approval for the export of controlled goods and technology.

ENFORCEMENT AND PENALTIES

Reporting violations

26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

There is no Australian Commonwealth law that requires self-reporting of sanctions violations to authorities. With the exception of New South Wales, there is no other State or Territory law that imposes a positive self-reporting obligation.

Under the New South Wales Crimes Act 1900, it is an offence for a person who knows or believes a serious indictable offence has been committed, and who knows or believes they might have information of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for that offence, and who fails without reasonable excuse to bring that information to the attention of the New South Wales Police Force or other appropriate authority (in the case of sanctions breaches, the Australian Sanctions Office (ASO) or Australian Federal Police (AFP)) (see Crimes Act 1900 (NSW), section 316). The crime must have a geographic nexus to New South Wales.

A 'serious indictable offence' is an offence that 'is punishable by imprisonment for life or for a term of 5 years or more' (section 4, Crimes Act 1900 (NSW)). Sanctions offences carry penalties of more than 10 years' imprisonment. Where a sanctions offence has been committed, depending on the facts and circumstances (including location), there may be a positive requirement to report to the New South Wales Police.

The ASO encourages any person with information relevant to a possible contravention of an Australian sanctions law to notify the ASO or the AFP or Australian Border Force (ABF).

A person who holds an asset connected with a designated person or entity is required by law to provide the AFP with specific information about controlled assets (see Regulation 42 of the Charter of the United Nations (Dealing with Assets) Regulations 2008 (Cth) and Regulation 24 of the Autonomous Sanctions Regulations 2011 (Cth)).

Investigations

27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

Sanctions violations are criminal offences and therefore fall within the jurisdiction of the AFP. The AFP investigates breaches of sanctions law either on its own account, or on referral from the Australian Sanctions Office or a member of the public.

The AFP has wide ranging powers including search, arrest, surveillance and interception of telecommunications.

The ABF is responsible for overseeing export or import of goods from Australia. Where it is suspected that a particular export or import of goods may require a sanctions permit, the ABF may request further information and hold goods until a sanctions assessment has been undertaken by the Australian Sanctions Office.

Penalties

28 | What are the potential penalties for violation of sanctions?

There are various penalties that can apply for violation of sanctions laws.

The prohibitions are set out in:

- section 27 Charter of the United Nations Act 1945 (Cth), for breaches of UNSC sanctions; and
- section 16 Autonomous Sanctions Act 2011 (Cth) for breaches of autonomous sanctions.

The penalty for a body corporate breaching sanctions offences is a fine that is the greater of three times the value of the transaction or 10,000 penalty units. If the court cannot determine the value of the transaction, the fine will be 10,000 penalty units.

For an individual, breaching sanctions offences can result in imprisonment for up to 10 years and/or a fine the greater of three times the value of the transaction, or a fine of 2,500 penalty units.

It is also a serious criminal offence to give false or misleading information prohibition in connection with the administration of a sanction law. These offences are punishable by up to 10 years in prison and/or a fine of 2,500 penalty units [see section 28, Charter of the United Nations Act 1945 (Cth) and section 17 Autonomous Sanctions Act 2011 (Cth)].

Breaches of the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 (Cth) (WMD Act, such as supplying, or exporting goods or services that may assist or be used in relation to a weapons of mass destruction programme can also result in imprisonment of eight years or a pecuniary penalty calculated in accordance with 4B(2) of the Crimes Act 1914 (Cth). Bodies corporate can be prosecuted under the WMD Act and can receive a fine five times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

The pecuniary value of a penalty unit is set out in section 4AA of the Crimes Act 1914 (Cth) and as at February 2022 the value of one penalty unit is A\$222.

Recent enforcement actions

29 | Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

There have been no recent prosecutions of companies under Australian sanctions law.

The most significant investigation into breaches of Australia's trade sanctions arose from the 2004 UN Inquiry chaired by Paul Volcker, into the administration and management of the Oil-for-Food Programme in Iraq. The inquiry found that the Australian Wheat Board breached United Nations Security Council sanctions by paying kickbacks to the regime of Saddam Hussein (see Manipulation of the Oil-for-Food Programme by the Iraqi Regime 27 October 2005). This finding led to a Royal Commission set up by the Australian government in November 2005 known formally as the Inquiry into Certain Australian Companies in

relation to the United Nations Oil-for-Food Programme and chaired by Justice Terence Cole (the Cole Inquiry). The Cole Inquiry raised serious issues about the ability of Australian regulatory authorities to properly investigate and prosecute alleged breaches of sanctions, particularly in respect of breaches by companies.

Following the Cole Inquiry, the Australian government passed the International Trade Integrity Act 2007 (Cth) with the purpose of creating a strict liability for corporations that engage in conduct that breaches sanctions laws. However, since the creation of the new sanctions regime there have been no prosecutions of corporate entities.

There have been some prosecutions of individuals under Australian sanctions laws. In the case of *R v Chan Han Choi* [2021] NSWSC 891 the accused was charged with breaches of the Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2008 (Cth). The relevant conduct related to arms dealings with North Korea with the accused having visited and toured North Korea and provided brokering services for sale of arms of related material from North Korea. The accused entered a guilty plea and was sentenced to three years' imprisonment.

It should also be noted that a number of Australian companies have been subject to prosecution for breach of US sanctions. For example, in 2009, ANZ Bank was fined for breaching sanctions in its dealings in Sudan and Cuba.

UPDATE AND TRENDS

Emerging trends and hot topics

30 | Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

The Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021 (Cth) commenced on 8 December 2021. This legislation amends the Autonomous Sanctions Act 2011 (Cth).

These changes were supported by the Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021, which came into effect on 21 December 2021 amending the Autonomous Sanctions Regulations 2011 (Cth), the Customs (Prohibited Exports) Regulations 1958 (Cth) and the Migration Regulations 1994 (Cth).

The new laws provide that sanctions regimes can either be country-specific or thematic such as the proliferation of weapons of mass destruction; threats to international peace and security; malicious cyber activity; serious violations or serious abuses of human rights; activities undermining good governance or the rule of law, including serious corruption; and serious violations of international humanitarian law.

Based on the precedents of the Global Magnitsky Human Rights Accountability Act 2016 (US) and the Sanctions and Anti-Money Laundering Bill 2018 (UK), prior to making a thematic sanctions listing decision, the Minister for Foreign Affairs is required to consult and obtain the agreement of the Attorney-General. The Minister must also consult with any other relevant ministers.

In line with the approach taken by the United States and European Union, the Australian government has indicated it will take action and sanction malicious cyber actors including perpetrators of ransomware attacks. The position of regulators is that where a ransom payment is made and the recipient of the payment is a designated person or entity, there will be a risk of prosecution for breach of sanctions laws.

European Union

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Blomstein

GENERAL FRAMEWORK

Legislation

1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

In the EU, resolutions passed by international or European organisations usually provide the basis for sanctions. These are mainly resolutions or decisions of the Security Council of the United Nations (UN) or the Organization for Security and Cooperation in Europe (OSCE). As international agreements, they bind member states under international law. However, in order for them to be binding on the natural and legal persons within those member states, further legal acts are required at the level of the European Union (EU) or at national level.

The provisions of the Common Foreign and Security Policy (CFSP) govern the imposition of restrictive measures in the EU. Articles 28 and 29 of the Treaty on European Union (TEU) – and in the context of combating terrorist financing, article 75 of the Treaty on the Functioning of the European Union (TFEU) – provide the legal basis for restrictive measures. Transposing a CFSP decision into law that is directly binding on a member state's nationals depends on the scope of the sanctions measures. That is due to the fact that not all areas of law fall within the exclusive competence of the EU and therefore must be implemented by the individual EU member states. However, the EU does have exclusive competence for economic and financial embargo measures, pursuant to article 3(1)(e) TFEU. The EU may therefore issue regulations for those measures. Once published in the Official Journal of the European Union, those regulations become valid and are directly applicable within the member states.

In contrast, the trade with weapons, ammunition and war material does not fall under the exclusive competence of the EU (cf. article 346 TFEU). Member states can therefore establish measures regarding any trade with those goods. In Germany, for example, the implementation of arms embargoes is governed by sections 74 et seq of the Foreign Trade and Payments Ordinance (AWV).

Notwithstanding this, regulations concerning technical and financial assistance related to arms and military equipment still fall within the competence of the EU, as this does not constitute trade within the meaning of article 346 TFEU. These measures are therefore also governed by EU regulations.

Autonomous versus international regimes

2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

According to article 25 of the UN Charter, member states are obliged to adopt and implement resolutions of the UN Security Council adopted under Chapter VII of the UN Charter. Although the EU is not a member

of the United Nations, EU member states have transferred their common trade policy to the EU. Such decisions are therefore usually implemented through restrictive measures by the EU, whereby EU legal acts are bound by the relevant UN Security Council resolutions. Nevertheless, the EU can also impose measures that are more restrictive than the resolutions of the UN Security Council and that are directly applicable in the EU member states.

In addition, states can also issue restrictions in order to comply with their international obligations, especially those concerning Chapter VII of the Charter of the United Nations or their obligation to implement decisions of the Council of the EU on economic sanctions measures in the area of CSFP.

In addition, EU regulations often contain obligations for member states to transpose certain rules into national law. These concern, for example, sanctions in the event of an infringement.

Under exceptional circumstances, member states may also restrict legal transactions and actions or impose obligations to act. Such circumstances may be necessary, for example, to safeguard essential security interests of or to prevent a disturbance of the peaceful coexistence of nations (eg, sections 4(1) and 6(1) of the German Foreign Trade and Payments Act (AWG). For this, member states may impose measures concerning the disposal of funds and economic resources of certain persons or partnerships or the provision of funds and economic resources for the benefit of certain persons or partnerships.

Types of sanction imposed

3 | What types of sanction are imposed in your jurisdiction?

Restrictive measures imposed by the EU are intended to bring about a change in the policies or actions of the country or part of the country, government, organisations or individuals targeted by the measures. The restrictive measures applied vary depending on the objectives sought and how those objectives can be best achieved under the circumstances. They include, among other things, the freezing of funds and economic resources, import restrictions, arms embargoes, technical assistance, embargoes on equipment which might be used for internal repression, other export restrictions, import restrictions and flight bans. Prohibitions on the provision of financial services and investment bans have also been imposed.

Countries subject to sanctions

4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

Currently, there are more than 30 countries subject to EU sanctions and embargoes. An overview of the affected countries and the respective restrictive measures is provided by the EU Sanctions Map.

Non-country specific regimes

5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

Beyond country-specific sanctions, the EU Sanctions Map illustrates other sanctions regimes that are in force in the EU. They concern chemical weapons, cyberattacks and human rights.

Council Regulation (EU) 2018/1542 imposes an EU regime of restrictive measures to address the use and proliferation of chemical weapons. The measures include asset freezing and travel bans of persons or entities directly responsible for the development and use of chemical weapons, as well as those who provide financial, technical or material support, and those who assist, encourage or are associated with them.

Council Regulation (EU) 2019/796 imposes restrictive measures against cyberattacks threatening the EU or its member states. The measures consist of asset freezing and travel bans of persons or entities responsible for cyberattacks or attempted cyberattacks, as well as those involved in or offering financial, technical or material support for these attacks and those who assist, encourage, facilitate or are associated with them.

On 7 December 2020 the Council adopted the EU Global Human Rights Sanctions Regime. The regime enables the EU to target individuals, entities and bodies responsible for, involved in or associated with, serious human rights violations and abuses worldwide, no matter where they occurred. It applies to acts such as genocide, crimes against humanity and other serious human rights violations and abuses. Other human rights violations or abuses can also fall under the scope of the sanctions regime, if they are widespread, systematic or otherwise of serious concern as regards the objectives of the EU CFSP. The restrictive measures imposed by Council Regulation (EU) 2020/1998 and Council Implementing Regulation (EU) 2021/371 consist of travel bans applying to individuals, and freezing of funds applying to both individuals and entities. In addition, EU persons and entities will be prohibited from making funds available to those listed, either directly or indirectly.

Counter-terrorism sanctions

6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

In the EU, two anti-terrorism regulations are in force, constituting a comprehensive sanctions regime. First, Council Regulation (EC) No 2580/2001 enables the Council to designate persons and entities involved in terrorist activities. The designation entails an asset freeze and a prohibition from making funds and economic resources available. The designations are reviewed at regular intervals and at least every six months to ensure that there are sufficient grounds for keeping them on the list.

Second, Council Regulation (EU) 2016/1686 imposes additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda as well as natural and legal person, entities and bodies associated with them. The restrictive measures include the prohibition of arms exports, asset freeze and the prohibition to make funds available, the prohibition to satisfy claims and restrictions on admission.

Anti-boycott laws

7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

There are no EU restrictive measures with respect to the US per se. However, the EU introduced legislation that allows each member state to take the measure it deems necessary to protect the interests of the natural or legal persons affected by the extraterritorial application of a third country's law.

In addition, on 22 December 1996, the Council of the EU decided to respond to the extraterritorial measures taken by the US, which purport to affect EU member states or natural and legal persons, their activities, or interests. The Council expressed the view that such laws with extraterritorial application violate international law. According to Council Regulation (EC) No 2271/96 no judgment of a court or tribunal and no decision of an administrative authority located outside the EU giving effect, directly or indirectly, to the laws specified in the Annex of the regulation or to actions based on or resulting from it, shall be recognised or be enforceable in any manner pursuant to its article 4.

Furthermore, there are anti-boycott laws at national level. In Germany, for example, boycott declarations are prohibited pursuant to section 7 AWW. However, this prohibition does not apply to a declaration that is made in order to fulfil the requirements of an economic sanction by one state against another state that faces sanctions of the UN Security Council, the Council of the EU or Germany.

Scope of application

8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

EU restrictive measures only apply where there is a link to the EU. An extraterritorial effect is condemned by the EU as a violation of international law.

Therefore, sanctions apply within the territory of the Union, including its airspace; on board of any aircraft or vessel under the jurisdiction of an EU member state; to any natural person inside or outside the territory of the EU who is a national of an EU member state; to any legal person, entity or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of a EU member state; and to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Legally independent subsidiaries or legally independent branches of European companies located in third countries are not covered by the scope of application of the Sanctions Regulations unless they are incorporated or registered under the laws of a member state. Domination or control by an EU person is not sufficient per se, as the persons acting are legally independent. Nor is the European nationality of the directors, to whom the regulations also apply outside the EU, a sufficient factor in determining the nationality of the subsidiary abroad. However, control of the specific business conducted must be examined. For example, the business may be attributable to the parent company, provided that it has a significant share. Other relevant indicators may include, for example, arrangements in which the parent company is jointly and severally liable for or guarantees the financial obligations of the subsidiary.

Competent sanctions authorities

9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

In principle, the adoption of restrictive measures falls within the competence of the EU. However, the actual implementation and enforcement is carried out by the competent authorities at member state level.

In Germany, for example, the authorities responsible for implementing and administering sanctions are the Federal Office of Economics and Export Control (BAFA) for embargoes related to goods, technical assistance and economic resources, and the Federal Bank of Germany regarding funds, financial resources and financial assistance.

Business compliance

- 10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

European law does not specifically legally oblige companies to set up a sanctions compliance programme. The Council of the EU merely states in its Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy that there should be 'appropriate measures' to ensure compliance with that restrictive measures.

On a national level, member states have different standards on compliance requirements. In most jurisdictions, there are several national provisions regarding general duties of care and various provisions of foreign trade law that result in a de facto obligation to implement an internal sanctions related compliance programme.

For example, a company's failure of organisation or controls can be classified as an administrative, or in some states, a criminal, offence, if it results in offences or crimes committed by employees. The management of a company in particular is subject to general duties of care. Furthermore, the granting of export licences usually depends on the reliability of the applicant. The company must be able to guarantee compliance with applicable legal standards in order to receive such a licence.

Guidance

- 11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

While the Council of the EU has issued Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy, member states have in many cases also taken the opportunity to base their own national guidelines on them.

In Germany, for example, the competent authorities have published national guidelines on Internal Compliance Programmes (ICP) in the field of export control as well as some guidelines on compliance with trade sanctions in Germany and in the EU (Foreign Trade with embargoed Countries) and on Compliance with Financial Sanctions.

In addition to the aforementioned ICP guidelines, the German competent authorities have also released manuals relating to compliance with foreign trade sanctions against specific countries such as Russia (Leaflet on foreign trade with the Russian Federation) and Iran (Leaflet on the development of the Iran Embargo).

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

- 12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

EU sanctions are instruments of foreign policy designed to uphold universal values such as the preservation of peace, the strengthening of international security and the consolidation and promotion of democracy, international law and human rights. The freezing of funds and assets can be used to target those whose actions threaten these values, while avoiding negative impacts on civilians.

The freezing of economic resources prevents any use of economic resources to obtain funds, goods or services, including selling, hiring or mortgaging them. The freezing of funds prevents any moving, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

General carve-outs and exemptions

- 13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

The competent national authorities may grant exemptions in accordance with the specific rules laid down in the EU regulations. Reasons for such exemptions include, in particular, the basic needs of the designated persons, including the payment of food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges. In addition, consideration is to be given to defence rights in relation to expenditure in connection with the provision of legal services and the property rights of the designated person or entity, as well as humanitarian purposes such as the provision or facilitation of assistance, including medical care, food supplies or the transport of humanitarian workers and related assistance.

List of targeted individuals and entities

- 14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

The EU provides for a Consolidated Financial Sanctions List. This list contains all persons, entities and bodies subject to financial sanctions under EU law. However, the list does not include those persons, organisations and institutions that are not subject to a comprehensive ban on making funds available, but to restrictions that are only limited to certain areas. In addition, the EU Sanctions Map offers the possibility to check personal restrictions. The EU Sanctions Map covers all persons, entities and bodies listed in the annexes to the embargo regulations and not only those subject to comprehensive bans on making funds available.

Other restrictions

- 15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

In some cases, restrictions can apply to specific sectors, such as trade with dual-use or military goods. For example, in response to Russia's actions destabilising the situation in Ukraine, the EU has imposed an arms embargo, trade restrictions on dual-use goods and energy equipment and restrictions on the access to the capital market. These sectoral sanctions are constituted by Council Regulation (EU) No. 833/2014. On 25 August 2017, the European Commission has published a Guidance Note on the Implementation of certain Provisions of Regulation (EU) No. 833/2014 in order to ensure uniform implementation by national authorities and parties concerned.

Exemption licensing – scope

- 16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

The implementation of sanctions as well as the issuing of exemption licences are the responsibilities of the competent national authorities.

In Germany for example, it is possible, contrary to the prohibitions in sections 74 et seq., AWV (countries subject to arms embargo), to obtain a licence for the sale, export, transit or trading and brokering transactions according to sections 76 and 76a AWV. This is done through an application to the competent authority (BAFA). Pursuant to Section 76(2) AWV, it is possible, for example, to export non-lethal military goods to Belarus intended exclusively for humanitarian or protective purposes or for institution-building programmes or for crisis management operations of the EU

and the UN. A licence can also be granted for the sale of non-combat vehicles that have been manufactured or retrofitted with a bulletproof device and are intended solely for the protection of personnel of the EU and its member states in Belarus, as well as protective clothing for UN and EU personnel and humanitarian workers.

In addition, the export or transit of goods exported or carried out by German authorities for the fulfilment of official duties and intended exclusively for the German authorities' own use or remaining in the German authorities' own custody can be authorised under Section 76a AWW. Furthermore, a licence can be granted regarding the export of goods that serve in particular for the self-protection of diplomatic and consular missions.

Many EU member states have issued similar rules regarding licensing exceptions.

Exemption licensing – application process

17 | What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

The application process for an exemption licence is a matter of the EU member states' national regulations. Although the member states strive for a more uniform approach, the process and timeline differ greatly from state to state.

For example, in Germany, applications for exemption licences must be submitted to the BAFA via the export online system ELAN-K2. In order to gain access to the system, a one-time registration is required.

When applying for exemption licences, such as for the export of goods to embargoed countries, national authorities usually require an end use certificate. Furthermore, technical data on the product and contractual documents must be submitted with the application.

The duration of the application process is always case-specific and depends on the type of goods, the country of destination and the end user or end use. Due to additional embargo regulations to be observed in addition to the general export regulations, more time must be planned for exports with an embargo reference than for those without an embargo reference. The processing time can therefore range from a few weeks to several months.

Approaching the authorities

18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

It is possible and advisable to contact the competent authorities of the EU member states at an early stage to discuss the requirements for a sanctions-related project. Particularly in the case of exports of military equipment and of dual-use goods, it is necessary to carry out the application procedure in close contact with the competent authorities by ensuring the greatest possible transparency, thereby guaranteeing that the export complies with both national and European export control law.

Reporting requirements

19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

The EU financial sanctions regulations contain extensive obligations to cooperate and provide information. They oblige everyone to immediately provide information that facilitates the application of the financial sanctions ordinances such as information on frozen bank accounts and amounts, without undue delay, to the authorities of the EU member states and to cooperate with these authorities in verifying the information.

In addition, member states may establish their own administrative arrangements to supervise financial transactions regarding sanctions.

In Germany, for example, the Service Centre for Financial Sanctions of the Deutsche Bundesbank actively requests information on frozen bank accounts and amounts by sending email circulars to all credit institutions located in Germany when financial sanctions are imposed on new addressees or when names (including aliases) or other identifying characteristics of already sanctioned persons, entities or bodies are changed. In this regard, credit institutions are requested to report any frozen funds held with them to the Service Centre for Financial Sanctions of the Deutsche Bundesbank within one week. Credit institutions with no frozen funds are requested to submit a missing report. Institutions located in Germany are expected to answer the queries of the Service Centre Financial Sanctions of the Deutsche Bundesbank promptly (as a rule, a time window of one week is provided for this purpose) and accurately. In order to comply with financial sanctions and in particular with reporting obligations, the Deutsche Bundesbank has published the Leaflet on Compliance with Financial Sanctions.

TRADE SANCTIONS

General restrictions

20 | What restrictions apply in relation to the trade of goods, technology and services?

There are various trade-restricting, especially export-restricting, regulations within EU law. These regulations are directly applicable in EU member states without further implementing acts. The member states are responsible for the administrative enforcement of those regulations. The following is a brief description of the most relevant restrictions.

Regulation (EC) No. 428/2009 (Dual-Use Regulation)

The Dual-Use Regulation covers the export of goods that can be used for both civilian and military purposes (eg, certain chemicals, machines, technologies and software). The Dual-Use Regulation implements the international Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG), the Australia Group and the Chemical Weapons Convention (CWC). According to article 3 of the Dual-Use Regulation, the export of all goods listed in Annex I Dual-Use Regulation is subject to authorisation. For goods not listed under Annex I, restrictions may still apply under certain circumstances, such as potential use for nuclear purposes or a potential military use in a country subject to an arms embargo.

The EU member states also maintain their own lists with dual-use goods. For example in Germany, Part I Section B AWW lists additional dual-use goods whose export must be approved by the relevant authority.

Regulation (EC) No. 258/2012 (Firearms Regulation)

This regulation lays down the licensing requirements and principles of the licensing procedure for the export of firearms, their parts, essential components and ammunition listed in Annex 1 to this regulation.

Regulation (EC) 2019/125 (Anti-Torture Regulation)

The Anti-Torture Regulation prohibits exports and imports of goods that have no practical use other than capital punishment or torture and other cruel, inhumane or degrading treatment or punishment. It also imposes an authorisation requirement for goods that could potentially be used for the same purposes as above (potential torture or capital punishment goods).

Military Equipment and War Weapon Regulation: The term military equipment generally covers goods that are primarily or exclusively used for military purposes, ie, weapons and ammunition of all kinds as well as accessories, spare parts or mounting devices for weapons, armoured vehicles, protective devices or clothing as well as relevant software or technologies. The Council Common Position 2008/944/CFSP defines common

rules governing the control of export of military technology and equipment. The position further sets out guidelines for EU member states on effective arms export control and on the review of applications for export licences for items on the Common Military List.

Under article 346(1)(b) TFEU, member states can also issue measures regarding the trade of weapons, munition and war material. Many EU member states have made use of this provision, issuing national export lists on military equipment (eg, Part I section A AWV). These lists usually correspond with the European Common Military List and also include technology relating to the equipment.

In addition, several sanctions regulations make explicit reference to specific sectors whose trade is to be restricted under the regulation.

General exemptions

21 | Do any exemptions apply to the general trade restrictions?

There are different types of general exceptions applicable to EU trade restrictions. There are exemptions relating to the scope of application of regulations or the authorisation requirement. Examples of these include:

- article 8 (3) Dual-use Regulation, which excludes the restrictions on technical assistance under certain circumstances, eg, the technical assistance is provided by authorities or agencies of a member state in the context of their official task;
- article 3 Firearms Regulation, which excludes state to state transactions or state transfers; and
- article 9 Nr.1 lit(a)(i) of the Firearms Regulation, which provides an exemption from the authorisation requirement for temporary export by hunters or sport shooters as part of their accompanied personal effects.

There are also exemptions in the form of EU and member state general export authorisations, which apply under specific circumstances. A general export authorisation is issued ex officio and has the effect of automatically authorising all exports that meet the established requirements. It is valid for everyone without prior application. However, companies must evaluate, at their own risk, whether their proposed exports are covered by the general authorisation. Additionally, they are obliged to notify the competent national authority about the envisaged export of goods under the general authorisation. The EU has issued several general export authorisations such as general export authorisation EU001 for goods under Annex 1 of the Dual-Use Regulation or EU006 regarding certain chemicals under the Dual-Use Regulation.

Targeted restrictions

22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

The imposition of trade sanctions against dealing with any particular individuals or entities generally falls within the jurisdiction of the EU. The EU provides for a Consolidated Financial Sanctions List. This list contains all persons, entities and bodies subject to financial sanctions under EU law. However, the list does not include those persons, organisations and institutions that are not subject to a comprehensive ban on making funds available, but to restrictions that are only limited to certain areas. In addition, the EU Sanctions Map offers the possibility to check personal restrictions. The EU Sanctions Map covers all persons, entities and bodies listed in the annexes to the embargo regulations, and not only those subject to comprehensive bans on making funds available.

Exemption licensing – scope

23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

The licences to trade are issued on a case-by-case basis. The authorities consider all circumstances of the individual case. For these purposes, the final recipient, the political situation in the recipient country and the potential for misuse of the respective goods are taken into account.

Exemption licensing – application process

24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

As a part of the administrative enforcement of the regulations, the application process for a licence follows the national system of the respective member state of the EU. Although the member states strive for a more uniform approach, the process and timeline greatly differ from state to state.

Most European countries have implemented a process to submit the application electronically (eg, the ELAN-K2 Export Portal by the German authorities).

Authorities often ask for a designated person responsible for the export and information on profiles of the companies involved in the transaction as well as their websites. In addition, the authorities usually request an end-user certificate and a technical description of the goods to be exported.

The duration of the approval process depends on the circumstances of each individual case (ie, type of goods, country of destination, end user or end use). In the case of exports to 'sensitive' countries, the process may take longer. This is because a more intensive investigation and, if necessary, the involvement of relevant ministries and other bodies is required. Practical experience indicates that in straightforward cases, a processing time of two to six weeks is common. In particularly critical cases, the process, however, can also take up to several months.

Approaching the authorities

25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

In general, national authorities within the EU adopt a low-key approach to dealing with export authorities. It is therefore possible, advisable and very common to contact the competent authorities at an early stage to discuss licence applications or queries on trade sanctions compliance. Particularly in the case of exports of military equipment and dual-use goods, it is advisable to carry out the application procedure in close contact with the competent authorities by ensuring the greatest possible transparency, thereby demonstrating the reliability of the exporter and ensuring compliance with both national and European export control law.

ENFORCEMENT AND PENALTIES

Reporting violations

26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

Enforcement and penalties for sanctions and export violations are a matter of national EU member state law. While in many states there is no legal obligation to report violations of foreign trade law, in certain cases national law offers companies the option of self-disclosure (eg, section 22(4) of the German Foreign Trade and Payments Act). This can lead to a broad

exemption from fines. In other cases, a voluntary declaration can be taken into account in favour of the company and lead to reduced penalties or to an exemption from more severe forms of punishment.

While self-disclosure is not a perfect solution in every case, companies should at least give it consideration. If companies decide to self-disclose, they should do so in a timely manner. Self-disclosure is in general only effective if it is voluntary and before the authorities discover the infringement.

Investigations

27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

Investigating sanctions violations is generally a matter of national law. Therefore, criminal procedures may vary between member states. Usually, the investigating authorities can conduct searches, seize documents and objects on the basis of and within the scope of a search warrant, and take other investigative measures such as personal or communication surveillance.

Penalties

28 | What are the potential penalties for violation of sanctions?

The EU member states are responsible for penalising sanctions violations. The EU regulations imposing restrictive measures merely require that the EU member states shall lay down rules on penalties applicable to infringements, and take all measures necessary to ensure that they are implemented. The penalties must be effective, proportionate and deterrent. Therefore, penalties differ from state to state.

In Germany, for example, violations of an arms embargo can be punished with imprisonment from one to ten years, according to section 17(1) AWG. A negligent offence in this regard is punishable with imprisonment of up to three years or a fine pursuant to section 17(5) AWG.

In addition, section 18(1) AWG covers violations of legal acts of the EU sanctions measures, except in the case of an arms embargo. These can be punished with imprisonment of up to five years or a fine. Negligent offences are considered administrative offences and can be punished with a fine of up to €500,000 pursuant to section 19(6) AWG.

In addition to the completed and attempted violation of an embargo, acts of participation in the form of incitement and aiding and abetting, as well as attempted incitement are also punishable. In these cases, the penalties correspond to those applied to the main perpetrators.

Similar penalties also apply in other European countries.

Recent enforcement actions

29 | Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

In December 2021, a Danish court fined a company based in Middelfart, Denmark for violating the EU sanctions by supplying jet fuel that was used in Russia's operations in Syria with around €4 million. The background of the judgment is that during 2015 and 2017 a total of 172,000 tons of jet fuel to a value of about €87 million was sold to two Russian companies, ultimately leading to its use for military purposes in the Syrian conflict by the Russian troops.

In March 2021, the German Higher Regional Court Hamburg (Case No. 3 St 2/20) sentenced a German businessman to three years and nine months imprisonment for violating the EU sanctions imposed on Russia since 2014 due to the annexation of Crimea. Between 2015 and 2018, the convicted had sold and delivered a total of 15 machines, which can be used in the production of missile technologies, to two Russian companies in Yekaterinburg for a total price of approximately €8 million.

On 4 September 2017, the Den Bosch Netherlands Court in the Netherlands (ECLI:NL:RBOBR:2017:4666) sentenced a former managing director of a Dutch company to almost two years' imprisonment, because he violated EU sanction regulations. The convicted had been trading with a company in Iran from October 2012 to February 2015. The Iranian company was listed on the EU list for persons or entities involved in nuclear or ballistic missiles activities, and persons and entities that support the government of Iran.

Although such cases are not frequently brought to court in EU member states, these cases and others show that it is essential to implement an internal compliance programme in the context of cross-border activities in order to prevent imprisonment and other severe fines.

UPDATE AND TRENDS

Emerging trends and hot topics

30 | Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

In view of Russia's invasion of Ukraine, existing sanctions against Russia have been severely extended (see amended Council Regulation (EU) 833/2014 and Council Regulation (EU) 269/2014) and now include, inter alia:

- extensive trade restrictions regarding several sectors, including dual-use goods, high technology and aviation;
- an exclusion of several Russian bank institutions from the international financial transaction system Swift
- additional restrictions regarding the financial market; and
- additional listings of private persons, entities and organisations.

The new sanctions also target the trade with the areas of Luhansk and Donetsk and prohibit trade with goods from specific sectors, such as traffic, telecommunication and others (Council Regulation (EU) 263/2022).

Since June 2021, many sanctions have been enacted against Belarus. These comprise the prohibition of any aircraft operated by Belarusian air carriers to take off from, land in or overfly the territory of the EU (Council Decision (CFSP) No. 2021/908 of 4 June 2021) as well as economic sanctions such as restrictions for the trade of arms and dual-use items for military use or restrictions to access to EU capital markets by the Belarusian government (Council Decision (CFSP) No. 2021/1031 of 24 June 2021) following the unlawful forced landing of an intra-EU Ryanair flight in Minsk, Belarus in May 2021. In view of the situation at the Polish-EU border in order to react to the instrumentalisation of refugees by the Lukashenka regime for political purposes, the EU council broadened the aforementioned sanctions. The measures now also target persons and entities organising and contributing to activities of the regime (Council Decision (CFSP) No. 2021/2125 of 2 December 2021). Additionally, in light of the Russian invasion in Ukraine, the EU council has extended the sanctions against Belarus that now include extensive trade restrictions in several sectors, including dual-use goods and high technology (Council Regulation (EU) 355/2022).

In March 2021, the EU imposed measures against 11 officials responsible for the military coup in Myanmar (Council Decision (CFSP) No. 2021/482 of 22 March 2021, Council Decision (CFSP) No. 2021/483 of 22 March 2021) including travel bans and asset freeze. With Council Decision (CFSP) No. 2021/639 of 19 April 2021 and Council Decision (CFSP) No. 2021/1000 of 21 June 2021 these measures have been extended to 18 more individuals and six companies.

Because of the shelving of the promised elections by the Malian military junta and as a response to the arrival of private military contractors from Russia, the EU foreign policy chief Josep Borrell announced that the EU will impose measures in line with the sanctions already taken by ECOWAS in January 2022 against the military regime in Mali, including economic, financial and personal penalties.

Israel

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GENERAL FRAMEWORK

Legislation

- 1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

Israeli law includes several statutory frameworks that allow for the imposition of sanctions. These include the Trading with the Enemy Ordinance 1939, a statute originally promulgated by the British Mandatory Government, as well as the more recent Law to Contain the Iranian Nuclear Programme 2012, Law for the Prevention of the Proliferation and Financing of Weapons of Mass Destruction 2018 and the Counterterrorism Law 2016. Violations of any of these sanctions frameworks may also constitute a violation of the Anti-Money Laundering Law 2000.

Autonomous versus international regimes

- 2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

Israeli legislation provides for the imposition of autonomous sanctions regimes and does not require the automatic adoption of sanctions imposed by international institutions or organisations. At the same time, guidelines issued by the Bank of Israel require financial institutions to take the existence of foreign and international sanctions regimes, including sanctions regimes of the United States or the United Nations Security Council, into account in assessing the risks associated with any account or transaction. In addition, export licences issued by the Ministry of Defence pursuant to the Defense Export Control Law 2007 often require the licensee to ensure that no controlled items are transferred to any country subject to an embargo of the United Nations Security Council.

Types of sanction imposed

- 3 | What types of sanction are imposed in your jurisdiction?

Israeli law generally allows for the imposition of sanctions such as trade restrictions and arms embargoes. However, the current statutory frameworks do not generally allow for the implementation of asset freezes. Rather, asset freezes may only be imposed against entities designated as terrorist organisations by the Minister of Defence under the Counterterrorism Law 2016. Israeli law also imposes a ban on travel by Israeli citizens to several countries, pursuant to the Law Against Infiltration (Prohibitions and Judgements) 1954.

Countries subject to sanctions

- 4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

Iran, Lebanon and Syria are subject to a broad array of sanctions under the Trading with the Enemy Ordinance 1939. Formally, Iraq is also subject to sanctions under the same statutory framework, but the Ministry of Finance annually issues a broad licence for business with Iraq. The Sanctions Bureau at the Ministry of Finance makes available a current list of sanctioned countries.

Non-country specific regimes

- 5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

Israeli law provides for sanctions against entities designated as terrorist organisations by the Minister of Defence under the Counterterrorism Law 2016.

Counter-terrorism sanctions

- 6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

The Counterterrorism Law 2016 imposes broad sanctions on entities designated as terrorist organisations by the Minister of Defence. The Law generally prohibits the use of any funds or tangible or intangible property to 'assist, further or finance' any entity designated as a terrorist organisation. On 16 January 2022, the Ministry of Justice proposed legislation to allow the Minister of Defence to designate foreign individuals without Israeli connections as active in terror activities.

Anti-boycott laws

- 7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

The Law to Prevent Injury to the State of Israel Through Boycotts 2011 provides that certain calls for boycotts or sanctions against Israel, or other institutions or individuals because of their relationship with Israel, constitute a civil tort for which courts in Israel may award damages. In addition, entities calling for or participating in such boycotts or sanctions may be barred from participating in tenders by the Israeli government or from receiving other listed benefits.

The original statute as passed by the Knesset provided for the award of statutory damages against individuals calling for boycotts or sanctions against Israel, including in situations where damages had not been shown by the plaintiff. However, the Supreme Court of Israel struck down those latter provisions as unconstitutional violations of the freedom of speech in Israel. In addition, the Supreme Court has held that any claim for damages under the statute must satisfy the ordinary

standards of tort law, including showing that such calls were the proximate cause of the claimed damages.

Scope of application

8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

Generally, Israeli sanctions frameworks are subject to the ordinary territorial restrictions under Israeli law. However, the financing of entities either designated as terrorist organisations pursuant to the Counterterrorism Law 2016 or that otherwise have a connection to Israel may constitute a criminal offence regardless of whether such activities took place within or outside the territory of Israel. The prosecution of these extraterritorial activities under the Counterterrorism Law requires the written approval of the Attorney General.

Competent sanctions authorities

9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

Current statutory frameworks authorise different government authorities to implement and administer the various Israeli sanctions frameworks. The Sanctions Bureau at the Ministry of Finance oversees the inter-agency process of administering the Trading with the Enemy Law 1939, the Law to Contain the Iranian Nuclear Programme 2012 and the Law for the Prevention of the Proliferation and Financing of Weapons of Mass Destruction 2018. The National Bureau for Counter Terror Financing at the Ministry of Defence administers and implements sanctions pursuant to the Counterterrorism Law 2016. In addition, the Israeli Money Laundering and Terror Financing Prohibition Authority operates to provide financial intelligence regarding any violation of these sanctions frameworks.

Business compliance

10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

Under the Anti-Money Laundering Law and the regulations promulgated thereunder, banks, financial institutions, service providers and other listed entities and institutions are required to institute certain identification, reporting and record-keeping requirements to ensure compliance with sanctions frameworks.

Guidance

11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

The Sanctions Bureau has published on its website a limited amount of information regarding compliance with sanctions.

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

The Minister of Defence may, under the Counter Terrorism Law 2016, issue temporary administrative orders for the seizure of assets of entities designated as terrorist organisations. These assets are generally transferred to the management of the Administrator General at the Ministry of Justice during the period of the administrative order. In

addition, the Israeli Money Laundering and Terror Financing Prohibition Authority (IMPA) is moving forward with regulatory proposals that would grant IMPA authority to temporarily freeze assets involved in transactions that raise concerns of money laundering, including transactions that raise concerns of sanctions evasion.

General carve-outs and exemptions

13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

Property may be exempt from administrative orders of temporary seizure under the Counterterrorism Law 2016 if the owner can prove either that the property was used in violation of law without the owner's consent, or that the property was obtained in good faith without knowledge of the fact that it was used or obtained in violation of law. In addition, property may be exempt from these administrative orders if implementation of the seizure would leave the owner and the owner's family without reasonable means of livelihood.

List of targeted individuals and entities

14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

The Sanctions Bureau maintains a list of countries designated as 'enemies' under the Trading with the Enemy Ordinance 1939.

The National Bureau for Counter Terror Financing maintains a list of individuals and entities designated under the Counterterrorism Law 2016.

Other restrictions

15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

The Trading with the Enemy Ordinance 1939 prohibits the trading of the currency of 'enemy countries'. In addition, the Ordinance provides that Israeli law will not accord any legal consequences to either the receipt of securities by an individual or entity from an enemy country or the provision of securities to an enemy country or a citizen of such a country.

Exemption licensing – scope

16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

The competent authorities are generally authorised to issue licences to permit activities that would otherwise violate Israeli sanctions frameworks. The specific government agency authorised to issue this licence, and the discretion granted to this agency, differs across the various sanctions frameworks.

The Minister of Finance is authorised to issue licences under the Trading with the Enemy Ordinance 1939. The Ordinance does not set forth a standard for when these licences will be issued and, as such, grants broad discretion to the Minister of Finance. The Minister of Finance is also authorised to issue licences under the Law for the Prevention of the Proliferation and Financing of Weapons of Mass Destruction 2018, to the extent the Minister finds that such a licence is required according to the guidelines of the United Nations Security Council. An inter-agency committee of six government ministries chaired by the Minister of Finance is authorised to grant licences under the Law to Contain the Iranian Nuclear Programme 2012, to the extent the committee finds that such a licence would be in the public interest.

The Minister of Finance, in consultation with the Minister of Defence and Minister of Public Security, is also authorised to grant licences under the Counterterrorism Law 2016, although the law does not set forth a standard for when such licences will issue.

Exemption licensing – application process

- 17 | What is the application process for an exemption licence?
| What is the typical timeline for a licence to be granted?

Applications for licences under the Trading with the Enemy Ordinance 1939 may be directed to the Sanctions Bureau at the Ministry of Finance. Neither the statute nor regulations provide for any timeline for the Ministry to provide a response to the application. In practice, the timeline to receive an acceptance or rejection depends on the complexity of the application and may be several weeks to several months.

Applications under the Law for the Prevention of the Proliferation and Financing of Weapons of Mass Destruction 2018, the Law to Contain the Iranian Nuclear Programme 2012 and the Counterterrorism Law 2016 may also be directed to the Sanctions Bureau. Again, there is no statutory or regulatory timeline for the agency to provide a response. Applications for licences under these frameworks are very rarely submitted.

Approaching the authorities

- 18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

It is possible to engage with the Sanctions Bureau at the Ministry of Finance to discuss applications for licences and other compliance matters. In principle, these inquiries may initially be submitted to the Sanctions Bureau without identifying the entities submitting the inquiry in order to obtain the Ministry's initial assessment of the inquiry.

Reporting requirements

- 19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

Assets frozen pursuant to the Counterterrorism Law 2016 are generally transferred to the Administrator General or the Official Receiver at the Ministry of Justice. The Administrator General is subject to reporting requirements pursuant to applicable regulations.

TRADE SANCTIONS

General restrictions

- 20 | What restrictions apply in relation to the trade of goods, technology and services?

Israeli law provides for generally applicable export controls on military and dual-use goods. The list of controlled dual-use items generally tracks the list published pursuant to the Wassenaar Arrangement. However, the list of controlled military items can often be broad and vague, and often encompasses items, software and technology that are not controlled under international arrangements. For controlled military items and for dual-use items provided to military end users, Israeli law controls both the marketing of these items for export as well as the actual export of these items.

The Import-Export Order 2014 restricts the import of goods from countries with which Israel does not have diplomatic relations, or that otherwise discriminate against the import of goods from Israel. However, the Ministry of Economy has issued guidelines that permit the

import of goods from many of these countries, or that limits the statutory import restrictions to specific categories of goods.

General exemptions

- 21 | Do any exemptions apply to the general trade restrictions?

Generally applicable export control regulations are subject to narrow regulatory exceptions in specific circumstances, pursuant to the Defence Export Control Regulations (Exemptions from Export Licences) 2007.

The Ministry of Economy has issued guidelines that permit the import of goods from many countries from which imports would otherwise be prohibited under the Import-Export Order 2014.

Targeted restrictions

- 22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

Individuals and entities listed as subject to sanctions pursuant to the Law to Contain the Iranian Nuclear Programme 2012 are subject to comprehensive trade sanctions.

Exemption licensing – scope

- 23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

An inter-agency committee of six government ministries chaired by the Minister of Finance is authorised to grant licences under the Law to Contain the Iranian Nuclear Programme 2012, to the extent the committee finds that such a licence would be in the public interest.

The Ministry of Defence (with regard to military end users) and the Ministry of the Economy (with regard to civilian end users) have broad discretion as to the granting of licences under generally applicable export control regimes.

Exemption licensing – application process

- 24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

Applications under the Law to Contain the Iranian Nuclear Programme 2012 may be directed to the Sanctions Bureau at the Ministry of the Economy. Applications are very rarely submitted, and there is no set timeline to receive a response to these applications.

With regard to generally applicable export controls, applications for licences to provide dual-use controlled items to civilian end users are made to the Ministry of the Economy. Under the Import-Export Order (Control of Dual-Use Goods and Technology) 2006, the Ministry must respond to requests that do not implicate military foreign policy concerns within five days. Applications that implicate military concerns may demand several months to receive a response, with the timeline depending on the complexity of the concerns raised by the applications.

With regard to military end users, application for licences are made to the Ministry of Defence. An initial export licence from the Ministry of Defence requires an involved bureaucratic process of registering both the potential licensee and the controlled item proposed for export with the Ministry of Defence, which may require several months. Subsequent export licences can be provided on a faster timeline.

Approaching the authorities

- 25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

It is possible to engage with the authorities, both regarding sanctions as well as regarding generally applicable export control matters.

ENFORCEMENT AND PENALTIES

Reporting violations

- 26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

All current statutory frameworks for sanctions were amended in 2012 to include reporting requirements for sanctions violations. According to these provisions, all actual or suspected violations of the sanctions laws must be reported to the Israeli police according to the provisions of the Anti-Money Laundering Law 2000, and the regulations promulgated thereunder.

Investigations

- 27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

Generally, the Israeli National Police and the national intelligence authorities are the bodies responsible for investigating sanctions violations and terror financing. The Israeli Money Laundering and Terror Financing Prohibition Authority also plays a key role in identifying cases for investigation. In addition, the Sanctions Bureau of the Ministry of Finance has investigative powers under the Law to Contain the Iranian Nuclear Programme 2012 and Law for the Prevention of the Proliferation and Financing of Weapons of Mass Destruction 2018.

Penalties

- 28 | What are the potential penalties for violation of sanctions?

Violations of sanctions are criminal offences punishable by up to 10 years' imprisonment and fines that can amount into the several millions of shekels. A failure to report sanctions violations can be a criminal offence, punishable by up to one year's imprisonment and criminal fines. An inter-agency panel is in certain circumstances authorised to impose administrative fines.

In addition, the sanctions regimes administered under the Law to Contain the Iranian Nuclear Programme 2012 and the Law for the Prevention of the Proliferation and Financing of Weapons of Mass Destruction 2018 provide for the criminal liability of officers and directors that did not exercise their authority as necessary to prevent sanctions

violations. These regimes also provide that, if a corporate legal entity has violated any of these sanctions regimes, then the officers and directors of this entity are presumed not to have exercised the necessary care to prevent these violations unless proven otherwise.

To the extent any sanctions violations also constitute a violation of the Anti-Money Laundering Law 2000, violations may also be subject to criminal penalties and administrative fines pursuant to this Law as well.

Recent enforcement actions

- 29 | Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

The Jerusalem Magistrate Court recently upheld a fine of several million shekels imposed on an Israeli bank for failure to properly report transactions as required by the regulations promulgated under the Anti-Money Laundering Law 2000. Among its other claims, the bank asserted that its familiarity with the specific clients performing the relevant transactions allowed the bank greater flexibility in determining whether the bank was required to report the transactions under the applicable regulations. The Court dismissed these claims, and held that the bank's familiarity and ongoing relationship with the clients performing the transaction did not obviate the bank's regulatory requirements to further investigate the relevant transactions. The case underscores the obligations of financial institutions to thoroughly investigate transactions that could raise concerns of money laundering, including under applicable sanctions regimes.

UPDATE AND TRENDS

Emerging trends and hot topics

- 30 | Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

In November 2021, revisions to the regulatory identification, reporting and record-keeping requirements applicable to certain financial institutions came into effect. Among other provisions, these regulations impose requirements on financial service providers that provide cryptocurrency services. The goal of these amendments was to impose clear regulatory requirements on cryptocurrency service providers to allow the integration of these service providers into the Israeli financial and banking sectors. The revised regulation requires financial service providers to retain certain details in respect of cryptocurrency transactions, including in respect of the type and address of the cryptocurrency wallets involved in the transactions and the Internet Protocol addresses used to effect the transaction, and to report unusual cryptocurrency transactions. In a February 2022 circular, the Israeli Money Laundering and Terror Financing Prohibition Authority clarified its position that these regulations also apply to cryptocurrency transactions made as payments by victims of ransomware incidents.

Japan

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GENERAL FRAMEWORK

Legislation

- 1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

Although there is no legislation that comprehensively governs Japan's sanctions regimes unlike the US and other jurisdictions that have comprehensive regimes to comply with resolutions of the United Nations Security Council (UNSC), the Foreign Exchange and Foreign Trade Act (FEFTA), which regulates foreign exchange, foreign trade and other foreign transactions, mainly provides the rules for economic and financial sanctions and trade sanctions.

The Act on Special Measures for the Prohibition of Entrance into Ports by Specified Vessels (the Specified Vessels Entrance Prohibition Act or SVEPA) (no English translation available) and the Act on Special Measures concerning Freezes of International Terrorists' Assets etc. Conducted by the Government Taking into Consideration United Nations Security Council Resolution (the International Terrorist Asset Freezes Act or ITAFA) (no English translation available) provide for certain specific sanction measures as well.

Autonomous versus international regimes

- 2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

FEFTA empowers the cabinet to implement autonomous sanctions when it is particularly necessary in order to maintain national peace and security. This mechanism was introduced in 2004 mainly to enable the government to trigger autonomous sanctions against North Korea, in addition to sanctions based on international agreements or international cooperation. SVEPA, which was primarily introduced to impose sanctions on North Korea, empowers the government to unilaterally prohibit designated vessels from entering ports in Japan.

Types of sanction imposed

- 3 | What types of sanction are imposed in your jurisdiction?

As for economic and financial sanctions, FEFTA authorises the Minister of Finance to impose obligations to obtain approval for international capital transactions (eg, transactions relating to deposits, loans, trusts or guarantees, and transfers, issuances and offerings of securities); and transactions between a resident and a non-resident to provide certain services (in principle, services other than trade-related ones). ITAFA restricts transactions that involve designated terrorists and are not subject to FEFTA (mainly domestic transactions).

As for trade sanctions, FEFTA authorises the Minister of Economy, Trade and Industry to impose obligations to obtain approval for import from or export to certain places of certain goods; and transactions between a resident and a non-resident to provide certain services (in principle, trade-related ones). SVEPA prohibits designated vessels from entering ports in Japan.

In order to ensure the effectiveness of the sanctions under FEFTA, with regard to payments other than those in relation to transactions subject to approval, each government minister is authorised to impose obligations on residents or non-residents to obtain approval to make outbound payments; and on residents to obtain approval to make payments to or receive payments from non-residents or residents.

Countries subject to sanctions

- 4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

The Ministry of Economy, Trade and Industry's (METI) website lists the countries that are currently subject to sanctions under FEFTA. The Ministry of Finance (MOF) specifically provides a list of the entities and individuals currently subject to asset freezes. (Although there are no English versions of these websites, the English or native language names of the affected persons are provided in the lists.)

Pursuant to SVEPA, the cabinet has prohibited certain ships that have North Korean registries or other relationship with North Korea from entering ports in Japan.

Non-country specific regimes

- 5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

FEFTA itself does not necessarily designate the subject of sanctions. Sanctions would be imposed, whether or not they are country specific, if either unlimited implementation of certain types of transactions would obstruct Japan's implementation of international agreements or contribution to international efforts for peace, or there is a cabinet decision to take sanction measures, which can be made if such decision is particularly necessary in order to maintain national peace and security.

Some members of the Diet have reportedly commenced discussions on potential legislation that would enable the imposition of sanctions on those involved in human rights violations. The discussions are being conducted due to a doubt as to whether autonomous sanctions against human right violations are allowed under the current regimes outlined above even if there are no international agreements such as resolutions of the UNSC. In December 2021, the Prime Minister informed the press that the government will continue considering the introduction of sanctions in relation to human rights violations based on Japan's existing foreign policies on human rights.

Counter-terrorism sanctions

6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

Pursuant to the relevant resolutions of the UNSC, asset freezes are imposed on terrorists. International and domestic transactions that involve terrorists named in public notices are restricted under FEFTA and ITAFA, respectively.

In addition, the Act on the Punishment of Provision etc of Funds etc for Criminal Activities for Purposes of Threatening the Public, etc, prohibits the collection and direct or indirect provision of funds or other benefits to facilitate terrorist activities that are being contemplated at the time of the collection or provision, and provides for criminal sanctions for violations of the prohibitions. The application of these restrictions is not limited to terrorists designated in public notices but is rather a general regulation on financing of certain criminal activities than a sanctions regime.

Anti-boycott laws

7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

Japan does not have any blocking or anti-boycott laws.

Scope of application

8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

When sanctions are triggered pursuant to FEFTA, transactions implemented in Japan are subject to the sanctions. This law also applies to transactions implemented outside Japan by representatives, agents, employees or other workers of a corporation that have a principal office in Japan, or persons with a domicile in Japan or their agents, employees or other workers, with regard to their assets.

Under sanctions pursuant to that law, residents and non-residents who intend to implement international capital transactions (eg, transactions relating to deposits, loans, trusts or guarantees and transfers, issuances and offerings of securities), or imports and exports, and residents who intend to implement transactions to procure services from non-residents, must obtain approval to implement those transactions. In addition, residents and non-residents who intend to make outbound payments and residents who intend to make payments to or receive payments from non-residents are subject to approval as well.

Competent sanctions authorities

9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

MOF and METI are responsible for implementing and administering financial sanctions and trade restrictions, respectively, under FEFTA. The restrictions pursuant to ITAFA are administered by the national and prefectural Public Safety Commissions.

Business compliance

10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

As for financial sanctions, FEFTA requires financial institutions to confirm that a customer's payment or receipt of payment is not subject to restrictions including sanctions or is approved before the remittance; confirm the identity of the customer in relation to outbound payments; payments to or receipt of payments from a non-resident; and execution

of contracts with regard to capital transactions (eg, transactions relating to deposits, loans, trusts or guarantees and transfers, issuances and offerings of securities); and maintain customer identification records for seven years. MOF may conduct inspections in accordance with FEFTA to examine compliance measures taken by financial institutions.

As for trade restrictions, the Minister of Economy, Trade and Industry issued an ordinance (no English translation available) that provides for the compliance standards for export businesses (the standards are intended for general compliance with FEFTA, rather than compliance with sanctions) and may conduct inspections as well.

Guidance

11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

As for financial sanctions, MOF has issued Foreign Exchange Inspection Guidelines, which elaborate on the compliance measures to be examined in inspections which are conducted in accordance with FEFTA. The Financial Services Agency also issued the Guidelines concerning Prevention Measures against Money Laundering and Terrorist Funding (no English translation available), which set out approaches that financial institutions are required or advised to take from general anti-money laundering and antiterrorist funding perspectives.

As for trade restrictions, the Minister of Economy, Trade and Industry issued an ordinance (no English translation available) that provides for the compliance standards for export businesses (the standards are intended for general compliance with FEFTA, rather than compliance with sanctions), but there are no guidelines focusing on trade sanctions.

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

The Foreign Exchange and Foreign Trade Act (FEFTA) authorises the Minister of Finance to impose obligations to obtain approval for international capital transactions (eg, transactions relating to deposits, loans, trusts or guarantees and transfers, issuances and offerings of securities); and transactions to provide services (other than trade-related ones, which are administered by the Minister of Economy, Trade and Industry) between a resident and a non-resident, on those who intend to implement the transactions. The restrictions would be implemented if unlimited implementation of those transactions would obstruct Japan's implementation of international agreements or contribution to international efforts for peace, or there is a cabinet decision to take sanction measures, which can be made if it is particularly necessary to maintain national peace and security.

The International Terrorist Asset Freezes Act (ITAFA) restricts transactions that involve terrorists designated (from the United Nations' list of international terrorists) by the National Public Security Commission. When the designated terrorists intend to implement certain transactions (eg, transactions with regard to assets such as cash, securities, immovable properties and automobiles), they must obtain approval. No-one can be a party to transactions with international terrorists if such transactions are not approved.

General carve-outs and exemptions

- 13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

FEFTA does not have general carve-outs or exemptions to the asset freeze provisions. On the other hand, ITAFA, which mainly restricts domestic transactions that involve terrorists, provides that if there is no risk that the assets that the designated terrorist will acquire will be used for terrorist activities (eg, where the assets will be used for ordinary cost of living or tax payment), the prefectural Public Safety Commission must approve the transactions.

List of targeted individuals and entities

- 14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

The Ministry of Finance provides a list of the entities and individuals currently subject to asset freezes under the Foreign Exchange and Foreign Trade Act. The National Police Agency provides a list of the designated international terrorists under ITAFA. These lists overlap with each other.

Other restrictions

- 15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

Sectoral sanctions are not widely implemented in Japan.

Under FEFTA, however, transactions subject to economic and financial sanctions are specified through announcements from MOF with a degree of flexibility. As such, economic and financial sanctions which primarily focus on specific sectors are introduced occasionally. For example, in respect of sanctions against Ukraine, the issuance and offering of securities by five designated Russian banks are specifically prohibited.

Exemption licensing – scope

- 16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

Economic and financial sanctions are implemented by imposing obligations to obtain approval for certain transactions; thus, the competent authorities have the power to approve or disapprove those transactions by considering, among others, international agreements that have caused the authorities to impose such obligations. However, approval is not granted in general and it is not common in practice for applications for approval to be filed.

Exemption licensing – application process

- 17 | What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

The designated form for each type of transaction must be submitted to MOF via the Bank of Japan. However, approval will not be granted in principle. Thus, there is no typical timeline.

Approaching the authorities

- 18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

Prior consultation on transaction approval as well as queries on interpretation or compliance of economic and financial sanctions are available at the relevant division of MOF. These consultations or queries can be conducted by telephone. The Bank of Japan, which administers applications as a liaison, also deals with general queries on application by email or telephone. However, it would be difficult to actively engage with them on substance since transactions subject to economic and financial sanctions are not approved in principle.

Reporting requirements

- 19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

Financial institutions are required to comply with the regulations on assets frozen under sanctions. With regard to reporting requirements, there exist no specific requirements.

TRADE SANCTIONS

General restrictions

- 20 | What restrictions apply in relation to the trade of goods, technology and services?

Japan is a founding member of the four existing multilateral export control regimes, namely, the Nuclear Suppliers Group, the Australia Group, the Wassenaar Agreement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, and the Missile Technology Control Regime. In accordance with the best practices and guidelines of these regimes, Japan maintains a 'list control' and a 'catch-all control' that apply to the export of certain goods, technology and services. These controls are stipulated in Foreign Exchange and Foreign Trade Act (FEFTA) and its subordinate legislation.

The list control covers sensitive items that can be potentially used for the development, manufacture, use and storage of Weapons of Mass Destruction (WMDs) and conventional weapons. To export items subject to the list control, an exporter is required to obtain an export licence from the Minister of Economy, Trade and Industry regardless of their destination, although the specific procedure for obtaining the licence may vary depending on the type of items being exported and their destination. The items subject to the list control are listed in the Appended Table 1 of the Export Trade Control Order and the Appended Table of the Foreign Exchange Order, while specifications of the items are stipulated in the Ministerial Order Specifying Goods and Technologies Pursuant to the Provisions of the Appended Table 1 of the Export Trade Control Order and the Appended Table of the Foreign Exchange Order.

The catch-all control covers all items that are not subject to the list control (except for certain items such as foods and lumber). Even if an item is not subject to the list control, a prior export licence may be required depending on its end use and end user. As to the end use, in general, a prior export licence is required when an exporter is aware or has been informed by the Minister of Economy, Trade and Industry that the item will be used for WMD-related activities or the development, manufacture and use of conventional weapons. As to the end user, in general, a prior export licence is required when an exporter is aware that the end user is or was involved in the development, manufacture, use and storage of WMDs or, the end user is listed on the Foreign End User List.

Recently there has been a growing demand, from the perspective of *keizai anzen hoshō* (or economic security), to strengthen the control over transfers of sensitive technologies to foreign countries or persons. This trend includes the clarification of 'deemed export' control regulations in the relevant Ministry of Economy, Trade and Industry (METI) guidelines that restrict domestic transfers of sensitive technologies to persons under the influence of foreign countries. The relevant amended METI guidelines will take effect on 1 May 2022.

In addition to the above-mentioned export controls for the purpose of maintaining international security, the Customs Law and other legislation set forth trade bans or restrictions of a more general nature on exports and imports of certain items, such as illegal drugs, child pornography and counterfeit goods.

The subsequent answers related to 'general trade restrictions' are focused on the above-mentioned list control and catch-all control.

General exemptions

21 | Do any exemptions apply to the general trade restrictions?

With regard to the list control, various kinds of 'bulk' (as opposed to individual) export licences are available depending on the types of items being exported and their destinations. In addition, there are certain licence exemptions, including those applicable to trades in goods that a person has imported without charge on the premise that that person will export them without charge; goods that a person is exporting without charge on the premise that that person will import them without charge; certain types of goods the total value of which is not more than a certain amount; and goods that contain only a small proportion of controlled goods.

With regard to the catch-all control, exemptions apply to trades in which the destination is one of the Group A (or 'white') countries, namely, those listed in the Appended Table 3 of the Export Trade Control Order (the listed countries are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States). Also, even if an exporter is aware that the end user is or was involved in the development, manufacture, use and storage of WMDs or the end user is listed on the Foreign End User List, exemptions apply if it is evident that the item in question will be used for a purpose other than WMD-related activities.

Targeted restrictions

22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

METI maintains the Foreign End User List in relation to the catch-all control. According to METI, this list provides exporters with information on foreign entities for which concern regarding involvement in activities such as the development of WMD and other activities cannot be eliminated. At the same time, the Foreign End User List is not intended to impose a general ban on exports destined to the listed end users and the permissibility of an export to a listed end user will be assessed on a transaction-by-transaction basis. In addition, even if an end user is listed on the Foreign End User List, a prior export licence is not required if it is evident that the item in question will be used for a purpose other than WMD-related activities.

Exemption licensing – scope

23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

Under Japanese export control regulations (which follow the best practices and guidelines of the multilateral export control regimes), the default practice is to grant export licences for controlled goods on a transaction-by-transaction basis (specific or 'individual' licences). Under this practice, METI will examine the end user and the end use of the item being exported based on the application form and attached documents, and issue an export licence if it is confirmed that the item is destined for civilian use and will not interfere with the maintenance of international peace and security. In addition, there are several types of 'bulk' licences available for many of the controlled items when destined for certain designated countries. Although these 'bulk' licences are an exception to individual licences, they are frequently used by exporters and are thus of significant practical importance.

Exemption licensing – application process

24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

The specific types of information and documents required for obtaining an export licence differ depending on the specific item being exported and its destination. In principle, an exporter will be required to demonstrate that the item in question is being exported for civilian purposes by providing information regarding the item's end user and end use. There are three ways to apply for an export licence: face-to-face application; postal application; and online application. In practice, the review period is normally within 90 days from the application and if it exceeds 90 days, the applicant will be notified in advance. The typical timeline for the grant of an export licence is approximately three weeks, but it may be shorter or longer depending on the division in charge, type of item, destination and end user.

Approaching the authorities

25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

Prior consultations on licence application as well as queries on interpretation or compliance of trade restrictions are available at the relevant division of METI. These consultations or queries can be conducted by email or telephone. Although these consultations are a useful means of receiving technical guidance or assistance from the authorities, Japanese authorities are generally reluctant to really 'negotiate' with exporters on substance to offer exceptional treatment in individual cases.

ENFORCEMENT AND PENALTIES

Reporting violations

26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

With regard to economic, financial and trade sanctions, and general trade restrictions, there is no formal requirement to report violations (eg, to self-report or to report others) to the authorities. There is also no special legislative framework to encourage such reporting.

Notwithstanding the above, there may be some practical incentives to report violations. For example, if an exporter uncovers past violations

of general trade restrictions and reports them to the authority, such fact may be considered in favour of the exporter when determining the penalties or when assessing the permissibility of any future export transactions relating to that exporter.

Investigations

27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

With regard to the sanctions and restrictions based on the Foreign Exchange and Foreign Trade Act (FEFTA), the Minister of Finance and the Minister of Economy, Trade and Industry are responsible for investigating violations.

With regard to the sanctions based on International Terrorist Asset Freezes Act (ITAFZA), prefectural Public Safety Commissions are responsible for investigating violations.

These authorities are not vested with a compulsory power to investigate, such as the right to search or seizure contrary to the subject's will. However, the failure to cooperate with an investigation, including by refusing, obstructing or avoiding investigations; not answering or falsely answering questions; and submitting false documents, is subject to criminal penalty.

Penalties

28 | What are the potential penalties for violation of sanctions?

With regard to criminal penalties, a violation of sanctions stipulated in FEFTA, Specified Vessels Entrance Prohibition Act (SVEPA) and ITAFZA is subject to imprisonment or a fine. FEFTA contains dual criminal liability (ie, corporate liability) provisions, meaning if a representative or an agent, employee or other worker of a corporation violates the sanctions in connection with the business or assets of that corporation, then in addition to the individual offender being subject to the penalty, the corporation is subject to the fine as well. However, SVEPA has no dual criminal liability provisions.

For individuals, the maximum imprisonment for a violation of sanctions stipulated in the above-mentioned three pieces of legislation is five years and the maximum fine is ¥10 million. For corporations, the maximum fine is ¥500 million (or, if five times the value of the subject matter of the violation exceeds ¥500 million, a fine of not more than five times that value).

With regard to administrative penalties, a violation of sanctions stipulated in FEFTA is subject to a prohibition on the related acts or transactions or an imposition of an obligation to obtain a licence for the related acts or transactions, for a certain period of time. In addition, for a violation of trade sanctions by individuals, the offender may be prohibited from becoming the officer in charge of operations that are within the scope of the prohibition at a corporation that engages in such operations, or commencing new operations within the scope subject to the prohibition (this includes prohibiting the person from becoming the officer in

charge of such new operations at a corporation engaging in those operations), for the same period as that of the prohibition. On the other hand, there are no administrative penalties for a violation of sanctions stipulated in SVEPA and ITAFZA.

Recent enforcement actions

29 | Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

There have not been many significant recent enforcement cases related to economic, financial and trade sanctions, and general trade restrictions in Japan.

One of the most recent enforcement cases in the field of export controls made public by METI related to the export of carbon fibre. In this case, a Japanese company was exporting carbon fibre products to China with an export licence. However, a portion of the products was retransferred to third parties for which the company had no licence to export the products. The Ministry of Economy, Trade and Industry (METI) concluded that this incident was due to the company's inadequate internal control system and, on 22 December 2020, the Director-General of METI issued a warning notice to request the company to implement recurrence prevention measures and stricter security export controls. No criminal or administrative penalties have been reported. More generally, METI has issued a report on recent trends regarding violations of export control regulations (no English translation available).

UPDATE AND TRENDS

Emerging trends and hot topics

30 | Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

Some members of the Diet have reportedly commenced discussions on potential legislation that would enable the imposition of sanctions on those involved in human rights violations. The discussions are being conducted due to a doubt as to whether autonomous sanctions against human rights violations are allowed under the current regimes outlined above even if there are no international agreements such as resolutions of the UNSC. In December 2021, the Prime Minister informed the press that the government will continue considering the introduction of sanctions in relation to human rights violations based on Japan's existing foreign policies on human rights.

As noted, in the context of export controls, there has been a growing demand, from the perspective of *keizai anzen hoshō* (or economic security), to strengthen the control over transfers of sensitive technologies to foreign countries or persons. This trend includes the clarification of 'deemed export' control regulations in the relevant Ministry of Economy, Trade and Industry (METI) guidelines that restrict domestic transfers of sensitive technologies to persons under the influence of foreign countries. The relevant amended METI guidelines will take effect on 1 May 2022.

Mexico

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GENERAL FRAMEWORK

Legislation

1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

Mexican Constitution

Regarding commercial sanctions on goods, the Mexican Constitution states that the federal government has the exclusive power to tax, impose or charge the imported or exported goods, or in transit through national territory, with taxes or non-tariff regulations, as well as to regulate or forbid for security reasons the movement of those goods within the interior of the Mexican Republic, regardless of their origin.

It also provides that the Executive Power may be empowered by Congress, to increase, decrease or eliminate the export and import tariffs issued by Congress or to create others; the President may also restrict imports, exports and the transit of goods, when he deems it necessary, to regulate foreign trade, the economy of the country, the stability of national production or any other purpose for the benefit of Mexico.

In addition, the Mexican Constitution empowers the President to regulate activities that could be considered illicit and therefore prohibiting any importation of services of this type.

Foreign Trade Law

The Foreign Trade Law provides the possibility to:

- regulate or restrict the exportation, importation, circulation or transit of the merchandise when deemed urgent, according to article 131 of the Mexican Constitution;
- establish measures to regulate and restrict the exportation or importation of goods throughout agreements issued by the Ministry of Economy; and
- establish the necessary measures to regulate or restrict the circulation and transit of foreign goods through national territory.

It is worth mentioning that according to specific federal laws, there are certain services reserved for the state. To be able to render such services or invest in them, Mexico can grant certain concessions and authorisations. Some of those restricted services are broadcasting, television, gambling and betting games, financial services, transportation of people, and extraction and exploitation of hydrocarbons, among others. In this regard, the importation and rendering of such services will be forbidden unless the company or individual holds a licence or authorisation to carry it out, which are administered by other branches of the Executive, such as the Ministry of Economy, the Ministry of Health or Ministry of Energy, among others, based on the characteristics of the regulated services.

Autonomous versus international regimes

2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

Domestic legislation in Mexico allows the implementation of autonomous sanctions. Regarding goods and services, the Mexican Constitution and the Foreign Trade Law, enable the executive branch to impose trade sanctions to control, reduce or ban exports, imports and the general movement or transit of goods and provision of services within the country. However, such trade restrictions must be in line with the World Trade Organization and other international organisations to which Mexico is a part.

It is worth mentioning that the Mexican Constitution establishes that international treaties adopted by Mexico, are part of the supreme law, therefore any sanction adopted by an international institution will become domestic law once it is approved by the Mexican senate.

Types of sanction imposed

3 | What types of sanction are imposed in your jurisdiction?

Tariff barriers

In the form of foreign trade taxes or duties to control or reduce the amount of goods entering and exiting the country. Such tariff barriers must be paid at the entry or exit point.

Such import duties or taxes are based on the tariff classification established in the Harmonized Tariff System of the World Customs Organization, applicable to each product. In Mexico, the General Import and Export Tax Law indicates the import or export tax rate.

Non-tariff measures

According to the Foreign Trade Law, Mexico can also impose non-tariff measures or barriers to limit the importation or exportation of products, in the way of quantitative or qualitative restrictions, such as quotas, labelling requirements, import or export permits, authorisations or certificates.

These measures are also imposed based on the tariff classification established in the Harmonized Tariff System of the World Customs Organization, applicable to each product.

However, in the majority of cases, such non-tariff barriers are imposed by other branches of the Executive, such as the Ministry of Economy, the Ministry of Health, Ministry of Energy, among others, based on the characteristics of the regulated goods.

Currently, Mexico holds quotas to protect the national production of certain sensitive products, such as coffee, sugar, rice, toys, meat, chicken, among others.

Technical barriers to trade

Mexico can also establish technical barriers to trade as a sanction, to hinder and make the importation or exportation of specific products more difficult. These barriers are usually in the form of formalities and requirements based on the technical characteristics of the products, rather than a general classification.

These measures are also imposed based on the tariff classification established in the Harmonized Tariff System of the World Customs Organization, applicable to each product.

General prohibition

Another sanction could be to completely ban the importation, exportation and circulation of certain products within the country.

These sanctions are usually based on risks to health, environmental or security of the country or its citizens.

For example, Mexico currently holds a ban on electronic cigarettes, spare parts of electronic devices, drugs (as cocaine), morphine, LCD, opium, turtle eggs, totoaba liver, hazardous chemicals, radioactive products, certain weapons and materials for specific countries, among others.

These sanctions are usually based on risks to health, environmental or security of the country or its citizens.

Restrictions to services

Mexico is a signatory member of the General Agreement on Trade in Services, therefore, all the services provided therein, are covered by the principles of most favoured nation, national treatment among other. However, there are certain services reserved for the state and Mexico can grant certain concessions and authorisations for the exploitation and rendering of such services (for example broadcasting, television, gambling and betting games, financial services, transportation of people, and extraction and exploitation of hydrocarbons, among others). In this regard, the importation and rendering of such services will be forbidden unless the company or individual holds a licence or authorisation to carry it out, which are administered by other branches of the Executive, such as the Ministry of Economy, the Ministry of Health, Ministry of Energy, among others, based on the characteristics of the regulated services.

In addition, it is worth mentioning that any importation of services considered as illicit on the Federal Criminal Code is totally forbidden.

Countries subject to sanctions

4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

Currently, Mexico holds sanctions restricting the exportation or importation of specific military and technological dual-use goods to Iran, North Korea, Afghanistan, Republic of Congo, Sudan, Lebanon, Yemen, among others.

Mexico's restriction is based on the Security Council of the United Nations Organization's agreement, to which Mexico is a signatory member.

Besides the security list, Mexico does not hold a list of sanctions or countries on a general basis. A case-by-case analysis is necessary to determine if a certain product or country is subject to sanctions by Mexico.

Non-country specific regimes

5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

No other general sanction is currently held by Mexico, that is not country-specific.

The current trade restrictions in Mexico, in the way of quotas, taxes, trade remedies, etc, are imposed on a product-specific or country-specific basis.

Counter-terrorism sanctions

6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

Currently, Mexico holds sanctions restricting the exportation or importation of specific military and technological dual-use goods to Iran, North Korea, Afghanistan, Republic of Congo, Sudan, Lebanon, Yemen, among others.

Mexico's restriction is based on the Security Council of the United Nations Organization's agreement, to which Mexico is a signatory member.

Besides the security list, Mexico does not hold a list of sanctions or countries on a general basis. A case-by-case analysis is necessary to determine if a certain product or country is subject to sanctions by Mexico.

Mexico does not allow for a regular individual or entity to buy, import, export or carry weapons above calibre .38, which is allowed. All military armament and explosives are controlled by the Ministry of Defence and are considered only for military use. No individual or entity can have access to such type of goods except in certain cases with a permit or licence of the Ministry of Defence.

Mexico is also a member of the Wassenaar agreement on export controls for conventional arms and dual-use goods and technologies, by which Mexico seeks to improve international security and stability, encouraging transparency and obligations in transfers of arms and dual-use goods and technologies, avoiding accumulations in certain regions.

Every six months the signatory members exchange information on sales of arms and dual-use technologies to non-Wassenaar members. The agreement pretends to control eight types of weapons categories: battle tanks, armoured fighting vehicles, large-calibre artillery, military aircraft, military helicopters, warships, missiles or missile systems, and small arms and light weapons. The list of goods is annually revised and updated by its members.

In Mexico, a legal person or entity may import or export the goods listed in the Wassenaar Agreement only by obtaining the corresponding export or import permit by the Ministry of Defence and the Ministry of Economy.

Anti-boycott laws

7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

There are no blocking or anti-boycott laws in Mexico.

Scope of application

8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

Sanctions in Mexico are imposed only on individuals, entities, organisation or associations based and conducting operations in Mexico.

It would be the importer, exporter, seller or buyer in Mexico who would have to comply with the trade restrictions.

According to Mexican laws, application of trade sanctions cannot go beyond domestic territory. An extra-territorial application of those sanctions, would be illegal.

Competent sanctions authorities

9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

For commercial and tax purposes, the Ministry of Finance and the Ministry of Economy will be the authorities in charge of implementing and ensuring compliance of trade restrictions or sanctions.

In the case of non-compliance, such authorities can seize the products, impose fines and penalties, suspending import and export licences and rights, and even start a criminal action against the importer, exporter or seller of the regulated product.

In certain cases, depending on the specific product, other authorities, such as the Ministry of Energy, Ministry of Health, the Environmental Office, etc, are responsible for the application and compliance with the trade sanctions.

Business compliance

- 10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

For commercial purposes, there are no specific required systems or controls in order to ensure compliance with sanctions. Most regulated goods or sectors are subject to specific permits, licences or authorisations, therefore, businesses must go through a process with the authorities to secure those permits or licences, so no previous control or system is required.

As a best practice, a case-by-case analysis on each product or service is recommended to confirm if sanctions apply.

Guidance

- 11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

Yes. As part of the Trade Facilitation Agreement, Mexico must provide guidelines and public records detailing the applicable sanction, and the procedure or specifics for complying with those sanctions.

For commercial purposes, most of the guidelines for the importation, exportation and commercialisation of products can be found in the following link: <https://www.ventanillaunica.gob.mx/vucem/tramites.html>.

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

- 12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

In relation to trade sanctions, the Customs Law establishes that in the event of introducing foreign trade goods into Mexico without complying with the formalities and regulations established in such Law, it will be understood that they are illegal in the country and, therefore, the authorities could seize the goods.

Additionally, the Federal Tax Code establishes that when taxpayers are unable to cover fines or tax assessments, the authority could seize assets to cover payment.

General carve-outs and exemptions

- 13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

The customs and tax regulations do not provide for exemptions or carve-outs when sanctions are breached. The authority, however, has full discretion on determining if the asset freeze is imposed or not.

List of targeted individuals and entities

- 14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

From a trade perspective, there are no public records on who is penalised for breaching a sanction.

Other restrictions

- 15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

From a trade perspective, there are no additional restrictions.

Exemption licensing – scope

- 16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

No, they are not allowed to do so.

Exemption licensing – application process

- 17 | What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

From a trade perspective, there are no additional restrictions.

Approaching the authorities

- 18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

Approaching the competent authorities in Mexico is possible, and to a certain extent, common. Communications and contact with the competent authorities regarding economic and financial sanctions compliance are common and advisable to better understand the authorities' position.

Reporting requirements

- 19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

Any person holding frozen assets is bound to maintain them in good condition, and is not allowed to sell, dispose of or transfer them.

TRADE SANCTIONS

General restrictions

- 20 | What restrictions apply in relation to the trade of goods, technology and services?

Tariff barriers

In the form of higher foreign trade taxes or duties to control or reduce the amount of goods entering and exiting the country. Such tariff barriers must be paid at the entry or exit point.

Such import duties or taxes are based on the tariff classification established in the Harmonized Tariff System of the World Customs Organization, applicable to each product. In Mexico, the General Import and Export Tax Law indicates the import or export tax rate.

Non-tariff measures

According to the Foreign Trade Law, Mexico can also impose non-tariff measures or barriers to limit the importation or exportation of products,

in the way of quantitative or qualitative restrictions, such as quotas, labelling requirements, import or export permits, authorisations or certificates.

These measures are also imposed based on the tariff classification established in the Harmonized Tariff System of the World Customs Organization, applicable to each product.

However, in the majority of cases, such non-tariff barriers are imposed by other branches of the Executive, such as the Ministry of Economy, the Ministry of Health, Ministry of Energy, among others, based on the characteristics of the regulated goods.

Currently, Mexico holds quotas to protect the national production of certain sensitive products, such as coffee, sugar, rice, toys, meat, chicken, among others.

Technical barriers to trade

Mexico can also establish technical barriers to trade as a sanction, to hinder and make the importation or exportation of specific products more difficult. These barriers are usually in the form of formalities and requirements based on the technical characteristics of the products, rather than a general classification.

These measures are also imposed based on the tariff classification established in the Harmonized Tariff System of the World Customs Organization, applicable to each product.

General prohibition

Another sanction could be to completely ban the importation, exportation and circulation of certain products within the country.

These sanctions are usually based on risks to health, environmental or security of the country or its citizens.

For example, Mexico currently holds a ban on electronic cigarettes, spare parts of electronic devices, drugs (as cocaine), morphine, LCD, opium, turtle eggs, totoaba liver, hazardous chemicals, radioactive products, certain weapons and materials for specific countries, among others.

These sanctions are usually based on risks to health, environmental or security of the country or its citizens.

Restrictions on services

Mexico is a signatory member of the General Agreement on Trade in Services, therefore, all the services provided therein, are covered by the principles of most favoured nation, national treatment among others. However, there are certain services reserved for the state and Mexico can grant certain concessions and authorisations for the exploitation and rendering of such services (for example, broadcasting, television, gambling and betting games, financial services, transportation of people, and extraction and exploitation of hydrocarbons, among others). In this regard, the importation and rendering of such services will be forbidden unless the company or individual holds a license or authorisation to carry it out, which are administered by other branches of the Executive, such as the Ministry of Economy, the Ministry of Health or Ministry of Energy, among others, based on the characteristics of the regulated services.

In addition, it is worth mentioning that any importation of services considered as illicit on the Federal Criminal Code is totally forbidden.

Military and technological dual-use restrictions

Mexico published a Decree for which several measures are established to restrict the export or import of specific military and technological dual-use goods to the countries, entities and persons indicated therein, among others Iran, North Korea, Afghanistan, Congo Republic, Sudan, Lebanon and Yemen.

Such decree was published as domestic legislation according to the Security Council of the United Nations Organization.

In addition, to avoid any possible terrorist activity, all the military, armament and explosive goods are controlled by the Ministry of Defence, and no civil person is allowed to buy or carry weapons above calibre .38, which is allowed only for military use.

In relation to the above, Mexico is a member of the Wassenaar Arrangement on export controls for conventional arms and dual-use goods and technologies.

The Wassenaar agreement was established to improve international security and stability encouraging transparency and obligations in transfers of arms and dual-use goods and technologies, avoiding accumulations in certain regions.

Every six months the signatory members exchange information on sales of arms and dual-use technologies to non-Wassenaar members. The agreement pretends to control eight types of weapons categories: battle tanks, armoured fighting vehicles, large-calibre artillery, military aircraft, military helicopters, warships, missiles or missile systems, and small arms and light weapons. The list of goods is annually revised and updated by its members.

Currently a number of 42 countries have voluntarily adopted the Wassenaar Agreement, the participating states are Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom and the United States.

Nevertheless, a legal person or entity may still export the goods listed in the Wassenaar Agreement only if they get the corresponding import permit regulated by the Ministry of Defence and the Ministry of Economy.

General exemptions

21 | Do any exemptions apply to the general trade restrictions?

There are no general exemptions to trade restrictions.

Targeted restrictions

22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

No. The only targeted restrictions imposed by the Mexican government directed to specific countries, are the ones related to the exportation or importation of specific military and technological dual-use goods to Al-Qaida, Iran, North Korea, Afghanistan, Congo Republic, Sudan, Lebanon and Yemen.

In 2018, Mexico imposed retaliatory measures on certain US products in response to President Donald Trump's duties on Mexican steel and aluminium exports to the United States; however, such tariff barriers are no longer in place.

Exemption licensing – scope

23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

No licences for trade goods, technology and products subject to restrictions can be issued on a general basis.

Depending on the type of restriction to which the product is subject, importers and exporters may request an import or export permit or authorisation; however, some restrictions are not subject to exemption licences.

Regarding tariff restrictions, no licence or permit would be necessary to apply for preferential treatment if the good, technology and product originates from a country with a free trade agreement with Mexico.

Other barriers or sanctions, such as import permits, quotas, authorisations or duties, a licence would only be available if the exemption is provided directly by law, and then, the applicant must comply with all the requirements applicable for that licence.

Exemption licensing – application process

24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

No licences to trade goods, technology and products subject to restrictions can be issued on a general basis. However, depending on the type of restriction to which the product is subject, importers and exporters may request an import or export permit or authorisation, but some restrictions are not subject to exemption licences, such restrictions are imposed based on the tariff classification established in the Harmonized Tariff System of the World Customs Organization, applicable to each product.

For example, the Ministry of Defence has a time frame of 40 working days to issue an import permit of weapons for specific purpose.

Approaching the authorities

25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

Communications with competent authorities represent a complex problem since most of the application process is carried out through a digital platform. Hence, no verbal communication with the authority is necessary to request such licences. After the application is submitted, petitioners are able to reach the authority in charge of the approval of the permits, to discuss the approval process in person (covid restrictions did not help this process).

ENFORCEMENT AND PENALTIES

Reporting violations

26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

No obligation and not a common practice in Mexico to report violations of sanctions to the authorities.

Laws and regulations usually provide the possibility to self-report and self-correct the trade operations, as long as those actions occur prior discovery by the authority. In practice, is more common to see self-correction than the reporting of violations to authorities committed by others.

There are mechanisms available for anonymous reporting through authorities, which do not represent any danger or administrative risk for those who report. However, it is not a common practice.

Investigations

27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

For commercial and tax purposes, the Ministry of Finance and the Ministry of Economy will be the authorities in charge of implementing and ensuring compliance with trade restrictions or sanctions.

In case of non-compliance, such authorities can seize the products, impose fines and penalties, suspending import and export licences and rights, and even start a criminal action against the importer, exporter or seller of the regulated product.

In certain cases, depending on the specific product, other authorities, such as the Ministry of Energy, Ministry of Health, the Environmental Office, etc, are responsible for the application and compliance with the trade sanctions.

Penalties

28 | What are the potential penalties for violation of sanctions?

The potential penalties for violation of trade restrictions can go from a determination of a tax assessment, the imposition of fines that vary depending on the type of breach stand out fines as high or above 100 per cent of the value of the merchandise, to the seizure of goods that were not submitted to all the customs regulations.

Penalties can also be in the form of cancellation of the granted permits and authorisations, quotas, among others, or the importer's licence.

Finally, criminal actions can be initiated by authorities, in the case of importing, exporting or commercialising goods that are considered as prohibited – deemed to be contraband.

Recent enforcement actions

29 | Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

The enforcement cases are not public. Therefore, no information on recent cases is available.

UPDATE AND TRENDS

Emerging trends and hot topics

30 | Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

In January 2022, Mexico requested the establishment of a dispute settlement panel against the United States on the interpretation of the rules of origin of the automotive sector established in such a treaty. Specifically, Mexico argues that the United States is taking an overly strict approach by not allowing various methodologies to calculate regional content to be considered as originating in Mexico.

If such a dispute is resolved determining that Mexico's interpretation and methodology is correct and should prevail to calculate the regional value content, the United States will be bound to comply with such ruling. In the event that the United States disregards such resolution and denies the origin of the goods exported by Mexico, retaliatory measures could be imposed, eliminating certain tariff preferences and increasing import taxes.

Russia

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GENERAL FRAMEWORK

Legislation

1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

These are:

- Russian Federal Law No. 390-FZ On Security, dated 28 December 2010;
- Russian Federal Law No. 281-FZ On Special Economic and Compulsory Measures, dated 30 December 2006;
- Russian Federal Law No. 127-FZ On Measures (Countermeasures) Against Unfriendly Actions of the United States of America and Other Foreign States, dated 4 June 2018;
- Russian Federal Law No. 115-FZ On Countering Legalization (Laundering) of Funds Derived from Criminal Activity and Financing of Terrorism, dated 7 August 2001;
- Decree of the President of the Russian Federation No. 560 On the Application of Certain Special Economic Measures to Ensure the Security of the Russian Federation, dated 6 August 2014;
- Decree of the President of the Russian Federation No. 592 On Application of Special Economic Measures in Connection with the Unfriendly Actions of Ukraine Towards Russian Legal and natural Persons, dated 22 October 2018;
- various decrees of the President of the Russian Federation implementing the resolutions of the UN Security Council; and
- resolutions of the Russian government implementing the foregoing laws and decrees.

Autonomous versus international regimes

2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

Russian domestic legislation empowers the government and the president to implement an autonomous sanctions regime.

Types of sanction imposed

3 | What types of sanction are imposed in your jurisdiction?

Various forms of sanctions are provided for and imposed, including:

- Suspension or termination of international cooperation by the Russian state and Russian legal entities with unfriendly foreign states, entities within the jurisdiction of unfriendly states or entities that are directly or indirectly controlled by unfriendly states or affiliated with unfriendly states, in the areas determined by the Russian President;

- suspension of all or some programmes in the area of economic or technical aid, as well as military cooperation programmes;
- bans on financial operations or restrictions (limitations) thereof (eg blocking (freezing) of bank accounts and other property, a ban (restrictions) on withdrawal of capital);
- trade embargo (ban on international commercial transactions (international trade) or restrictions (limitations) thereof), including:
 - restrictions on import into Russia of certain goods or raw materials (eg agricultural products) originating in unfriendly states that have imposed sanctions on Russia;
 - bans or restrictions on exports from Russia to unfriendly states of certain goods or raw materials;
 - bans or restrictions on the ability of entities within the jurisdiction of unfriendly states (affiliated with such state) to participate in Russian government tenders or procurement contracts, or contracts and tenders of state-controlled companies; and
 - bans or restrictions on the ability of entities within the jurisdiction of unfriendly states (affiliated with such state) to participate in privatizations of state or municipal property;
- termination or suspension of international trade agreements and other international treaties of the Russian Federation in the area of international commercial (trade) operations;
- changing of export or import customs duties and levies;
- prohibitions or restrictions (limitations) on access to Russian ports by vessels and on the use of Russian airspace or parts thereof;
- limitations on travel to Russia (ie, travel bans);
- prohibition of or refusal to participate in international scientific and technical programmes and projects, or such projects of a foreign state; and
- restrictions (ban) on employing Russian citizens by diplomatic and consular missions and offices of unfriendly states, branches (representative offices) of their state bodies (hiring ban or freeze).

Further, Russia complies with sanctions and export or arms control restrictions imposed by the UN Security Council resolutions, hence various presidential decrees have been promulgated to give effect to restrictions contained in such resolutions of the Security Council.

Countries subject to sanctions

4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

- Afghanistan (the Taliban movement);
- Albania;
- Australia;
- Canada;
- Central African Republic;
- Democratic Republic of Congo (DRC);

- Eritrea;
- European Union member states;
- Georgia;
- Iceland;
- Iran;
- Iraq;
- Liechtenstein;
- Libya;
- Montenegro;
- Norway;
- Democratic People's Republic of Korea (North Korea);
- Somalia;
- Sudan (Darfur region);
- Turkey (certain sanctions lifted);
- UK;
- Ukraine; and
- USA.

Individuals who are citizens of various other countries are also sanctioned. There is no website available that aggregates this information.

Non-country specific regimes

- 5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

None (only those applied by the UN, ie, with respect to terrorist organisations).

Counter-terrorism sanctions

- 6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

While there is extensive criminal liability that can be imposed on an individual who engages in terrorist activities and on legal entities for facilitating or financing such activities, no specific terrorism-related sanctions programmes are currently in effect in Russia.

Russia follows the restrictions contained in the UN Security Council resolutions addressing terrorist activities generally (eg, UN Security Council Resolution 173, dated 28 September 2001), as well as resolutions imposing various sanctions on the Al-Qaeda terrorist organisation, the Taliban and the National Union for the Total Independence of Angola (some of the restrictions are partially lifted).

Anti-boycott laws

- 7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

No. However, a blocking law (providing for criminal liability for implementing restrictions against a person based on foreign countries' sanctions) has been under consideration.

Scope of application

- 8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

All Russian nationals and legal entities operating in Russia must comply with Russian sanctions. While the sanctions are not explicitly limited in their application to the territory of the Russian Federation, generally, Russian laws do not have extra-territorial effect.

Competent sanctions authorities

- 9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

<https://www.fedsfm.ru/en> All governmental authorities have technical responsibility for sanctions compliance and enforcement within their respective authorities, including:

- the government of the Russian Federation (<http://government.ru/en/>);
- Ministry of Foreign Affairs (<https://www.mid.ru/>);
- Ministry of Finance (<https://minfin.gov.ru/en/>);
- Ministry of Defence (<http://eng.mil.ru/en/index.htm>);
- The Central Bank (<https://www.cbr.ru/en/>);
- Federal Security Service (FSB) (<http://www.fsb.ru/>);
- Federal Service for Financial Monitoring (<https://www.fedsfm.ru/en/>);
- Ministry of Interior (<https://en.mvd.ru/>);
- Ministry of Industry and Trade (<https://minpromtorg.gov.ru/en/>);
- Customs authorities (<https://eng.customs.gov.ru/>);
- Ministry of Transportation (<https://mintrans.gov.ru/>);
- state corporations [such as Rosatom (<https://www.rosatom.ru/en/>) and Roscosmos (<http://en.roscosmos.ru/>); and
- National Guard (<https://rosguard.gov.ru/>).

Business compliance

- 10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

Yes. Under Federal Law No. 115-FZ On Countering Legalization (Laundering) of Funds Derived from Criminal Activity and Financing of Terrorism, dated 7 August 2001, certain entities that engage in financial operations and transactions, as well as those engaged in money transfers, are required to put in place certain processes and procedures (internal controls) over their operations with monetary funds and other property. The purpose of such internal controls is to identify operations potentially connected with (or funds derived from) money laundering, the financing of terrorism or the financing of proliferation of weapons of mass destruction.

Entities that are subject to such requirements include: credit organisations (eg, banks), professional securities market participants (broker-dealers, clearing houses, stock exchanges, money managers or investment funds or other professional securities market participants), investment platform operators, insurance companies, post office operators, pawn shops of various kinds, gambling industry participants, management companies of investment funds, real estate brokers, money transfer operators (payment systems), various providers of credit and financing, mutual insurance companies, non-state pension funds, cellular companies, lottery operators or information systems operators that issue digital assets. Certain exceptions apply in multiple cases.

Relevant entities must appoint (designate) employees within their organisation with responsibility for implementation and enforcement of relevant internal controls and procedures.

Guidance

- 11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

No comprehensive guidance exists, although the government has issued responses and explanations to multiple specific questions that various industry participants have submitted in connection with the implementation of sanctions laws and regulations (although this is not publicly available in one place).

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

- 12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

Assets of a person may be frozen by Russian authorities if the person is determined to be involved in extremist activities, terrorism (including financing terrorism) or proliferation of weapons of mass destruction (based on the decisions of the relevant international organisations or Russian authorities).

In addition, an asset freeze may be applied to particular nationals of 'unfriendly' states included in sanctions lists based on specific government resolutions (eg, RF Government Resolution No. 1300, dated 1 November 2018, sets out a list of Ukrainian individuals and legal entities whose assets located in Russia must be frozen).

Under Russian law, an asset freeze is a prohibition on carrying out any transactions with respect to assets owned by such person (including property, money, securities).

General carve-outs and exemptions

- 13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

Individuals whose assets are frozen and who are included in a relevant register, may file an application to state authorities for partial or full release of the freeze on their assets 'for the purpose of ensuring their well-being, as well as the well-being of their family members'. Similarly, legal entities (and individuals), whose assets are frozen and who are included in the relevant register, may file an application to state authorities for partial or full release of the freeze on their assets for the purpose of paying expenses related to the maintenance of bank accounts or other property, making payments under agreements concluded before the inclusion in the relevant registers, and for the purpose of covering emergency expenses.

List of targeted individuals and entities

- 14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

Rosfinmonitoring maintains a list of individuals and entities blocked under asset freeze restrictions due to involvement in extremist activities or terrorism (<https://fedsfm.ru/documents/terr-list>) and the list of individuals and entities blocked under asset freeze restrictions due to the involvement in proliferation of weapons of mass destruction (<https://fedsfm.ru/documents/omu-list>).

Sanctions authorities do not maintain a list of individuals and entities blocked under asset freeze restrictions.

Other restrictions

- 15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

Other types of economic and financial sanctions may be provided for in government resolutions imposing sanctions on particular states or persons (eg, according to RF Government Resolution No. 1300, dated 1 November 2018, sanctioned Ukrainian persons are prohibited from the transfer of funds (disinvestment) outside the territory of the Russian Federation).

Exemption licensing – scope

- 16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

Russian authorities do not issue licences permitting activities that would otherwise violate economic and financial sanctions (subject to partial or full release of the freeze on the assets in certain cases based on the application to state authorities).

Exemption licensing – application process

- 17 | What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

Russian authorities do not issue licences permitting activities that would otherwise violate economic and financial sanctions (subject to partial or full release of the freeze on the assets in certain cases based on the application to state authorities).

Approaching the authorities

- 18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

Usually competent economic and financial sanctions authorities (the RF government, the Ministry of Finance, Rosfinmonitoring) are reluctant to discuss any queries on economic and financial sanctions compliance (especially, to give any specific advice on economic and financial sanctions compliance). Generally, relevant Russian state authorities only consider an application on partial or full release of the freeze on the assets in certain cases and issue a positive or negative decision.

Reporting requirements

- 19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

Organisations carrying out transactions with money or other property' (such as banks, broker-dealers, clearing houses, money transfer operators (payment systems)) must report to Rosfinmonitoring (the RF Federal Service for Financial Monitoring) about clients whose assets are frozen at least once every three months.

TRADE SANCTIONS

General restrictions

- 20 | What restrictions apply in relation to the trade of goods, technology and services?

Specific trade restrictions are provided for in relevant government resolutions with respect to specific unfriendly countries. Trade restrictions may include:

- restrictions on import into Russia of certain goods or raw materials (eg agricultural products) originating in unfriendly states that have imposed sanctions on Russia;
- bans or restrictions on exports from Russia to unfriendly states of certain goods or raw materials, or both (including oil, oil-products, coal);
- bans or restrictions on the ability of entities within the jurisdiction of unfriendly states (affiliated with such state) to participate in Russian government tenders or procurement contracts, or contracts and tenders of state-controlled companies;

- bans or restrictions on the ability of entities within the jurisdiction of unfriendly states (affiliated with such state) to participate in privatisations of state or municipal property;
- changing of export or import customs duties and levies;
- prohibitions or restrictions (limitations) on access to Russian ports by vessels and on the use of Russian airspace or parts thereof; and
- bans on selling or transferring weapons, military equipment and dual-use items

Further, Russia complies with sanctions and export or arms control restrictions imposed by the UN Security Council resolutions, hence various presidential decrees have been promulgated to give effect to restrictions contained in such resolutions of the Security Council.

There is no website available that sets out this information.

General exemptions

21 | Do any exemptions apply to the general trade restrictions?

No general exemptions to the general trade restrictions are provided for. However, the government resolutions that set out specific trade restrictions with respect to specific unfriendly countries may provide for exemptions [eg, RF Government Resolution No. 778, dated 7 August 2014, on ban on import to Russia of certain agricultural products, raw materials and food originating in the USA, EU and certain other countries, provides for an exemption – the said products may be imported into Russia if they are transiting into third countries; RF Government Resolution No. 1296, dated 30 November 2015, on ban on import to Russia of certain agricultural products, raw materials and food originating in Turkey, provides for another exemption – it is allowed to import the said products to Russia for personal use].

Targeted restrictions

22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

No, Russian authorities do not impose trade sanctions against dealing with particular individuals or entities. However, Russian authorities have imposed other types of sanctions, such as assets freezes, against particular individuals and entities included in 'black lists'; eg, RF Government Resolution No. 1300, dated 1 November 2018, sets out a list of Ukrainian individuals and legal entities whose assets located in Russia must be frozen.

In addition, presidential decrees adopted in accordance with the UN Security Council resolutions may contain trade sanctions against dealing with particular individuals and entities [eg, RF Presidential Decree No. 484, dated 14 October 2017, on sanctions, including trade sanctions, against North Korea and particular North Korean individuals].

Exemption licensing – scope

23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

Russian authorities generally do not issue exemption licences.

Exemption licensing – application process

24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

Russian authorities generally do not issue exemption licences.

Approaching the authorities

25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

Russian authorities generally do not issue exemption licences.

Usually competent trade sanctions authorities (the RF government, the Ministry of Agriculture, the Ministry of Industry and Trade, Customs authorities) are reluctant to discuss any queries on trade sanctions compliance (especially, to give any specific advice on trade sanctions compliance).

ENFORCEMENT AND PENALTIES

Reporting violations

26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

Reporting sanction violations is not obligatory (Russian law provides for limited cases when reporting violations is obligatory, eg, reporting corruption (only for public officials), reporting on preparation for a terrorist attack, kidnapping).

Investigations

27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

There is no specific state body charged with investigating sanctions violations. The state body that is responsible for investigating sanctions violations depends on the type of sanctions restriction – for example:

- if a bank carries out a transaction with respect to assets of a person who is the subject of an asset freeze, the violation of such an entity would be investigated by Rosfimonitring (the RF Federal Service for Financial Monitoring) and the RF Central Bank that may issue an order to rectify the violation and impose a fine on such bank; and
- if a person imports to Russia goods that are blocked under trade sanctions (for example, certain agricultural products from the EU), such a violation would be investigated by customs authorities and the person may be held liable in the form of a fine.

Such violations may also be considered by courts if relevant regulatory authorities transfer the case to a court for consideration.

Penalties

28 | What are the potential penalties for violation of sanctions?

Russian law does not provide for specific liability for violation of sanctions and the potential penalty for violation of sanctions would depend on the type of sanction and its violation – for example:

- a bank that carries out a transaction with respect to assets of a person who is the subject of an asset freeze may apparently be held liable in the form of a fine (the amount of the fine varies from 100,000 roubles to 1 per cent of the funds (capital) of such bank), suspension of certain bank activities, involuntary reorganisation or change of certain officers of the bank;
- a person who imports to Russia goods that are blocked under trade sanctions, may be held administratively liable in the form of a fine (the amount of fine varies from 1,000 to 2,500 roubles and confiscation of the blocked goods; and
- an entity that imports to Russia goods that are blocked under trade sanctions may be held administratively liable in the form of a

fine (the amount of fine varies from 50,000 to 300,000 roubles and confiscation of the blocked items.

Recent enforcement actions

- 29 | Have there been any significant recent enforcement cases?
| What lessons can be learned from these cases?

There have not been any significant enforcement cases with respect to sanctions violations.

UPDATE AND TRENDS

Emerging trends and hot topics

- 30 | Are there any emerging trends or hot topics in sanctions law
| and policy in your jurisdiction?

The recent trend in sanctions law and policy in Russia is an attempt to provide Russian individuals and legal entities that are subject to sanctions imposed by foreign countries, with a certain degree of legal protection. For example, according to amendments to the Russian Commercial Procedural Code, introduced on 8 June 2020, Russian courts obtained exclusive jurisdiction over certain disputes involving Russian individuals and legal entities on which foreign countries' sanctions were imposed, as well as certain disputes arising in connection with the imposed sanctions. In addition, the amendments have allowed an individual or legal entity to seek from a Russian court a ban on commencement, or continuance by another individual or legal entity of such sanctions-related disputes before a foreign court or arbitration panels.

Another illustration of an attempt of Russian authorities to protect Russian individuals and entities that are subject to sanctions imposed by foreign countries is a proposed blocking law that provides for criminal liability for implementing restrictions against a person based on a foreign country's sanctions (this bill is very vague and does not contain any guidelines as to what 'implementing restrictions based on a foreign country's sanctions' would mean). According to the bill, the maximum punishment for such crime is imprisonment for up to four years. Although the bill was introduced in 2018, its consideration was subsequently suspended. However, in February 2021, the speaker of the State Duma (the lower house of the Russian parliament) announced the resumption of consideration of the bill.

Since 2014, the US, the EU, Canada, Japan and Australia have imposed various targeted sanctions on Russia in connection with Russia's alleged interference in the sovereignty of Ukraine and its alleged interference in foreign elections, its use of a biological weapons against its citizens and other alleged 'malign activity'. In total, more than 1,500 individuals and entities are listed on various sanctions lists. In addition to freezing the assets of Russian individuals and entities, the sanctions also restrict US or EU individuals from providing financing to certain entities in defined sectors of the Russian economy (banking, oil and the defence and intelligence sectors of the Russian economy) and restrictions on US banks from purchasing primary debt issued by the Russian state and certain state bodies. The US sanctions also authorise the US government to sanction non-US persons if they engaged in significant transactions with sanctioned parties or assist a sanctioned person evade sanctions, or both.

South Korea

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GENERAL FRAMEWORK

Legislation

1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

Korea has implemented international economic, financial and trade sanctions as required by the United Nations Security Council Resolutions (UNSCR) and other international treaties to which it is a party. Korea has also incorporated into its domestic regime, as it deemed necessary, certain sanctions regimes of its main allies such as the United States (US) and the European Union (EU) with legislative intents to contribute to the international effort to maintain international peace and security.

There is a great deal of domestic legislation for international sanctions applicable to several economic sectors. For instance, the Foreign Trade Act is mainly applicable to trade sanctions, the economic and financial sanctions are governed mostly by the Foreign Exchange Transactions Act and the Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction (CFT/WMD Act). Additionally, the Immigration Act, Customs Act, Coast Guard Affairs Act, Act on Arrival and Departure of Ships, and Aviation Safety Act govern other types of sanctions such as travel bans, aviation bans and maritime sanctions.

Autonomous versus international regimes

2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

Although the domestic legislation empowers the Korean government to implement an autonomous sanctions regime, the Korean government mostly takes the approach to implement sanctions imposed by international organisations such as the United Nations (UN) or its allies such as the US and the EU, by incorporating these sanctions into their domestic sanction regimes.

Types of sanction imposed

3 | What types of sanction are imposed in your jurisdiction?

Korea imposes, among others, trade sanctions (including arms embargoes; economic and financial sanctions (including asset freeze); travel bans; and aviation bans and maritime sanctions.

Countries subject to sanctions

4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

The countries subject to sanctions in Korea include Iraq, Somalia, Democratic Republic of the Congo, Republic of the Sudan, Lebanon, Libya, Syria, North Korea, Central African Republic and Yemen.

Korean versions of the main public notices embracing the sanctioned countries and entities can be found at:

- The Public Notice on Special Trade Measure for implementation of Obligation for Maintaining international Peace and Security (Effective 18 November 2021, Public Notice of the Ministry of Trade, Industry and Energy No. 2019-57, partly amended on 18 November 2021) (Public Notice on Special Trade Measures);
- The Guidance on Approval for Payment and Receipt of Payment for implementation of Obligation for Maintaining international Peace and Security (Effective 3 January 2018, Public Notice of the Ministry of Economy and Finance No. 2017-39, partly amended 28 December 2017) (Guidance on Approval for Payment and Receipt of Payment); and
- The Regulation on Designation and Revocation of Designation of Financial Transaction Restricted Persons (Effective 17 December 2020, Public Notice of Financial Services Commission No. 2020-55, partly amended 17 December 2020) (Financial Transaction Restricted Persons Regulation).

Non-country specific regimes

5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

Korea implemented the rough diamond trade controls under the Kimberly Process. In a nutshell, the Kimberly Process is an international commitment to eliminate conflict diamonds supply. As a participant in the Kimberly Process, Korea has required all importers of rough diamonds to be in possession of a Kimberly Process certificate showing that the diamonds are conflict free and all exporters of rough diamonds must obtain an export licence so that the rough diamonds shall not be traded with non-participants in the Kimberly Process.

Counter-terrorism sanctions

6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

The CFT/WMD Act and the Financial Transaction Restricted Persons Regulation (FTRPR) designate the individuals and entities related to terrorist activities as 'financial transaction restricted persons', which would be automatically subject to restrictions on financial or other types of commercial transactions. Such financial transaction restricted persons must obtain approval from the Financial Services Commission

(equivalent to the US Securities and Exchange Commission) in order to engage in financial and other types of transaction, which in effect operates as an asset freeze.

Additionally, certain individuals and entities who were designated by the UNSCR as being a threat to international peace and security, or by the US or the Council of the EU as being related to terrorist activities, may also be subject to the approval requirement of the Bank of Korea for their foreign exchange transactions pursuant to the Foreign Exchange Transactions Act and the Ministry of Economy and Finance’s Guidance on Approval for Payment and Receipt of Payment. Such persons are known as ‘financial sanctioned persons’. The scope of financial sanctioned persons is generally broader than that of financial transaction restricted persons.

Anti-boycott laws

7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

No.

Scope of application

8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

In general, Korean laws apply to Korean nationals and those within the Korean territory. However, sanctions may also apply to foreign nationals under the general criminal law principle that foreign nationals who commit crimes against Korean nationals or the Korean government in other countries, and foreign exchange transactions involving a Korean element such as one of the parties being a Korean resident or Korean currency.

Competent sanctions authorities

9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

These include:

- trade sanctions (including arms embargoes) pursuant to the Foreign Trade Act are mostly administered by the Ministry of Trade, Industry and Energy (concerning most of the ‘dual-use’ items) and the Korean Security Agency of Trade and Industry, and also are partly administered by the Nuclear Safety And Security Commission (concerning dual-use materials relevant to nuclear activities) and the Defense Acquisition Program Administration (for military materials as well as dual-use materials imported for military purposes);
- economic and financial sanctions (including asset freeze) pursuant to the Foreign Exchange Transactions Act and CFT/WMD Act are administered by the Ministry of Economy and Finance, the Financial Services Commission and the Bank of Korea; and
- other types of sanctions such as travel bans, aviation ban and maritime sanctions are administered by the Ministry of Justice, the Ministry of Land, Infrastructure and Transport, the Ministry of Oceans and Fisheries, and the Ministry of Unification.

Business compliance

10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

Financial companies are required to put in place a compliance system for the purpose of anti-money laundering, which includes sanction-related compliance programmes to a certain extent. The companies in other industrial sectors are not required to establish such internal controls or

compliance systems in order to ensure the adequate compliance of sanction programmes. However, in practice, many Korean companies have established and maintained internal controls and systems for the compliance of sanction programmes, especially for those businesses dealing with high-risk areas of geographic locations or sensitive technology or items. Such companies may enjoy favourable treatment by the government in receiving export permission, to the extent that they would be designated a trader with a voluntary compliance system and, therefore, are entitled to a general export permission effective for a certain period of time without a need to apply for specific permission for individual items to be exported.

Guidance

11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

The Korean Security Agency of Trade and Industry provides a useful guide on its website that introduces the sanction programmes of the Korean government against many other countries including North Korea. As for North Korea sanctions, a private entity called South-North Korea Exchanges and Cooperation Support Association publishes very comprehensive guidance for the economic sanction programmes directed at North Korea and promulgated by all the major countries and international organisations, including the UN, the US and the Korean government.

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

The Financial Services Commission may designate individuals and entities related to terrorist activities as financial transaction restricted persons who would be subject to restrictions of financial and other transactions, which in effect operates as an asset freeze. Currently, such persons are mainly those designated by the United Nations Security Council Resolutions (UNSCR) in relation to the economic sanctions against North Korea, or other terrorist groups such as the Taliban and Al Qaida.

Also, certain individuals and entities who were designated by the UNSCR as being a threat to international peace and security, or by the US or the Council of the EU as being related to terrorist activities, may also be designated as financial sanctioned persons, which would be subject to the approval requirement of the Bank of Korea for their foreign exchange transactions.

General carve-outs and exemptions

13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

No.

List of targeted individuals and entities

14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

Yes. The list of financial transaction restricted persons can be found in the Financial Transaction Restricted Persons Regulation. The list of financial sanctioned persons is updated from time to time by the Ministry of Economy and Finance and the most recent update was on 11 December 2017.

Other restrictions

- 15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

None.

Exemption licensing – scope

- 16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

Financial transaction restricted persons under the Financial Transaction Restricted Persons Regulation may consummate the transaction if the Financial Services Commission approves. Additionally, financial sanctioned persons under the Ministry of Economy and Finance's Guidance on Approval for Payment and Receipt of Payment may engage in a foreign exchange transaction upon approval by the chairperson of the Bank of Korea.

However, the laws and the subordinate regulations do not provide specific criteria or circumstances by which such approval is granted. In practice, such approval would rarely be granted.

Exemption licensing – application process

- 17 | What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

Since the approval for the transaction with financial transaction restricted persons and the approval for the foreign exchange transaction involving financial sanctioned persons would rarely be utilised, there are no publicly available laws and regulations detailing the application process for such approval. That said, however, with respect to the foreign exchange transaction for financially sanctioned persons, the Bank of Korea advises that the applicant should prepare for the application documents, visit the Foreign Exchange Review Team at the Bank of Korea's headquarters and have a meeting with the responsible officer. The decision for approval will be rendered within 20 days.

Approaching the authorities

- 18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

Access to the competent sanctions authorities are generally open to the public. One can generally contact the responsible officers to discuss licence applications or queries on economic and financial sanctions compliance.

Reporting requirements

- 19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

None.

TRADE SANCTIONS**General restrictions**

- 20 | What restrictions apply in relation to the trade of goods, technology and services?

According to the Foreign Trade Act and the Public Notice on Export and Import of Strategic Materials, any person who intends to export

strategic items (military equipment and dual-use items, including technologies) shall obtain permission from the Korean government ('export permission'); and any person who intends to export any goods or technologies that do not fall within the category of any strategic items but have a high potential of being appropriated for manufacturing, developing, using, or storing weapons of mass destruction or missiles as carriers of such weapons shall also obtain permission from the Korean government ('situational permission'), if the person becomes aware that the importer or the end user of the goods has intent to appropriate the goods for manufacturing, developing, using, or storing weapons of mass destruction, or suspects that there is probably such intent.

General exemptions

- 21 | Do any exemptions apply to the general trade restrictions?

According to the Foreign Trade Act and the Public Notice on Export and Import of Strategic Materials, the Korean government may exempt exporters from export permission or situational permission, in cases such as that where an exporter exports public commodities to be used for overseas diplomatic or consular missions, armed forces of the Republic of Korea dispatched overseas, diplomatic envoys, etc; where an exporter exports machinery, instruments, components, etc used for emergency repair to ensure the safe navigation of ships or aircraft; or exports of public goods used for diplomatic establishments abroad.

Targeted restrictions

- 22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

No. There are no trade sanctions against dealing with any particular individuals or entities except that the situational permissions shall be required to export any items to certain individuals or entities who were designated by the United Nations Security Council Resolutions (UNSCR) as being a threat to international peace and security.

Exemption licensing – scope

- 23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

Export permission or situational permission may be granted when the relevant goods or technologies shall be used for a peaceful purpose; exportation of the relevant goods or technologies shall not affect international peace, safety maintenance, and national security; the importer or end user of the relevant goods or technologies shall be properly qualified for the relevant transactions, and trust the purpose of use of such goods or technologies.

Exemption licensing – application process

- 24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

If anyone applies for export permission or situational permission, it will be reviewed by the Korean government and the decision for the application should be rendered within 15 days of application. However, given that the time incurred for the following processes is not counted into the 15-day period, it would generally take around two months for the applicant to receive the final decision. These processes are: a separate technical review for the relevant items; a discussion on the export of the items between relevant government agencies; a discussion on the relevant items with the related state; a field investigation relating to the

product; a supplement of documents regarding the review for the export permission of the items; and a consultation with the member states or international organisations of a trade control regime applicable to the relevant items (including the approval processes).

Approaching the authorities

25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

Access to the competent sanctions authorities is generally open to the public. One may contact the responsible officers in the authorities to discuss licence applications or queries on trade sanctions compliance.

ENFORCEMENT AND PENALTIES

Reporting violations

26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

The Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction (CFT/WMD Act) provides that the financial companies must report to the investigative authorities if it finds that assets received from a financial transaction are funds for terrorist activity or for the proliferation of weapons of mass destruction, or the other party to a transaction is making a transaction, or disbursing or receiving the payment without proper approval. Otherwise, there is no legal obligation to self-report in relation to the sanctions enforcement.

The Criminal Code of Korea generally allows favourable treatment in terms of sentencing if the plaintiff cooperates during the investigation, including self-reporting. The benefits of self-reporting could be considered by companies in making a decision as to how to respond to the potential enforcement action.

Investigations

27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

The responsible administrative authorities such as the Financial Services Commission and Financial Supervisory Services, the Korea Customs Service, the Korean National Police Service, the Korea Immigration Service as well as the Prosecution Service would investigate the violations. Such authorities would have fully fledged investigatory powers including search and seizure, and arrest pursuant to a warrant issued by a court with relevant jurisdiction.

Penalties

28 | What are the potential penalties for violation of sanctions?

Criminal liabilities including imprisonment and criminal fine and administrative sanctions as stringent as business suspension or the revocation of the relevant business licence may be imposed on the responsible employees and officers as well as the companies.

Recent enforcement actions

29 | Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

In the past few years, the Korean government's major economic sanctions appear to have focused on North Korea. That said, the sanctions programme against North Korea since 2017 has decreased, now primarily dealing with the financial sanctions only through the designation of

sanctioned persons. This shows a stark difference from the previous administration's comprehensive sanctions, which covered all relevant areas of the available sanction programmes. One could interpret this trend as indicating that the current administration has endeavoured to maintain its engagement policy toward North Korea while adjusting the scope of the sanctionable items in conjunction with other international sanction regimes. Indeed, the current government's position on the sanction programmes for North Korea should be carefully assessed in line with other overarching sanction regimes, particularly those of the UN, the US and the EU.

For example, the Korean government has diligently investigated alleged violations of maritime sanction programmes and, as a result, it has detained several commercial vessels in the past few years. One of the widely reported cases was a vessel called *P.Pioneer*, which was detained by the Korean government in the port of Busan in September 2018 as it was suspected of having taken part in illegal ship-to-ship oil transfers. This was the first case in which a South Korean vessel had been detained on suspicion of violating the Korean sanction programmes that reflected the UN trade or maritime sanctions. Prior to this incident, the Korean government had also detained vessels of other nationalities for the same violation, including, inter alia, a Hong Kong-flagged oil tanker, *Lighthouse Winmore*, which was detained in the southwestern coastal city of Yeosu in late November 2017. The Korean authorities had also seized a Panama-flagged vessel called *KOTI*, which was detained at Pyeongtaek-Dangjin port as it was suspected of transferring petroleum products to North Korea in December 2017. Ultimately, UN Security Council Sanctions Committee on North Korea approved the disposal of the vessel as their breaches of sanctions were likely to have been deliberate in July 2019.

In addition, the Korean government has investigated alleged violations of its financial sanction programmes by primarily referring to the Specially Designated Nationals list (SDN) published by the US government (OFAC) and the list of sanctioned persons designated by the UN Security Council (1718 Sanctions Committee), and published its own lists of sanctioned persons relating to North Korea. Also, the government has conducted its own investigations, which led to the publication of separate lists independent of the UN or US sanctions. In the past five years, the Korean government published several lists for financial sanctions in March 2016, November 2017, and December 2017. Since the latest issuance of the list in 2017, the government has issued no additional list for financial sanctions to date.

On the other hand, the Korean government has consistently implemented its sanction programs (especially financial sanctions) against other countries in conjunction with the overarching US and UN sanctions. The most representative case is the Iranian sanctions imposed by the US government. For example, in late 2021, Iran's Dayyani Group (the owner of Entekhab Industrial) commenced an international arbitration as a form of an investor-state dispute settlement (ISDS), seeking the amount (approximately US\$80 million) that it won in another ISDS arbitration case brought against South Korea. The sole reason that the Korean government had failed to pay the arbitral award rendered in the previous case was that the US financial sanctions on Iran banned the transfer of the award amount to Iran (as the US reimposed sanctions on Iran in 2018). Early this year, the Korean government received a special licence from OFAC for this amount; therefore, it is expected that the pending ISDS claim will likely be withdrawn or settled in due course. However, there is another potential giant ISDS claim by the Iranian investor (the Central Bank of Iran, CBI). The due amount for the Iranian oil purchased by Korean refinery companies (approximately US\$7 billion) has been frozen in South Korea due to the same US sanctions against Iran. The CBI has already submitted a Letter of Intent to bring an ISDS claim against South Korea. Although not brought to arbitration yet, this dispute is still under negotiation because the amount remains frozen due to the relevant banks' implementation of the US sanction

programme. It is unknown whether the OFAC will issue a similar special licence to the frozen asset as it previously did for the Dayyani's arbitral award amount. For trade sanctions, the Korean government has traditionally penalised unauthorised imports or exports in violation of its sanction programmes for North Korea and other countries, and these cases have been strictly prosecuted through the Korean judicial system. However, it seems that no notable cases have been reported in the past few years, probably because of the current administration's efforts to minimise the scope of its sanction programmes, unless the seriousness of the violation comes to its attention as suggested in the vessel detention cases explained above.

In any event, it has been observed in Korea that unauthorised exports of strategic items or an otherwise violation of the government's sanction programmes were closely investigated and penalised through prosecutorial or judicial proceedings. However, given that laypeople without relevant expertise or knowledge are normally unfamiliar with these legal frameworks, many companies involved in cross-border transactions in Korea often fail to handle such sanction issues (particularly, those relating to North Korea) properly. Therefore, the companies doing business in Korea must be equipped with relevant knowledge of the government's sanction programmes and provide their employees with continuing education. Such education could include, for example, training about the self-inspection process provided by the Korean Security Agency of Trade.

UPDATE AND TRENDS

Emerging trends and hot topics

30 | Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

In Korea, the most notable emerging trends in sanctions law are observed in the Korean government's engagement policy toward North Korea. In particular, the Korea Ministry of Unification, the authority responsible for reviewing and permitting any inter-Korean cooperative activities, tends to provide broad permission for NGO-driven humanitarian assistance

toward North Korea. The specific sectors where such assistance is provided includes, inter alia, healthcare and food aid for children. That said, the NGOs which received such permission from the Korean government are strictly limited to those which had received special licences from the US government (ie, Treasury and State Department) and sanction exemptions from the UN Security Council's sanction committee. This trend shows that Korean government's sanction programmes incorporated the stringent sanction regimes of the US and the UN into its domestic sanction laws. Therefore, any NGOs that intend to provide humanitarian assistance to North Korean people must take pre-emptive steps to receive exemption and licenses from both US and UN before filing with South Korean government (ie, Ministry of Unification) an application for such activities or for use of national funds raised for such activities.

On the other hand, the Korean government takes an increasing number of sanction programmes against other countries in compliance with US and UN sanctions. For example, two South Korean commercial banks have frozen the due amount for the Iranian oil purchased by Korean refinery companies (approximately US\$7 billion) in compliance with the US sanctions against Iran. Given that the amount is currently in the bank account held by the Central Bank of Iran (CBI), the CBI has already submitted a Letter of Intent to bring an ISDS claim against South Korea. This dispute is still under negotiation because the amount remains frozen due to the relevant banks' implementation of the US sanction programme. Even though the Korean government seeks a special license from OFAC, it is unknown whether the OFAC will issue the licence.

Another important sanction programmes expected by the Korean government is a Russian sanction. As Russia invaded Ukraine in February 2022, the Korean government expressly stated that it 'has no other option but to join sanctions against Russia' if Russia goes ahead with a full-fledged war in any form despite repeated warnings from the international community. The Korean government indicated that it would consider all available options, which would likely include various forms of export controls and financial sanctions, eg, participating in cutting key Russian banks out of the SWIFT financial messaging system.

Switzerland

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GENERAL FRAMEWORK

Legislation

1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

Historically in Switzerland, the local implementation of international sanctions was exclusively and directly made in the form of specific ordinances enacted by the Federal Council (the Swiss government) and based directly on article 184(3) of the Swiss Federal Constitution (Cst). These autonomous measures were enacted unilaterally to safeguard Switzerland's interests.

Since 1 January 2003, the Federal Act of 22 March 2002 on the Implementation of International Sanctions (the Embargo Act (EmbA)) is the main legal basis for the implementation of sanctions measures in Switzerland. Sanctions in accordance with the EmbA aimed at implementing international sanctions imposed by the UN Security Council Resolutions, the Organisation for Security and Cooperation in Europe or by Switzerland's most significant trading partners. The EmbA provides the general legal framework to implement trade sanctions in Switzerland (such as the purpose of the sanctions, jurisdiction, the obligation to provide information, monitoring, data protection, mutual legal assistance and administrative assistance, legal protection, criminal provisions). Specific enforcement or coercive measures against a state, individuals or legal entities are regulated in separate ordinances of the Federal Council based on this act and its annexes.

Since 4 March 2016, the Federal Council automatically implements changes to UN sanctions lists in Switzerland (instead of implementing each amendment through an internal administrative procedure) (see Ordinance on the Automatic Transfer of UN Security Council Sanctions Lists).

The authority in charge of the implementation of the coercive measures depends on the nature of the measures. Sanctions in accordance with the EmbA are regulated by the State Secretariat for Economic Affairs (SECO), while measures enacted unilaterally on the basis of article 184(3) Cst are implemented by the Federal Department for Foreign Affairs (FDFA).

Whether based on article 184(3) Cst or the EmbA, the names of the individuals, groups of companies or entities targeted by sanction measures are listed in Annexes to the specific ordinances and are updated on a regular basis.

Finally, the Federal Act of 18 December 2015 on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act (FIAA)) enables Switzerland to freeze, confiscate and retribute assets of politically exposed persons (PEPs) and their close associates, in particular in the event of the collapse of a political regime, if there is reason to suspect that these assets were acquired through acts of corruption, criminal mismanagement or other offences.

Autonomous versus international regimes

2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

Pursuant to article 1(1) EmbA, the Swiss Confederation may enact coercive measures in order to comply with international law, and in particular to safeguard human rights. These measures aim at implementing mandatory resolutions adopted by the UN Security Council or sanctions issued by the OSCE or by Switzerland's main trading partners.

In addition, the Federal Council has the power to enact unilateral or autonomous and urgent sanctions to safeguard Switzerland's interests based on article 184(3) Cst. These measures have a limited duration.

Thus, domestic legislation allows both the implementation of sanctions adopted by international institutions and organisations and the implementation of autonomous sanctions.

Types of sanction imposed

3 | What types of sanction are imposed in your jurisdiction?

Only targeted sanctions are applied in Switzerland, which means that sanctions are intended to be directed at specific individuals, companies or organisations or restrict trade of specific key commodities instead of targeting an entire state and its population. These are referred to as 'smart sanctions'.

Pursuant to article 1(3) EmbA, sanctions may include:

- direct or indirect restrictions imposed on transactions involving goods and services, payment and capital transfers, and the movement of persons, as well as scientific, technological and cultural exchanges; and
- prohibitions, licensing and reporting obligations as well as other restrictions of rights.

In practice, the main types of sanctions imposed in Switzerland are the following:

- financial sanctions concern monetary and financial activities and consist essentially in the freezing of funds and other financial assets, in the ban on transactions and in investment restrictions;
- Trade restrictions (commonly referred to as embargoes) relate to certain categories of particular goods (eg, arms, diamonds, oil, lumber) or services (including financial or technical assistance);
- travel restrictions for nationals of targeted states;
- diplomatic constraints targeting state officials (eg, cancelling of visas, exclusion from the activities of international agencies);
- cultural and sports restrictions; or
- air traffic restrictions.

Some of the aforementioned transactions are permitted but subject to prior authorisation or reporting. For instance, the import, export and transit of war materiel require a licence from the Confederation (article 17, paragraph 1 of the Federal Act of 13 December 1996 on War Material; War Material Act). Regarding financial sanctions, the authority designated in the applicable ordinance (ie, the SECO or the FDFA) may exceptionally authorise payments from frozen accounts.

Countries subject to sanctions

4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

At the time of writing this chapter, the countries that are the subject of sanctions enacted by Switzerland are the following (see SECO website):

- Iraq;
- Myanmar;
- Zimbabwe;
- Sudan;
- Congo;
- Belarus;
- North Korea;
- Lebanon;
- Iran;
- Somalia;
- Guinea;
- Lybia;
- Syria;
- Guinea-Bissau;
- Central African Republic;
- measures in connection with the situation in Ukraine;
- Yemen;
- Burundi;
- South Sudan;
- Mali ;
- Venezuela; and
- Nicaragua.

Non-country specific regimes

5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

Sanction regimes that are currently in place and are not country-specific are related to international trade in diamonds and counter-terrorism.

Counter-terrorism sanctions

6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

International efforts to combat the financing of terrorist activities mainly rest with the UN Security Council. UN member states are required to adopt procedures for freezing the assets of individuals and organisations listed as terrorist.

Switzerland implements the measures enacted by UN Security Council Resolutions via the existing regime and procedures relating to anti-money laundering legislation or in ordinances based on the Embargo Act.

To date, the Federal Council has enacted two ordinances based on the EmbA related to specific counter-terrorism sanctions:

- Measures against persons and entities associated with Osama bin Laden, the 'Al-Qaida' group or the Taliban; and
- Measures against certain persons in connection with the attack on Rafik Hariri.

Anti-boycott laws

7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

There are no blocking or anti-boycott laws in place in Switzerland.

Scope of application

8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

Article 184(3) Cst and the EmbA do not contain any indication as to the personal or territorial scope of sanctions. According to Swiss scholars, Swiss sanctions apply to individuals and legal entities that are located in Switzerland or conduct business from Switzerland, thus strictly applying the principle of territoriality.

By treaty of 29 March 1923, the territory of the Principality of Liechtenstein has united with the Swiss customs territory. As a result of this customs union, Swiss sanctions apply to Liechtenstein. Other than this exception, sanctions imposed in Switzerland have no extra-territorial effect.

Competent sanctions authorities

9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

The Federal Council enacts the sanctions by way of specific ordinances.

The implementation and supervision of measures decided by the Federal Council lies with the SECO (if based on the EmbA) or the FDFA (if based on article 184(3) Cst).

These authorities may be assisted by various agencies such as police forces, the Federal Customs Administration or the Federal Office for Migration.

Business compliance

10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

There is no specific legislation that requires that businesses in Switzerland put in place monitoring systems or specific controls to ensure compliance with sanctions. However, in practice, companies established in Switzerland are subject to the Swiss sanctions regime and must ensure that they comply with obligations incumbent upon them by virtue of the specific ordinances imposing sanctions measures.

More specifically, each business transaction in Switzerland must comply with the sanctions regime and must be assessed depending on (1) the business partners, (2) the products exported, (3) the origin and destination of the goods and, to a certain extent, (4) their final use (in particular, for businesses commercialising goods that can be considered as dual-use goods (ie, goods that may be used for both civilian and military purposes)) (article 3(b) of the Federal Act of 13 December 1996 on the Control of Dual-Use Goods and of Specific Military Goods and Strategic Goods; Goods Control Act).

Indirect elements may also trigger the application of the Swiss sanctions regime and must thus also be checked against the relevant transaction, for instance, when entities that do not appear on the sanctions list but are owned or controlled (directly or indirectly) by listed individuals or entities, or if the bank account on which payment is made is opened in a bank that is itself listed as a targeted entity. In such cases, the situation may be unclear and it is worth engaging with the SECO to check how the situation should be assessed (the answer may depend on the specific details of the transaction, such as the amounts to be paid and the purpose of said transaction).

To remain compliant, companies carrying out business with a foreign entity or individual must perform a complete analysis of the situation for each contemplated transaction by verifying that:

- the country of destination is not subject to trade sanctions measures;
- the goods commercialised are not listed;
- the parties involved in the transaction as well as the end customer are not listed; and
- that the end use of the goods is not prohibited or subject to authorisation.

The situation must be monitored on an ongoing basis. This is also the case for transactions contemplated with a business partner with whom business was done in the past as the sanctions regime may evolve. The situation must be assessed for each new transaction (not only in the event of a new business partner or a new country).

Guidance

11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

The SECO has issued the following guidance on compliance with trade sanctions:

- Best Practices Internal Control Programme for Export Controls (ICP);
- Strategic trade control outreach and industry compliance;
- Export controls - Dealing with intangible technology transfer;
- Export Control in a nutshell; and
- Merkblatt zu Ausfuhren von Dual-Use-Werkzeugmaschinen in die Russische Föderation (PDF, 226 kB, 24.02.2021) ('*Information sheet on exports of dual-use machinery to the Russian Federation*', available in German only).

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

A person or entity may become subject to asset freeze provisions in Switzerland when it is considered a formal or de facto agent of a state subject to sanctions in Switzerland. The Federal Council has the authority to enact such coercive measures pursuant to article 2(1) the Embargo Act (EmbA) and 184(3) Swiss Federal Constitution (EmbA and 184(3) Cst). All individuals subject to sanctions are listed in Annexes to each specific ordinance enacted by the Federal Council. In addition, a compiled list of all sanctioned individuals, entities and organisations (Sanctions/Embargos (admin.ch)), together with a user's guide that allows to perform more specific searches (Searching for subjects of sanctions (admin.ch)), can be found on the State Secretariat for Economic Affairs (SECO) website.

Furthermore, in accordance with the Foreign Illicit Assets Act (FIAA), a person may become subject to asset freeze provisions in Switzerland if he or she is a PEP or a close associate of a PEP to prevent the withdrawal of any illicitly acquired assets that have entered the Swiss financial centre, for the purposes of mutual legal assistance or confiscation (articles 3 and 4 FIAA).

Financial sanctions in Switzerland are usually three-fold and include (1) the freezing of assets and economic resources; (2) the prohibition of making available funds to targeted persons and (3) the obligation to report frozen assets.

General carve-outs and exemptions

13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

The Federal Council may stipulate exceptions to the asset freeze provisions in order to support humanitarian activities or to safeguard Swiss interests (article 2(1) EmbA).

The authority designated in the applicable ordinance, ie, the SECO or the Federal Department for Foreign Affairs (FDFA), may exceptionally authorise payments from frozen accounts, transfers of frozen capital and the release of frozen economic resources to safeguard Swiss interests or prevent cases of hardship.

List of targeted individuals and entities

14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

The Federal Council maintains lists of the individuals under asset freeze measures. These lists are issued as annexes to the specific ordinances.

In addition, an overall list of sanctioned individuals, entities and organisations is available on the SECO's website (Sanctions/Embargos (admin.ch)) together with a user's guide (Searching for subjects of sanctions (admin.ch)).

Other restrictions

15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

In some instances, specific dealings are restricted such as:

- the ban on financial transactions related to North Korea's nuclear and missile programmes (eg, North Korea);
- authorisation requirement for the acquisition of a participation or the creation of a joint venture in the nuclear field (eg, Iran);
- prohibition on securities and money market instruments (eg, Ukraine);
- prohibition on granting loans (eg, Ukraine);
- prohibition on accepting deposits of more than 100,000 Swiss francs from Russian nationals or legal entities or individuals in Russia (eg, Ukraine);
- mandatory declaration of existing deposits exceeding 100,000 Swiss francs (eg, Ukraine);
- prohibition on transactions with the Central Bank of Russia (eg, Ukraine);
- prohibition on the provision of public financing or financial assistance for trade with or investment in Russia (eg, Ukraine); and
- prohibition on the provision of specialized international messaging systems for financial transactions, in particular SWIFT (eg, Ukraine).

Exemption licensing – scope

16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

The authority designated in the applicable specific ordinance (ie, the SECO or the FDFA) may exceptionally grant a licence to permit activities that would otherwise breach economic and financial sanctions.

In accordance with the specific ordinances enacted by the Federal Council, the SECO may exceptionally authorise payments from frozen accounts, transfers of frozen capital and the release of frozen economic resources to:

- prevent cases of hardship;
- honour existing contracts;
- honour claims under an existing judicial, administrative or arbitral measure or decision; or
- to promote regional peace and stability.

Exemption licensing – application process

17 | What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

In accordance with the specific ordinances enacted by the Federal Council, the authority designated in the applicable specific ordinance (ie, the SECO or the FDFA) shall issue a licence after consulting the competent offices of the Federal Department of Foreign Affairs and the Federal Department of Finance and, where applicable, after notifying the competent committee of the UN Security Council and in accordance with the decisions of said committee.

The timeline for a licence to be granted by the SECO varies and depends on the complexity of the matter. In simple cases, a licence may be granted within one week. However, in complex cases, it could take up to more than a year for the licence to be granted since the SECO will carry out some research and liaise with the competent committee of the UN Security Council.

Approaching the authorities

18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

It is possible to reach out to the SECO on a no-name basis and request advice regarding a specific situation or transaction. For instance, it is possible to enquire about the conditions to be fulfilled in order to be granted a licence and the documents to be filed in support of the licence application.

It is also possible to request confirmation by the SECO that a contemplated transaction is compliant with the relevant ordinance. Such confirmation is generally granted in the form of an informal ruling. In complex and high-profile matters, it is also possible to request a meeting with the SECO officials.

Those requests are handled by the SECO in a swift manner (generally between one and 10 days), depending on the complexity of the matter.

Reporting requirements

19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

Anyone who is directly or indirectly affected by coercive measures in accordance with the EmbA must provide the supervisory authorities appointed by the Federal Council with the information and documentation that is required for a comprehensive assessment or supervision to be carried out (article 3 EmbA). Similar obligations exist in the specific ordinances enacted on the basis of article 184(3) of the Cst.

Furthermore, in accordance with article 7(1) FIAA, persons or institutions who hold or manage in Switzerland assets of persons affected by an asset freeze must immediately report these assets to the Money Laundering Reporting Office Switzerland (MROS), Switzerland's central money laundering office.

Finally, persons or institutions in Switzerland who have knowledge of assets of persons affected by an asset freeze by virtue of the functions they perform, must report those assets immediately to the MROS.

TRADE SANCTIONS

General restrictions

20 | What restrictions apply in relation to the trade of goods, technology and services?

In Switzerland, trade in war material and military equipment has long been subject to a strict state control. If international sanctions relate only to war material and military equipment, Switzerland does not enact specific ordinances since the export of these goods can be prohibited pursuant to the War Material Act (WMA) and the Goods Control Act (GCA).

The following are deemed to be war materials in accordance with article 5(1) and (2) WMA:

- weapons, weapons systems, munitions and military explosives; and
- equipment that has been specifically conceived or modified for use in combat or for the conduct of combat and that is not as a general rule used for civilian purposes; individual components and assembly packages, which may also be partially processed, provided it is discernible that such components cannot be used in the same form for civilian purposes.

Dual-use goods are defined as goods that may be used both for civilian and military purposes (article 3(b) GCA).

Trade restrictions will, typically, include the prohibition of the sale or purchase, supply, export and transit of certain listed goods, technologies or software. The targeted goods may for instance be luxury goods, dual-use goods, goods intended for military purposes or for internal repression as well as certain goods used in the oil, gas, petrochemical or nuclear industry.

General exemptions

21 | Do any exemptions apply to the general trade restrictions?

The import, export and transit of war materiel require a licence from the Swiss Confederation (article 17(1) WMA). However, according to article 17(4) WMA, no licence is required by those who:

- import war materiel intended for use by the Swiss Confederation;
- bring firearms, their components or accessories, or their munitions or munitions components into Swiss territory under the legislation on weapons; and
- import explosives, pyrotechnic devices or propellant powder.

With regard to the dual-use goods, specific military goods and related technology, no general exemption is provided in the GCA.

Targeted restrictions

22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

Swiss authorities have not imposed any trade sanctions against dealing with any particular individual or entity outside of the individuals and entities listed in the Annexes to the ordinances listed above.

Exemption licensing – scope

23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

A licence is granted by the State Secretariat for Economic Affairs (SECO) if the trade does not contravene public international law and is not contrary to the principles of Swiss foreign policy and its international obligations.

In considering whether a licence should be issued, the SECO takes into account peacekeeping, international security and regional stability, as well as the human rights' situation in the recipient country.

With regard to war material, the WMA provides for a dual licence system. The manufacture of, trade in or brokering of war material for recipients abroad requires a licence, which ensures that the planned activity is not contrary to Switzerland's national interests. Conversely, a specific licence is required for the import, export or transit of war material, brokering and trade in war material for recipients abroad.

Exemption licensing – application process

24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

Licences are granted by the SECO. Since 1 October 2014 all applications (requests or preliminary enquiries) relating to dual-use goods, war materials as well as special military goods are recorded, processed and administered on Elic, an electronic licensing system managed by the SECO.

The timeline for a licence to be granted by the SECO varies for each case and depends on the complexity of the matter. In simple cases, a licence may be granted within two or three days. However, in complex cases, it could take several months for the licence to be granted since the SECO will carry out some research and consult other departments of the Federal Administration (eg, the FDFA or the Federal Department of Finance) before granting the licence.

Approaching the authorities

25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

The licencing process is conducted through Elic. This platform provides a helpdesk that can be reached either by telephone or email and with which it is possible to engage in discussions on licence applications or queries.

ENFORCEMENT AND PENALTIES

Reporting violations

26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

In accordance with the specific ordinances enacted by the Federal Council, persons or institutions who hold or manage assets or have knowledge of economic resources in Switzerland subject to an asset freeze must report these to the State Secretariat for Economic Affairs (SECO) without delay.

The report must include the name of the beneficiary, the purpose and the value of the assets and economic resources that may be subject to an asset freeze order.

The FIAA also provides that persons or institutions who hold or manage in Switzerland assets of persons affected by an asset freeze within the meaning of article 3 must immediately report these assets to Money Laundering Reporting Office Switzerland (MROS) (article 7 (1) Foreign Illicit Assets Act (FIAA)). Furthermore, persons or institutions in Switzerland who have knowledge of assets of persons targeted by an asset freeze by virtue of the functions they perform must report those assets immediately to MROS (article 7 (2) FIAA).

Investigations

27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

The SECO investigates, prosecutes and tries, in accordance with the Federal Act of 22 March 1974 on Administrative Criminal Law, violations of sanctions stemming from the Embargo Act (EmbA) or the specific ordinances enacted by the Federal Council. The SECO may also order the freezing or forfeiture of assets.

Upon request of the SECO, the Office of the Attorney General of Switzerland may initiate an investigation provided that this is justified by the seriousness of the offence (article 14(2) EmbA).

Penalties

28 | What are the potential penalties for violation of sanctions?

The consequences of non-compliance with compulsory sanctions measures are contained either explicitly in the specific ordinances based on article 184(3) Cst. or by referral to the EmbA in the ordinances based on this act. Non-compliance with compulsory measures can have regulatory and/or criminal consequences.

Sanctions often include financial sanctions such as the freezing of assets and financial resources and an obligation to inform the authorities of the frozen assets and resources. Financial intermediaries thus have an obligation not only to stay informed of sanctions in force and apply the required coercive measures, but also to comply with the obligation to inform the relevant authorities.

The Swiss Financial Market Supervisory Authority (FINMA) can therefore intervene in cases of violation of obligations arising from sanctions especially when deficiencies in the bank's organisation arise or when the bank's reputation within the meaning of article 3(2)(c) of the Swiss Banking Act of 8 November 1934 is at stake. FINMA can impose the measures it deems most appropriate to enforce compliance with the law, having regard to the principle of proportionality. The measures available range from a reprimand to specific orders to restore compliance with the law or even to the revocation of licences.

Non-compliance can also lead to criminal prosecution by Swiss authorities. A wide range of criminal penalties is possible depending on the type and gravity of the violation. Articles 9 to 13 EmbA provide for criminal penalties for breach of the provisions of the ordinances and draws a distinction between violations of the provisions of the ordinances as such and the non-compliance with the obligation to report. In the former case, offenders can be sentenced to fines of up to 1 million Swiss francs or prison terms of up to five years (article 9 EmbA), or both. In the latter, the sentence is a fine of up to 100,000 francs (article 10 EmbA).

Attempts, aiding and abetting are also subject to prosecution. Property and assets may also be forfeited. If a violation under the EmbA also qualifies as an offence under other acts, such as the War Materials Act, the Nuclear Energy Act, etc, then the criminal provisions of the act that provides for the most severe penalty apply.

The ordinances based on article 184(3) Cst, which impose the freezing of funds and other financial assets provide that whoever wilfully or negligently disposes of funds or of financial assets or transfers them abroad can be sentenced to a fine of up to 10 times the value of these funds or financial assets. An Individual who wilfully or negligently breaches the duty to report assets under his or her supervision or management, or has knowledge thereof, can be sentenced to a fine of up to 20,000 francs.

Finally, both the ordinances based on article 184(3) Cst and the EmbA provide for corporate liability by reference to article 6 of the Federal Act of 22 March 1974 on Administrative Criminal Law.

Recent enforcement actions

29 | Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

There are two important cases that relate to the listing or delisting procedure.

Mr Al-Dulimi

In the European Court of Human Rights (ECHR) Grand Chamber judgment in the case of *Al-Dulimi and Montana Management Inc v Switzerland* (application No. 5809/08), the ECHR held, by a majority, that there had been a violation of article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

The case concerned the freezing of the assets in Switzerland of Mr Al-Dulimi and the company *Montana Management Inc* pursuant to UN Security Council Resolution 1483 (2003), which provided for sanctions against members of the former Iraqi regime.

The ECHR found that none of the provisions of Resolution 1483 (2003) expressly prohibited the Swiss courts from ensuring that the measures taken at a national level in order to implement the Security Council's decisions complied with human rights. Adding individuals and entities to the lists of persons subject to the UN sanctions may trigger serious violations of the European Convention on Human Rights for those individuals and entities concerned.

In the ECHR's view, before implementing those measures, the Swiss authorities had a duty to ensure that the listings were not arbitrary. The Swiss Supreme Court had merely verified that the applicants' names actually appeared on the Sanctions Committee's lists and that the assets concerned belonged to them. The applicants should have been given at least a genuine opportunity to challenge their inclusion in the lists by submitting appropriate evidence to a court. Consequently, the ECHR held that the very essence of their right of access to a court had been violated.

Lastly, noting that the UN sanctions system had received very serious, reiterated and consistent criticisms, in particular in relation to the procedure for the listing of individuals and legal entities and the manner in which delisting requests were handled, the Court found that access to the delisting procedure could not replace appropriate judicial scrutiny at the level of the respondent state or even partially compensate for a lack thereof.

Rami Makhoul

The case of Rami Makhoul, cousin of Bashar al-Assad, relates to the implementation of the European Union sanctions against Syria by the Swiss authorities.

On 9 May 2011, the Council of the European Union adopted the Decision 2011/273/CFSP concerning restrictive measures in relation to the situation in Syria.

On 18 May 2011 and 8 June 2012, the Federal Council adopted ordinances imposing measures against Syria (ie, the freezing of assets and ban on entry into and transit through Switzerland of individuals listed in the annexes). Rami Makhoul was listed in those annexes as cousin of Bashar al-Assad.

On 21 January 2013, Rami Makhoul requested the release of his frozen assets in Switzerland, which was considered by the Swiss authorities as a request to be removed from the list to the annex to the Federal Council's ordinance dated 8 June 2012.

By decision dated 10 October 2017, the Swiss Supreme Court relied on the ECHR Grand Chamber's judgment in the case of *Al-Dulimi and Montana Management Inc v Switzerland* and found that, in accordance with article 6, paragraph 1 ECHR, the national courts are entitled to ensure that the inclusion in international sanctions lists is not arbitrary.

The Swiss Supreme Court reached the conclusion that the previous court (the Federal Administrative Court) was right to consider that the listing of Rami Makhoul was not arbitrary. More specifically, the Federal Administrative Court had established, based on the 'high degree of likelihood', that Rami Makhoul had close proximity to the Syrian government since he was mentioned in numerous media sources. His appeal was therefore dismissed.

The lesson to be learned from this decision is that the national courts' discretion in analysing whether a listing is arbitrary is limited to the high degree of likelihood.

UPDATE AND TRENDS

Emerging trends and hot topics

30 | Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

Several provisions of the EmbA should be revised to take into account amendments to the Swiss Criminal Code of 21 December 1937 (SCC), which was revised in 2007 and 2018. As it stands, in case of violation of a sanction, it is necessary to combine the provisions of the EmbA with the provisions of the SCC to determine the penalties incurred. A revision of the EmbA, therefore, appears necessary to that extent.

To remedy this situation, the Federal Council published, on 25 April 2018, a draft of a new Federal law aimed at harmonising penalties throughout the Swiss legal order and adapting federal criminal provisions to the amended penalty provisions provided in the SCC.

Following the Russian intervention in Ukraine in February 2022, the Federal Council decided to adopt, on 28 February 2022, the packages of sanctions imposed by the European Union (EU) on 23 and 25 February 2022 with respect to this intervention. These mainly concerned trade and financial sanctions.

As consequence of criticism in Switzerland regarding the efficiency of the measures, the Federal Council approved, on 4 March 2022 the full revision of the Ordinance on measures in connection with the situation in Ukraine, thus adopting the EU sanctions in force at that time.

On 16 March 2022, the Federal Council approved the total revision of the Ordinance on measures against Belarus, further to the EU's extension of its sanctions against Belarus from 2 and 9 March 2022 in view of the country's involvement in Russia's intervention in Ukraine. The newly adopted measures concern goods and financial services, in particular.

United Kingdom

Cherie Spinks and Alexandra Webster

Simmons & Simmons

GENERAL FRAMEWORK

Legislation

- 1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

The UK has an autonomous sanctions regime implemented by the Sanctions and Anti-Money Laundering Act 2018 (SAMLA) and various regulations made thereunder, as well as the Counter-Terrorism Act 2008 (the CTA 2008) and Anti-Terrorism, Crime and Security Act 2001 (the ATCSA 2001). This legislation enables financial, immigration, trade, aircraft and shipping sanctions to be implemented, and also measures connected with terrorism.

Autonomous versus international regimes

- 2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

The UK has an autonomous regime, but as a member of the United Nations (UN) Security Council it also automatically implements UN sanctions. Following the UK's withdrawal from the European Union (EU), UK sanctions are in broad alignment with EU sanctions, although there are some differences, in particular, between the lists of individuals and entities designated under the respective regimes. Since the UK's departure from the EU, there has continued to be coordination on the introduction of regimes.

Types of sanction imposed

- 3 | What types of sanction are imposed in your jurisdiction?

SAMLA, which is the principal piece of legislation governing the sanctions regime in the UK, provides for financial, immigration, trade, aircraft and shipping sanctions. The types of 'financial' sanctions that may be imposed include targeted asset freezes, restrictions on a wide variety of financial markets and services, and directions to cease the provision of business.

UK sanctions under SAMLA can be imposed for a number of reasons, including:

- for the purposes of compliance with a UN obligation;
- for the prevention of terrorism, in the UK or elsewhere;
- in the interests of national security;
- in the interests of international peace and security;
- aligning with foreign policy objectives;
- for the resolution of armed conflicts or the protection of civilians in conflict zones;
- addressing human rights issues;
- controls around weapons of mass destruction; or
- for the promotion of democracy, the rule of law and good governance.

Countries subject to sanctions

- 4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

The UK Foreign, Commonwealth and Development Office (FCDO) publishes information on the countries that are currently targeted by sanctions and embargoes (by different instruments, and for different reasons). They are currently: Afghanistan; Armenia and Azerbaijan; Belarus; Bosnia and Herzegovina; Burundi; Central African Republic; China and Hong Kong; North Korea; Democratic Republic of the Congo; Guinea; Republic of Guinea-Bissau; Iran; Iraq; Lebanon; Libya; Mali; Myanmar; Nicaragua; Russia; Somalia; South Sudan; Sudan; Syria; Venezuela; Yemen; and Zimbabwe. An up-to-date list is maintained on the UK government's website.

Non-country specific regimes

- 5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

The UK regime provides for sanctions to be put in place with a number of different objectives. In 2020, the UK implemented a new global human rights sanctions regime. The list of persons designated under those sanctions can be viewed here. Currently, 72 individuals and six entities have been designated under that regime. For example, in February 2021, the UK announced the designation of three members of the Myanmar military for human rights violations in the jurisdiction following the military coup, and sanctions against four Zimbabwean security chiefs in response to human rights violations in 2019 when a number of individuals were killed protesting free speech. The UK has also designated individuals in China in relation to the treatment of the Uighur minority.

In April 2021, the UK put in place sanctions to prevent and combat serious corruption. There are currently 27 individuals subject to asset freeze restrictions under this regime, including those who are said to have been involved in corruption in, for example, Russia, Venezuela and South Africa. The current list of individuals designated under this regime can be viewed here.

Separately, the UK has implemented measures aimed at furthering the prevention of cyberactivity for a number of reasons including undermining the integrity, prosperity or security of the UK, or for causing (or intending to cause) economic loss to those affected. The current list of individuals and entities designated under this regime can be viewed here.

Counter-terrorism sanctions

- 6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

The UK has in place certain sanctions to further the prevention of terrorism in the UK and protect national security interests, as follows:

- Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019;

- ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) regime;
- Counter-Terrorism (International Sanctions) (EU Exit) regime;
- Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2019;
- Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2020; and
- Sanctions (EU Exit) (Miscellaneous Amendments (No.3) regulations 2020.

Among other things, these sanctions enable asset freezes in relation to proscribed terrorist organisations to be implemented. The sanctions sit alongside prohibitions on financing terrorist activities set out in the Terrorism Act 2000, and further secondary legislation forming part of the anti-money laundering frameworks in the UK, which provide for criminal liability for terrorist financing.

Anti-boycott laws

7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

Post-Brexit, the UK has retained the parts of its legislative framework that implemented the EU Blocking Regulation (see The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020). It therefore has measures in place to counter US sanctions against Iran and Cuba, by making it illegal for UK persons (ie, UK nationals and UK-incorporated entities) to comply with the relevant US sanctions and protecting UK persons from the extraterritorial effect of the US regime.

Scope of application

8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

UK financial sanctions under SAMLA apply to all persons within the UK territory and to all UK persons (ie, UK nationals and UK-incorporated entities), wherever they are in the world. In addition, anyone conducting activities within the UK (whether or not they are a UK person) must comply with UK sanctions in respect of those activities. The HM Treasury department Office for Financial Sanctions Implementation (OFSI) has indicated that it will take action to enforce the extraterritorial effect of UK sanctions, but not where it would be 'artificial' to do so. Specifically:

3.6 A breach does not have to occur within UK borders for OFSI's authority to be engaged. To come within OFSI's enforcement of sanctions, there has to be a connection to the UK, which we call a UK nexus.

3.7 A UK nexus might be created by such things as 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. These examples are not exhaustive or definitive – whether or not there is a UK nexus will depend on the facts in the case (see OFSI's Guidance on Monetary Penalties for Breaches of Financial Sanctions).

Competent sanctions authorities

9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

The following government departments and bodies have authority in relation to UK sanctions:

| Department | Role | Website |
|---|---|--|
| Foreign, Commonwealth and Development Office (FCDO) | Responsible for the UK's international sanctions policy, including all international sanctions regimes and designations. Negotiates all international sanctions | www.gov.uk/government/organisations/foreign-commonwealth-development-office |
| HM Treasury (Office of Financial Sanctions Implementation (OFSI)) | OFSI is the authority responsible for implementing the UK's financial sanctions on behalf of HM Treasury | www.gov.uk/government/organisations/office-of-financial-sanctions-implementation |
| Department for International Trade (Export Control Joint Unit (ECJU)) | Implements trade sanctions and embargoes | www.gov.uk/government/organisations/export-control-organisation |
| Department for Transport | Implements transport sanctions, including controlling movement of ships and aircraft in UK waters and airspace | www.gov.uk/government/organisations/department-for-transport |
| Home Office | Implements travel bans | www.gov.uk/government/organisations/home-office |
| HM Revenue & Customs (HMRC) | Enforces breaches of trade sanctions | www.gov.uk/government/organisations/hm-revenue-customs |
| National Crime Agency (NCA) | Investigates and enforces criminal breaches of financial sanctions | www.nationalcrimeagency.gov.uk/ |
| Crown Prosecution Service (CPS) | Enforces criminal breaches of trade sanctions | www.cps.gov.uk/ |

Business compliance

10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

The UK regime provides for criminal liability for breaching financial sanctions, and therefore while there is no legal requirement to have in place systems and controls to prevent breaches of sanctions, it is good practice to have the relevant controls in place to identify potential non-compliance in advance and to prevent its occurrence. Further, the UK's Financial Conduct Authority, which regulates businesses in the financial sector, requires firms to have in place appropriate systems and controls to prevent financial crime occurring. This includes putting in place appropriate measures such as carrying out due diligence on customers, clients and counterparties to identify any persons designated under sanctions, and screening to ensure that transactions will not breach sanctions regimes. Businesses exporting or importing goods to or from jurisdictions subject to export control measures will also need to implement measures to monitor whether restrictions are in place in respect of certain goods.

Guidance

11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

There is a helpful guide to financial sanctions issued by OFSI, which is available here. There is also guidance published for the financial services industry by the Joint Money Laundering Steering Group regarding anti-money laundering which may assist firms in applying

sanctions compliance processes and controls to the products and services they offer.

In addition, the Department for International Trade and the Export Control Joint Unit maintains guidance on controlled goods, which includes restrictions on dual-use items, military items and broader trade sanctions (see the government’s guidance here).

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

The provisions on asset freezes under the UK regime are set out in the Sanctions and Anti-Money Laundering Act 2018 (SAML A). They apply to named individuals and entities, whose names are published on a consolidated list (known as ‘designated persons’), and restrict their access to funds and economic resources. The UK government can identify persons either by name or by description where it has reasonable grounds to believe that the person is, involved with, owned or controlled, or acting on behalf of a person involved in an activity which is of the type within scope of SAML A, for example, human rights abuses or illegal arms dealing. It can also designate persons to give effect to UN sanctions.

Dealing with funds or economic resources belonging to, or owned, held or controlled by, a designated person, is prohibited. It is also prohibited to make funds or economic resources available, directly or indirectly to, or for the benefit of, a designated person. In addition, it is prohibited to undertake activities that, directly or indirectly, circumvent financial sanctions.

‘Funds’ is broadly defined and covers financial assets and benefits of every kind including securities, bonds, dividends and letters or credit. ‘Economic resources’ means assets of any kind that are not funds but may be used to obtain funds, goods or services. This includes, for example, precious metals and stones, and vehicles.

General carve-outs and exemptions

13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

While it is possible to apply to OFSI for a licence to engage in activity that would otherwise breach financial sanctions, other than acting under such a licence, there are very limited exceptions to the asset freezing regime in the UK under SAML A. The exceptions available provide that:

- a person may credit a frozen account with interest due, to discharge an obligation arising from the period prior to the freeze, or to accept third party funds on notice to OFSI (but in all cases the account must remain otherwise frozen);
- independent (non-sanctioned) persons may transfer their legal or equitable interests in frozen funds or economic resources to another person provided that they themselves are not holding the interests jointly with a sanctioned person and are not owned or controlled by them; and
- UK banks may transfer funds that would otherwise be frozen in order to comply with ring-fencing obligations (ie, those separating retail and non-retail business).

List of targeted individuals and entities

14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

Yes, OFSI maintains a ‘consolidated list’ of persons subject to an asset freeze, which is available here. This is separate to the list covering entities subject to restrictions in the financial markets, which is available here.

Other restrictions

15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

The UK has in place sanctions limiting access to financial services and investments for persons subject to restrictive measures in light of Russian involvement in Ukraine. Under these restrictions it is, currently, prohibited to deal in certain transferable securities and money market instruments if they have a maturity exceeding 30 days and were issued after either 1 August 2014 (for certain specified companies) or 12 September 2014 (for other specified companies). Subsidiaries established in a country other than the UK and owned (directly or indirectly) by one of the specified companies are also subject to the restrictions. It is not possible to obtain a licence to carry out the prohibited activities, but the measures do provide limited exemptions to allow dealing for the purposes of national security reasons or for the prevention of crime. It is also prohibited to grant loans or credit with a maturity of more than 30 days to specified companies (and their non-UK established subsidiaries).

OFSI has issued guidance on the Russia sectoral restrictions, which can be viewed on its website here. The guidance lists the companies specified under these restrictions. It also details other sectoral restrictions relating to the areas of Crimea and Sevastopol, for example, restrictions relating to acquisition of land in those areas.

The sectoral provisions in respect of Russia and Ukraine are expected to be broadened in March 2022.

Exemption licensing – scope

16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

OFSI can issue a licence to do an otherwise prohibited act where certain specific licensing grounds apply. These will vary according to the underlying sanctions but, in broad terms, OFSI’s approach to certain types of licence application under SAML A is set out in guidance (pages 26–28) and is summarised as follows:

| Licensing ground | OFSI's approach |
|---|--|
| Basic needs | Enables the basic needs of a designated person (ie, an individual or entity subject to an asset freeze), or (in the case of an individual) any financially dependent family member of such a person to be met and to ensure that they are not imperilled. Meeting basic needs does not necessarily mean that a person will be able to continue the lifestyle or business activities they had prior to designation. For entities, basic needs include (not an exhaustive list): payment of insurance premiums, payment of reasonable fees for the provision of property management services, payment of remuneration, allowances or pensions of employees, and rent or mortgage payments. |
| Fees for the provision of legal services | In general, it is possible for lawyers to provide legal advice or to act for a designated person without a licence. However, a licence is required to enable a lawyer to receive payment and OFSI recommends that a licence is sought in advance of the provision of any substantive legal services. OFSI requires that the licence applicant demonstrate that the legal fees and disbursements are reasonable. To do this, an estimate of the anticipated fees or fees that have already been incurred, a fee breakdown and identification of any disbursements should be provided with the application. |
| Routine maintenance of frozen funds or economic resources | Fees or service charges must be reasonable and result in the routine holding or maintenance of frozen funds or economic resources. OFSI will not generally provide a licence for refurbishment or redevelopment of properties to improve their value but will consider such requests on a case-by-case basis. |
| Extraordinary expenses | OFSI does not permit this licensing ground to be used if other grounds are more suitable. Expenses must be extraordinary in nature, ie, unexpected, unavoidable and not recurring. |
| Pre-existing judicial decisions etc. | Enables the use of frozen funds or economic resources that are the subject of a judicial decision or lien that was established before the date of designation and that is enforceable in the UK. The funds or economic resources must be used to implement or satisfy (in whole or in part) the pre-existing judicial decision or lien. They cannot be used for the benefit (whether direct or indirect) of a designated person. |
| Humanitarian assistance activity etc. | Enable payments to facilitate humanitarian activity or activity where its purposes are consistent with the objectives of UN Security Council Resolutions. This will include the work of international and non-governmental organisations carrying out relief activities for the benefit of the applicable civilian population, such as delivery of aid or peace-building programmes. OFSI notes that a licence may still be required even if the activity involves using government funds. |
| Diplomatic missions | Enables anything to be done in order that the proper functions of a diplomatic mission or consular post, or an international organisation may be carried out. |
| Extraordinary situations | This ground applies to non-UN designated persons and enables anything to be done to deal with an extraordinary situation. OFSI explains that this will enable a situation that is extraordinary in nature but does not necessarily involve an expense. 'Extraordinary' means unexpected, unavoidable and not recurring. For example, it may allow for funds to be released to support disaster relief or provide aid in extraordinary situations. Like the 'extraordinary expenses' ground, it cannot be used where other grounds are more suitable. |
| Prior obligations | Enables funds or economic resources to be used to satisfy an obligation in existence prior to the date of designation. It does not permit funds or economic resources to be made available (directly or indirectly) to a designated person. |

Where the relevant sanctions derive from other primary legislation (such as the Anti-Terrorism Crime and Security Act 2001), then OFSI will consider the grounds applicable under that legislation, which may differ.

OFSI also has the power to issue 'general licences' permitting specified activities which would otherwise be prohibited, without the need to apply for a specific licence. It is not possible to apply for a general licence – they are issued for specific policy reasons by the UK government, for example:

- there is a general licence published under the Russia (Sanctions) (EU Exit) Regulations 2019, which permits payments to be made to sea ports that would otherwise be unlawful, subject to both prior notification to OFSI and post facto reporting; and
- on 25 February 2022, a general licence was published under the Russia (Sanctions) (EU Exit) Regulations 2019 to allow for the wind-down of any positions involving VTB Bank and VTB Capital plc.

Exemption licensing – application process

17 | What is the application process for an exemption licence?
What is the typical timeline for a licence to be granted?

Applications for a licence should be made by submitting completed form (using OFSI's template) to ofsi@hmtreasury.gov.uk. The following information should be included with the application:

- the amount of an intended payment;
- the intended purpose of the transaction or funds;
- the intended payment routes;
- the sender and receiver of funds, including any intermediaries and beneficiaries;
- how the funds will be accounted for; and

- an explanation of the reasonableness of any proposed payment (where relevant).

OFSI aims to engage with applicants within four weeks of the licence request. This does not, however, mean that a licence will necessarily be granted within that time frame. In certain cases, OFSI will need to seek approval from the UN Sanctions Committee before a licence is issued. That will lengthen the processing time. OFSI will prioritise urgent or humanitarian licence requests.

Approaching the authorities

18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

It is possible to contact OFSI at ofsi@hmtreasury.gov.uk or by calling 020 7270 5454 with queries about the licence regime, the practicalities of submitting an application and the evidentiary requirements. In our experience, OFSI will not provide an indication of whether a licence is likely to be granted in a theoretical scenario and it will not provide legal advice on the sanctions requirements.

Reporting requirements

19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

All businesses in the regulated sector (as set out on page 19 of OFSI's guidance) are required to report to OFSI where they know or suspect either that their customer is a designated person, or that an

offence has been committed under sanctions legislation by another person, where the information upon which that knowledge or suspicion is based comes to them in the course of business. Information provided to a regulated person in privileged circumstances is protected from disclosure.

This means that there will be a reporting obligation where businesses holding frozen assets become aware, for example, that a person is attempting to move those assets or to circumvent the legislation. Businesses should also bear in mind that such situations may give rise to a separate reporting obligation under the money laundering regime, if potential money laundering is identified. A report to OFSI does not discharge the duty to report to the NCA by filing a SAR, or vice versa.

In addition to the reporting regime, OFSI has statutory powers to compel the production of information, where a failure to comply carries criminal liability.

TRADE SANCTIONS

General restrictions

20 | What restrictions apply in relation to the trade of goods, technology and services?

As well as financial sanctions, trade sanctions may be implemented under the Sanctions and Anti-Money Laundering Act 2018 (SAMLA) placing controls on:

- the import, export, transfer, movement, making available and acquisition of goods and technology;
- the provision and procurement of services related to goods and technology;
- the provision and procurement of certain other non-financial services; and
- the involvement of UK people in these activities.

Moreover, as well as SAMLA, there are further controls around exports from the UK under the Export Controls Act 2008, administered by a specific Export Control Joint Unit within the Department for International Trade (DIT). Licences are required to export controlled goods, software, and technology from the UK (including military and dual-use items) to another country. Details can be found on the government’s website, here. Certain activities, such as the export of military items, may require licences from both HM Treasury department Office for Financial Sanctions Implementation (OFSI) and the DIT.

General exemptions

21 | Do any exemptions apply to the general trade restrictions?

There are exceptions available under the Export Control Act 2008 specific to each type of item. For example, to ensure that a transfer of technology that is already in the public domain will not be prohibited by the controls set out in the Act.

Targeted restrictions

22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

Both ISIL and Al Qaeda are subject to sanctions derived from the UN regime, involving both asset freezes and arms embargoes. The trade sanctions include prohibitions on export, supply and delivery of military goods, making available, transferring or providing technical assistance in relation to military goods or technology, and restrictions around the provision of financial services or making funds available to these organisations. There is also a prohibition on providing brokering services to

enable any of these restrictions to be circumvented. The regulations are available on the government’s website here.

Exemption licensing – scope

23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

Where the relevant sanction is a trade sanction administered by the ECJU rather than a ‘financial sanction’ administered by OFSI, an application may similarly be made to the ECJU for a licence to undertake an activity that would otherwise be prohibited. The ECJU has also issued a series of open general export licences (OGEL) applying to different scenarios.

Exporters must register with the ECJU before relying on an OGEL.

Exemption licensing – application process

24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

There are a number of different export control licences available and it is recommended that new exporters seek guidance on the requirements and application process. For licences relating to the export of military or dual-use items, applications should be made on the unit’s online system SPIRE.

Timelines for licences to be published vary depending on the type of licence sought and the end jurisdiction of the goods, but they are often processed within 20 days. The DIT publishes quarterly reports on export licensing decisions, which include statistics on processing times. For example, see page 13 of the DIT’s Strategic Export Controls: Country Pivot Report for the period of 1 July 2020 to 30 September 2020 (published February 2021).

Approaching the authorities

25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

It is possible to contact the ECJU for assistance with licence applications by email at exportcontrol.help@trade.gov.uk or by telephone on 020 7215 4594.

ENFORCEMENT AND PENALTIES

Reporting violations

26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

All businesses in the regulated sector (as set out on page 19 of the Office of Financial Sanctions Implementation (OFSI)’s guidance) are required to report to OFSI where they know or suspect that an offence has been committed under sanctions legislation by another person, where the information upon which that knowledge or suspicion is based comes to them in the course of business. Information provided to a regulated person in privileged circumstances is protected from disclosure. There is no general duty that applies to non-regulated persons to report crime to the authorities in the UK; but it is open to anyone to do so.

While there is no obligation on individuals or entities (whether in the regulated sector or not) to self-report breaches of sanctions, HM Treasury department Office for Financial Sanctions Implementation (OFSI) may consider a voluntary disclosure to be a mitigating factor

when assessing whether a person has committed a breach. OFSI states in its guidance on Monetary Penalties (at 3.28):

OFSI values voluntary disclosure. Voluntary disclosure of a breach of financial sanctions by a person who has committed a breach may be a mitigating factor when we assess the case. It may also have an impact on any subsequent decision to apply a penalty.

HMRC also encourages receipt of voluntary disclosures of export control violations. The UK Strategic Export Controls Annual Report (published 30 November 2020) shows that, of 199 voluntary disclosures received by HMRC during 2019, 60 resulted in no further action being taken (see 8.2 of the report).

Investigations

27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

Various bodies including OFSI, ECJU, HMRC and the NCA are responsible for sanctions investigations and enforcement in the UK. Each body has its own powers to investigate matters within its remit under different legislation – for example, the compulsory powers that OFSI may use to require documents and other information to be produced (which are described above); there are separate powers available to HMRC; and the NCA can deploy powers under the Police and Criminal Evidence Act 1984 to obtain production orders from the courts, which can then be served on the subject without notice and create criminal liability for non-compliance.

Penalties

28 | What are the potential penalties for violation of sanctions?

A breach of sanctions can constitute a criminal offence. The maximum penalty is set out in the secondary legislation (ie, the regulations implementing the specific sanctions) but is subject to a maximum of 10 years' custody on indictment. For example, the penalty for breach of an asset freeze on summary conviction in England and Wales is imprisonment for a term not exceeding 12 months or a fine (or both) or seven years on conviction on indictment or a fine (or both).

The financial penalties can be very severe. Using its civil enforcement powers, OFSI can impose a maximum penalty of the greater of £1 million or half the value of the breach for breaches of the sanctions rules. Penalty discounts are available for voluntary disclosures depending on the circumstances of the case; and there are recently issued guidelines regarding how OFSI intends to approach this in the future.

Recent enforcement actions

29 | Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

Since it acquired the power to impose fines under a civil enforcement regime in 2017, OFSI has done so six times. The most significant case to date involved the largest penalty of £20.47 million being imposed against Standard Chartered Bank (SCB). SCB was penalised for making loans to Denizbank, a Turkish bank that was majority owned by Sberbank, a state-owned Russian bank. Our expectation, in line with the revised guidance on penalties, is that OFSI's enforcement activity will continue to increase.

UPDATE AND TRENDS

Emerging trends and hot topics

30 | Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

Following Brexit, the UK now has an autonomous sanctions regime and has already demonstrated that it is able to act more expeditiously than the EU in response to events. For example, the UK implemented a new Global Human Rights regime in July 2020 and the equivalent EU regime was not adopted until December 2020. The UK has also been quicker to designate individuals under those sanctions and we expect the UK to continue utilising that regime rather than creating new regimes for specific jurisdictions. The UK also implemented a global sanctions regime specifically targeting corruption during 2021.

Over the next year or two, we will increasingly see whether the UK aligns its sanctions policy with the EU or the US, or whether it will forge its own path. Recent events in Ukraine have shown that the UK will work closely with the EU, US and other Western powers to impose coordinated measures (in this case, against Russia).

United States

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GENERAL FRAMEWORK

Legislation

1 | What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

The United States has numerous statutes that authorise economic and trade sanctions, including the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA). Under IEEPA, which was enacted in 1977, the president has the authority to declare a national emergency in response to any 'unusual and extraordinary' threats to the 'national security, foreign policy, or economy of the United States'. Under the authority of 50 USC § 1701, the president can issue executive orders, as well as implement regulations, which include prohibitions on certain activities and asset blocking or freezing requirements.

The TWEA was enacted in 1917 and provides the president with authority to restrict trade between the US and foreign nations, governments, and persons during wartime (50 USC § 4301 et seq). The TWEA is currently the underlying statute for the US-Cuba sanctions programme.

The US has enacted additional legislation permitting the implementation and enforcement of economic sanctions, including the United Nations Participation Act of 1945 (UNPA), Hong Kong Autonomy Act (HKAA), North Korean Sanctions and Policy Enhancement Act of 2016 (NKSPEA), Countering America's Adversaries Through Sanctions Act (CAATSA), and the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA).

Autonomous versus international regimes

2 | Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

US sanctions legislation generally permits the implementation of unilateral sanctions. However, through the UNPA, the US is permitted to implement and enforce sanctions adopted by the United Nations Security Council. Various administrations have taken different approaches to economic sanctions, some preferring a more multilateral approach (the Biden administration) compared to others that have taken a more unilateral approach (the Trump administration). In short, US law permits both approaches, and the use of economic sanctions often has bipartisan support in Congress.

Types of sanction imposed

3 | What types of sanction are imposed in your jurisdiction?

There are numerous forms of sanctions that can be imposed under US law, including blocking sanctions, export or import restrictions, visa

restrictions, foreign exchange prohibitions and prohibitions relating to the activities of financial institutions, among others.

Countries subject to sanctions

4 | Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

The US has imposed sanctions, to some degree, against numerous countries and territories, a list of which can be found on the US Department of the Treasury's Office of Foreign Assets Control (OFAC) website here. The extent of the sanctions imposed largely depends on US foreign policy and can vary with administrations and congressional priorities. For example, as of February 2022, the US has imposed comprehensive sanctions against the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria, representing almost total transaction bans.

Non-country specific regimes

5 | What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

The US has enacted additional sanctions programmes that are not country-specific, including those targeting human rights abuses and cybersecurity. With respect to human rights sanctions, the Global Magnitsky Human Rights Accountability Act (GMA) and Executive Order 13818 were enacted following the torture and killing of lawyer Sergei Magnitsky by Russian officials. Executive Order 13818, which implements the GMA, has recently been used to sanction Chinese officials and entities allegedly responsible for serious human rights abuses in the Xinjiang Region of China and Saudi Arabia nationals deemed responsible for the killing of journalist Jamal Khashoggi. Additionally, the Uyghur Human Rights Policy Act of 2020 was enacted in June 2020 and focuses on human rights abuses targeted at the Uyghur people, including in the Xinjiang Region of China.

With respect to cybersecurity, Executive Orders 13694 and 13757 address cybersecurity threats to the US, including those targeting critical infrastructure, misappropriation of funds, and election processes. Both executive orders have been implemented into the Cyber-Related Sanctions Regulations. In addition, during 2021, the US imposed additional sanctions against Russia relating to its malicious cyber activities. See E.O. 14024.

Counter-terrorism sanctions

6 | What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

The US has enacted and implemented several sanctions programmes targeting terrorist activities, including the Counter Terrorism Sanctions (CTS). The CTS include Executive Order 13224, as amended by Executive Orders 13372 and 13886.

Executive Order 13224 was issued in September 2001 following the September 11 attacks. Executive Order 13224 imposed economic sanctions on persons who have been determined to have committed an act of terrorism, or who pose a significant risk of committing acts of terrorism, as well as persons determined to be owned or controlled by such person or to provide support to such persons, among other prohibitions.

President Trump issued Executive Order 13886 in September 2019, which was an attempt to modernise and consolidate certain counter-terrorism sanctions authorities. Executive Order 13886 generally prohibits US persons from transacting with or otherwise dealing in the property of persons determined to have committed, attempted to commit, or otherwise pose a threat of committing acts of terrorism that threaten the security of the US, among other restrictions (Global Terrorism Sanctions Regulations (31 CFR Part 594)).

Additionally, the State Department can designate foreign terrorist organisations under section 219 of the Immigration and Nationality Act, a list of which can be found here.

Anti-boycott laws

7 | Are any blocking or anti-boycott laws in place in your jurisdiction?

The US has enacted anti-boycott laws, including two main laws at the federal level. The Commerce Department's Bureau of Industry and Security (BIS) administers and enforces the anti-boycott provisions contained in the Export Administration Regulations (EAR), while the Treasury Department is responsible for administering and enforcing the anti-boycott provisions laid out in the Tax Reform Act of 1976, which are contained in section 999 of the Internal Revenue Code.

The EAR's anti-boycott restrictions apply to the activities of US persons that do business in the interstate or foreign commerce of the US, such that US persons cannot 'refuse, knowingly agree to refuse, require any other person to refuse, or knowingly agree to require any other person to refuse, to do business with or in a boycotted country, with any business concern organised under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other person, when such refusal is pursuant to an agreement with the boycotting country, or a requirement of the boycotting country, or a request from or on behalf of the boycotting country' (15 CFR § 760.2[a](1)).

Under the US tax laws, US persons must annually report the receipt of any request to participate in or cooperate with a boycott, regardless of whether they plan to assent to such request. Section 999's reach is broad, such that if the taxpayer 'knows or has reason to know that participation in or cooperation with an international boycott is required as a condition of doing business' within a boycotting country or with a boycotting entity, the taxpayer must report regardless of whether it has direct contact with such country or entity.

Scope of application

8 | Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

US sanctions generally apply to US persons, that are typically defined as US citizens, permanent resident aliens, entities organised under the laws of the US or any jurisdiction within the US (including foreign branches), or any person in the US.

Under certain US sanctions programmes, foreign subsidiaries owned or controlled by US persons are subject to certain restrictions. For example, under the Iranian Transactions and Sanctions Regulations (ITSR), an entity that is owned or controlled by a US person, and established or maintained outside the US, is prohibited from knowingly engaging in any transaction (directly or indirectly) with the government

of Iran or any person subject to the jurisdiction of the government of Iran that 'would be prohibited . . . if engaged in by a United States person or in the United States'.

Under the Cuban Assets Control Regulations (CACR) persons 'subject to US jurisdiction' are prohibited from engaging in certain transactions, including those that directly or indirectly involve the interests of the Cuban government or a Cuban person. The CACR defines persons subject to US jurisdiction to include entities owned or controlled by US citizens, residents or entities organised under the laws of the US.

Additionally, non-US persons could face US regulatory scrutiny if they engage in transactions that transit the US, including the US financial system, or otherwise subject themselves to US enforcement jurisdiction. For example, non-US persons have been penalised for engaging in activities that cause US persons to violate their sanctions obligations. See, for example, *CSE Global Limited and CSE TransTel Pte Ltd Enforcement Action* (27 July 2017), available here.

Finally, the US has enacted secondary sanctions that have an extraterritorial effect, under which non-US persons could be subject to various penalties for facilitating significant transactions with certain individuals and entities (see generally, CAATSA, HKAA, CISADA).

Competent sanctions authorities

9 | Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

US sanctions are primarily administered and enforced by OFAC. The US Department of Justice (DOJ) has authority to enforce criminal violations of certain US sanctions programmes, while the US Department of State's Directorate of Defense Trade Controls (DDTC) in the Bureau of Political-Military Affairs implements the International Traffic in Arms Regulations (ITAR) pursuant to the Arms Export Control Act, among other things.

Additionally, the BIS administers and enforces the EAR, which are the primary export control regulations in the US.

Business compliance

10 | Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

Under the US Bank Secrecy Act, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001, certain financial institutions are required to adopt and implement anti-money laundering (AML) compliance programmes (see the PATRIOT Act, section 352). Establishing an effective AML compliance programme also involves sanctions and terrorist financing compliance controls and screening.

OFAC published its Framework for OFAC Compliance Commitments in May 2019, which set forth OFAC's compliance expectations and best practices for those subject to US jurisdiction, as well as foreign entities that conduct business in the US, with US persons, or using US-origin goods or services. The Framework recommends a risk-based sanctions compliance programme, which should be predicated on and include the following five essential elements: (1) management commitment; (2) risk assessment; (3) internal controls; (4) testing and auditing; and (5) training. A copy of the framework can be found here. In October 2021, OFAC also published its Sanctions Compliance for the Virtual Currency Industry, which sets forth OFAC's compliance expectations for those in the cryptocurrency and blockchain industries, building upon the Framework for OFAC Compliance Commitments. A copy of the publication can be found here.

Additionally, OFAC's Economic Sanctions Enforcement Guidelines provide for numerous aggravating and mitigating factors that OFAC will

consider in response to an apparent violation of US sanctions and when determining the amount of a civil monetary penalty (if appropriate), including whether the violation was wilful, awareness of the conduct at issue, and the remedial response.

Guidance

11 | Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

The US periodically publishes formal written guidance, typically in the form of Frequently Asked Questions (FAQs). OFAC, for example, has long maintained a list of FAQs for many of the sanctions programmes that it administers. The consolidated list of OFAC FAQs is available [here](#).

OFAC also regularly publishes industry guidance, often in the form of public advisories. A consolidated page of OFAC advisories can be found [here](#). OFAC also publishes guidance focused on particular industry practices. For example, in October 2020, OFAC published the 'Advisory and Guidance on Potential Sanctions Risks Arising from Dealings in High-Value Artwork', which addressed the sanctions risk that art galleries, museums, private collectors, auction companies, agents, brokers and other participants in the art market face when transacting with sanctioned or otherwise blocked persons. In February 2022, the Treasury Department published a study on the facilitation of money laundering and the financing of terrorism through the trade in works of high-value art, following up from its advisory. A copy of the Treasury's study can be found [here](#). Additionally, OFAC has issued numerous advisories to the maritime industry, including most recently in May 2020 in coordination with the Department of State and Coast Guard. The Maritime Advisory addressed compliance best practices in the maritime and transportation industry, with a focus on preventing sanctions evasion, smuggling, the facilitation of terrorist activities, and the proliferation of weapons of mass destruction.

OFAC also recently updated its advisory regarding ransomware-related payments titled 'Updated Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments'. The Ransomware Advisory focused on the sanctions risks associated with ransomware payments related to malicious cyber-enabled activities.

OFAC also published numerous business advisories in 2021 and 2022, including advisories warning of the high-risk in doing business in Cambodia, Hong Kong and Burma.

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

12 | In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

US persons are generally required to 'block' (eg, freeze) any property or interests in property of a sanctioned or blocked person that the US person possesses or controls (see, for example, 31 CFR § 560.211). The US blocking requirements apply to US persons wherever they are located. Additionally, any property or interests in property of sanctioned or blocked persons that is located within the US could be subject to blocking requirements.

OFAC's blocking requirements also apply to entities that are owned 50 per cent or more by a sanctioned person. Under OFAC's 50 per cent rule, the property and interests in property of entities directly or indirectly owned 50 per cent or more, in the aggregate, by one or more blocked persons, are themselves deemed blocked (see Revised Guidance on Entities Owned By Persons Whose Property And Interests in Property Are Blocked, Office of Foreign Assets Control (OFAC), 13 August 2014; OFAC FAQ 401). Thus, if one or more sanctioned individuals

owns an entity, and their collective ownership stake is over 50 per cent, then that entity and the entity's property will themselves be the subject of sanctions and subject to OFAC blocking requirements.

General carve-outs and exemptions

13 | Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

With respect to humanitarian-related matters, US sanctions often permit US persons to engage in humanitarian-related transactions with countries or territories that are the subject of comprehensive sanctions. For example, under the ITSR, US persons can engage in certain transactions with Iran relating to agricultural commodities, medicine, medical devices and certain related software and services (see 31 CFR §§ 560.530, 560.532, 560.533). Additionally, under the US-Venezuela sanctions, US persons can engage in certain transactions related to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates with certain persons otherwise sanctioned (see generally OFAC General License 4C).

The US has also enacted statutory exceptions for humanitarian matters. The International Emergency Economic Powers Act (IEEPA), for example, contains several of such exemptions (see 50 USC § 1702(b)(2)) (providing that IEEPA generally does not grant the president the authority to regulate or prohibit, directly or indirectly, donations of articles such as food, clothing, and medicine intended to be used to relieve human suffering). OFAC has also issued general licences and extensive guidance under its Counter-Terrorism Sanctions relating to humanitarian aid, particularly in the context of Afghanistan (see General Licenses 14, 15, 16, 18 and 19).

There are additional exemptions relating to personal communications and information materials. Under the personal communications exception to IEEPA, the president's IEEPA authority does not include the authority to directly or indirectly regulate or prohibit any 'postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value' (50 USC § 1702(b)(1)).

The information material exception to IEEPA provides that the president cannot directly or indirectly regulate the import or export of any 'information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMS, artworks, and news wire feeds' (50 USC. § 1702(b)(3)).

List of targeted individuals and entities

14 | Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

OFAC maintains numerous sanctions lists, which are incorporated into the Consolidated Sanctions List. The lists that are incorporated into the Consolidated Sanctions List include the Specially Designated Nationals and Blocked Persons List (the SDN List), the Sectoral Sanctions Identification List, Foreign Sanctions Evaders List, and Non-SDN Menu-Based Sanctions List, among others. The full category of lists can be found [here](#). OFAC also maintains the Non-SDN Chinese Military-Industrial Complex Companies List (NS-CMIC List), which reflects entities and securities that are the subject of sanctions imposed by EO 13959, as amended by EO 14032.

BIS maintains the Entity List, which reflects the names of certain foreign persons that are subject to specific license requirements for the export, re-export, or transfer of specific US-origin items. The Entity List is found in Supplement No. 4 to Part 744 of the EAR and is located [here](#).

The US State Department maintains numerous lists as well, including a list of Foreign Terrorist Organisations, State Sponsors of Terrorism, Cuba Restricted List and Cuba Prohibited Accommodations List.

Other restrictions

15 | What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

The US has implemented certain restrictions that are not full transaction bans. For example, the Ukraine–Russia-related sanctions programme administers a sectoral sanctions programme, targeting specific sectors of the Russian economy (see OFAC Directives 1–4 Under EO 13662).

Additionally, the US has recently implemented the Chinese Military Company Sanctions programme, which prohibits US persons from transacting in any publicly traded securities (or securities that are derivative of or designed to provide investment exposure to such securities) of entities that the Secretary of the Treasury determines to either: (1) 'operate or have operated' in the defence and related material sector, or the surveillance technology sector, of the People's Republic of China (PRC) economy; or (2) to 'own or control, or to be owned or controlled by', directly or indirectly, a person who operates or has operated in any sector described in (1), among other reasons. See E.O. 13959, as amended by E.O. 14032.

Exemption licensing – scope

16 | Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

OFAC generally has authority to issue general and specific licences permitting activities and transactions that would otherwise be impermissible under applicable law.

A general licence is a public document that authorises the performance of certain categories of transactions, which otherwise would be prohibited, for a particular class of persons. Unlike a specific licence, there is no need to apply for a general licence. Further, a general licence may be posted on OFAC's website (see Venezuela-related general licences here, for example) or may be implemented via regulation (certain Cuba-related licenses here, for example).

A specific licence, on the other hand, is a written document that is issued by OFAC to a particular person or entity, which authorises a particular transaction in response to a written licence application (see generally OFAC FAQ 74). There are several different kinds of specific licences that OFAC might grant, including transactional, release of blocked funds, travel to Cuba, and licences authorising exports of agricultural commodities, medicine, and medical devices to Iran and Sudan pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000.

Exemption licensing – application process

17 | What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

Procedures for submitting an application to OFAC for a specific licence can be found on OFAC's website here. Generally speaking, the application can be completed electronically via OFAC's application portal or via US mail (including via forms located on OFAC's website). An OFAC licensing officer will then be assigned, and additional information may be requested as part of the application review process.

OFAC advises via FAQ 77 that applicants are encouraged to wait at least two weeks before telephoning OFAC's Licensing Division to inquire

about the status of their application. Depending on the subject-matter of the application (including the parties, contemplated transaction and circumstances), licences can often take considerable time before they are approved. For additional licensing-related information, see here for OFAC FAQs.

Approaching the authorities

18 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

US regulatory authorities are generally user-friendly when it comes to discussing licence applications and economic sanctions compliance. For example, OFAC maintains a compliance hotline, via which guidance can be requested. Contact information for the OFAC hotline can be found here. OFAC also permits parties to submit requests for formal interpretive guidance, which are submitted through OFAC's licensing process.

For licence applications, a licensing officer will typically be assigned, which permits communications regarding the status of the licence application.

Reporting requirements

19 | What reporting requirements apply to businesses who hold assets frozen under sanctions?

US persons (and those subject to US jurisdiction) that possess or control any blocked property must file reports within OFAC. Specifically, initial blocked property reports must be filed within 10 business days of the date that the property becomes blocked. Information that must be reported includes the contact information of the person holding the property; a description of the transaction associated with the blocking; the associated sanctions target whose property is blocked; the date of the blocking; description of the property; the actual or estimated value of the property in US dollars; and the legal authority under which the property was blocked, among other information (see generally 31 CFR § 501.603(a),(b)).

Additionally, persons holding blocked property must also file annual reports with OFAC by 30 September reflecting all blocked property held as of 30 June of the current year (see 31 CFR § 501.603(b)(2)).

Finally, US persons (and persons subject to US jurisdiction) must submit reports to OFAC following the rejection of a transaction that was not blocked, but where processing or engaging in the transaction would nonetheless violate applicable US sanctions (31 CFR § 501.604(a)). Rejected transaction reports must be filed within 10 business days of the rejected transaction.

Blocked property and rejected transaction reports can be submitted electronically through the OFAC website here.

TRADE SANCTIONS

General restrictions

20 | What restrictions apply in relation to the trade of goods, technology and services?

US export control and trade restrictions are contained in numerous regulatory regimes, including the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) and certain sanctions programmes administered by the Office of Foreign Assets Control (OFAC).

BIS administers and enforces the export control provisions of the EAR (see 15 CFR §§ 730–774). The EAR implements the EAA and 'are intended to serve the national security, foreign policy, non-proliferation of weapons of mass destruction, and other interests of the United

States, which in many cases are reflected in international obligations or arrangements’ (see 15 CFR §§ 730.2, 730.6).

The EAR generally restricts the export, re-export, or transfer of certain US-origin items, governing whether US persons (or non-US persons in some instances) may export, re-export or transfer these sensitive items to foreign countries.

The Commerce Control List, which is administered by BIS, is contained in the EAR and provides a list of goods, software, and technology that are subject to different degrees of restrictions (15 CFR Part 744, Supplement Nos. 1 and 2). BIS also maintains the Entity List, which is comprised of a list of certain foreign persons that are subject to licence requirements for the export, re-export, or transfer of items ‘subject to the EAR’, which includes many goods, software, or technology located in or originating from the US. Items located outside the US may also be subject to the EAR if those items incorporate greater than the de minimis controlled US-origin content or are produced as the direct product of certain controlled US-origin technology.

Finally, the DDTC administers the ITAR, which controls military-related items and services, while OFAC sanctions restrict (in some instances) the exportation of certain items to sanctioned countries or territories.

General exemptions

21 | Do any exemptions apply to the general trade restrictions?

The EAR contains provisions that exempt certain items from its export control restrictions, including those relating to certain information-type materials such as newspapers, printed books, children’s picturebooks and maps, among others (15 CFR § 734.3(b)(2),(3)). The EAR’s exemptions also apply to software that results from fundamental research, released by instruction in a catalogue course or associated teaching laboratory of an academic institution, appears in patents or published patent applications, are non-proprietary system descriptions or are certain types of telemetry data (§ 734.3(b)(3)).

Additionally, as discussed above, OFAC sanctions have several export-related exemptions, including those relating to information materials and humanitarian-related items.

Targeted restrictions

22 | Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

The US maintains trade-related restrictions, as well as sanctions, concerning dealings with certain individuals and entities, including those under the BIS Entity List. The US has recently focused on China, which has resulted in the addition of Huawei and other China-based companies to the Entity List. BIS also maintains the Military End User List, which identifies foreign parties that are prohibited from receiving certain items without a licence. Those on the Military End User List have been determined to be ‘military end users’ under the EAR, 15 CFR § 744.21.

Exemption licensing – scope

23 | In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

The export or re-export of certain goods subject to the EAR may require a licence from BIS, and there are some circumstances in which there is a presumption of denial for such a licence. The Export Control Classification Number (ECCN) is an alpha-numeric code that consists of the item category, its product group and the primary reason for control.

The Commerce Control List (CCL) generally contains a list of sensitive products, technologies and software, and the Commerce Country Chart (CCC) contains the reason for control and destination countries. The CCC generally allows you to determine the export and re-export licence requirements for most items listed on the CCL, which are based on the reasons for control listed in the ECCN that applies to the item (see 15 CFR § 738.3(a)).

If an item falls within the jurisdiction of the EAR, but is not on the CCL, then it will be designated as EAR99. Exporting EAR99 items may not require a licence; however, a licence may be required if the item is exported to certain countries, to an end user of concern, or in support of a prohibited end use.

Exemption licensing – application process

24 | What is the application process for a licence? What is the typical timeline for a licence to be granted?

BIS uses a programme called SNAP-R for its licence applications, which allows users to submit export licence applications online. Applicants must have a Company Identification Number (CIN) and an active user account to access SNAP R. The procedures and requirements for obtaining a CIN and user account are set forth here.

The EAR provides that all licence applications will be resolved or referred to the president no later than 90 calendar days from the date of BIS’s registration of the licence application (15 CFR § 750.4(a)(1)). Registration is defined as the point at which the application is entered into BIS’s electronic licence processing system. There are a variety of reasons that may lead to a delay, which are outlined at 15 CFR § 750.4(b). If a licence is denied, there is an appeal process (15 CFR § 750.6).

Approaching the authorities

25 | To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

Much like OFAC, BIS can be fairly user-friendly and willing to discuss licence applications or queries on export control compliance. BIS maintains numerous compliance hotlines (see here), as well as a confidential enforcement lead or tip form for submitting leads or tips on possible export control, boycott, or other related violations.

ENFORCEMENT AND PENALTIES

Reporting violations

26 | Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

There is generally no regulatory obligation to affirmatively self-report violations of law to the Office of Foreign Assets Control (OFAC); however, certain state and other regulators may require the reporting of legal violations (see, for example, 3 NYCRR § 300.1). OFAC and the Department of Justice (DOJ) encourage voluntarily self-disclosure of apparent violations and have a framework in place to provide leniency to those who self-disclose and cooperate with investigations.

Under OFAC’s Enforcement Guidelines, persons that voluntarily self-disclose apparent violations of law to OFAC can receive substantial credit, including a 50 per cent reduction in a civil monetary penalty. Cooperation with OFAC will also serve as a mitigating factor in determining an appropriate enforcement response. OFAC operates under a ‘first in’ standard, such that voluntarily self-disclosing an apparent violation after a subpoena or after OFAC uncovers the conduct from another third party will not permit the subject person to receive the civil

monetary penalty reduction and it could hinder the subject person's efforts to obtain cooperation credit.

The DOJ maintains an 'Export Controls and Sanctions Enforcement Policy,' which is located here and encourages companies and individuals to voluntarily self-disclose to DOJ all potentially wilful violations of the statutes implementing the US's primary export control and sanctions programmes. Under the policy, there is a presumption of a non-prosecution agreement and no fine if a wilful violation is voluntarily self-disclosed, the party fully cooperates, and there is timely and appropriate remediation.

Investigations

27 | Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

OFAC primarily administers and enforces civil violations of US economic sanctions, while the DOJ has authority to enforce criminal violations (for example, wilful violations). There are other US governmental agencies that have previously been involved in sanctions enforcement matters, including the New York State Department of Financial Services, the Federal Reserve Bank of New York, and the District Attorney's Office of New York County.

Penalties

28 | What are the potential penalties for violation of sanctions?

There are varying degrees of outcomes that can arise from OFAC investigations, including no action, cautionary letter, finding of violation, civil monetary penalty and a criminal referral. A no action will arise if OFAC determines that there is insufficient evidence to conclude that a violation has occurred. If OFAC determines that there is insufficient evidence to conclude that a violation has occurred, it may issue a cautionary letter conveying OFAC's concerns about the underlying conduct, among other areas. If OFAC determines that a violation has occurred, and considers it important to document such a violation, then it may issue a finding of violation. A civil monetary penalty may be imposed if OFAC determines that a violation has occurred and, based on an analysis of the various mitigating and aggravating factors, OFAC concludes that the conduct warrants the imposition of a monetary penalty.

Finally, for instances involving willful violations of law, OFAC has the authority to refer those violations to criminal authorities, including the DOJ.

Recent enforcement actions

29 | Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

There have been significant sanctions enforcement actions recently.

For example, OFAC brought its first ever enforcement actions against the cryptocurrency industry in December 2020 and again in February 2021 (see *BitGo, Inc Enforcement Action* (30 December 2020) [BitGo was fined for 183 apparent violations of multiple sanctions programmes after permitting users located in sanctioned jurisdictions to access its wallet services, processing 183 digital currency transactions totalling US\$9,127.70], available here); *BitPay, Inc Enforcement Action* (18 February 2021) [BitPay fined for 2,102 apparent violations of numerous sanctions violations after permitting those located in sanctioned jurisdictions to transact with merchants on the BitPay platform], available here).

OFAC also recently brought enforcement actions against companies for processing payments involving sanctioned jurisdictions and actors, as well as deficient compliance programmes. For example, Payoneer Inc was fined US\$1,385,901.40 after OFAC found that it had

processed over 2,241 payments involving sanctioned jurisdictions over a five-year period. OFAC commented in its enforcement release regarding several deficiencies in Payoneer's sanctions compliance programme. For example, while Payoneer had a sanctions compliance policy that prohibited processing payments in or with sanctioned jurisdictions, Payoneer had not adopted procedures to implement that policy, and failed to properly test or audit those processes. Additionally, OFAC commented on Payoneer's screening deficiencies, observing that Payoneer had insufficient algorithms for SDN List close matches and failed to focus on location screening (such as IP addresses). See *Payoneer Enforcement Action* (23 July 2021). Additionally, OFAC fined Bank of China US\$2.3 million for processing transactions that exported, directly or indirectly, to Sudan goods, technology or services from the US, including the export of financial services, after Bank of China had processed 111 commercial transactions totalling US\$40,599,184 on behalf of parties in Sudan via US correspondent banks. Of note, Bank of China's internal customer database did not include references to Sudan, reflecting 'know your customer' deficiencies. See *Bank of China Enforcement Action* (26 August 2021).

Finally, OFAC brought enforcement actions against non-US companies under the causing theory of liability and for transiting the US financial system. For example, see *Alfa Laval Middle East Ltd. Enforcement Action* (19 July 2021) [a Dubai entity was fined for causing its US affiliate to violate sanctions by exporting US\$18,000 worth of US-origin goods to Iran and conspiring to violate the ITSR]; *PT Bukit Muria Jaya Enforcement Action* (14 January 2021) [an Indonesian paper manufacturer was fined for causing US banks to clear wire transfers in relation to cigarette paper exports to North Korea]; *Essentra FZE Company Limited Enforcement Action* (16 July 2020) [a UAE cigarette filter manufacturer was fined for violating North Korea sanctions when it caused US persons to export financial services to North Korea after receiving wire transfers for payments in accounts at the foreign branch of a US financial institution relating to the export of cigarette filters to North Korea].

UPDATE AND TRENDS

Emerging trends and hot topics

30 | Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

There are several trends that have impacted US sanctions law over the past year. First, US regulators have focused on risk-based sanctions compliance programmes, particularly in industries that have historically had poor compliance with economic sanctions. The Office of Foreign Assets Control (OFAC)'s Framework for Compliance Commitments was an effort to clarify OFAC's compliance expectations and best practices for the industry. Second, US regulators have increasingly focused on the maritime industry, particularly as it relates to deceptive shipping practices, such as Automatic Identification System manipulation. Third, there has been an increased focus on the cryptocurrency and blockchain industry, which is evidenced by both the BitPay and BitGo enforcement actions, and OFAC's Sanctions Compliance Guidance for the Virtual Currency Industry, as well as advisories and public statements from many other US regulators. Fourth, the US has expanded the extraterritorial reach of US sanctions, including by the increased use of secondary sanctions and authority over the US dollar. Fifth, the US has prioritised the facilitation of humanitarian aid to sanctioned jurisdictions, and has issued extensive guidance on the issue, most recently as it relates to Afghanistan. Finally, as of the date of this publication, the US and several other allies have issued new and expanded sanctions against Russia in response to its military invasion of Ukraine, including sanctions that impact the debt and equity markets.

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