



The Implications of Financial Sanctions

Sanctions, Embargoes, Exemptions and Licensing

Although international trade is in some ways now easier than ever, there are also more considerations that need to be borne in mind.

As well as taxes and quotas, importers and exporters need to be particularly mindful of international sanctions, as failure to comply with them can have serious consequences.

Although we cannot give advice about whether a specific transaction is legal, we've published this guide to help you understand what you and your clients need to do.

International Trade Considerations

International financial and trade sanctions prohibit and restrict sales and purchases

- of certain goods, and/or
- to or from certain individuals, entities or countries, and/or
- where funds pass through certain banks.

Sanctions that can impact on UK importers and exporters are not just those prescribed by our own governments, but also those of the EU, the US and the UN.

To avoid falling foul of sanctions, it's absolutely vital that buyers and sellers know the identity of their suppliers and customers; otherwise they could find themselves in breach, without any defence, and liable to serious penalties.

If a transaction is illegal, then the insurance will be invalid; but insurers can't just hide behind this defence – they have to take proactive steps to ensure that anything that flags up a potential concern is investigated, otherwise they must not proceed.

Banks and insurance companies are required to ensure that they do not facilitate trade that is in breach of sanctions; so you may find that they will ask questions about transactions that flag up a potential risk, such as:

1. what are the goods and what is their intended use?
2. what is the origin and/or destination of the goods?
3. who is the beneficiary of the insurance cover?
4. who is the consignee and (possibly) who is the intended end user?
5. depending on other answers, is an export licence required and has it been obtained?

Just as brokers need to know their clients, so those clients need to know their own customers. And if clients choose to operate in the international sphere, then they need to be aware of the risks and responsibilities that go hand-in-hand with international trade.

The Office of Financial Sanctions Implementation

The Office of Financial Sanctions Implementation (OFSI), part of HM Treasury, implements financial sanctions in the UK. For more information about OFSI, visit www.gov.uk/government/organisations/office-of-financial-sanctions-implementation.

There are some extracts from the OFSI guidance below, and the full guidance can be found at www.gov.uk/government/publications/financial-sanctions-faqs, which sets out the approach that they will take when issuing sanctions licences and considering compliance, taking into account case law and guidance.

The OFSI guidance shows their intent to encourage firms to adopt sanctions compliance procedures. Some key points in the guidance include:

- OFSI will continue to construe the extent of sanctions prohibitions widely, which is in keeping with the EU's approach;
- OFSI cannot provide legal advice and expects firms to have fully considered the relevant laws and formed a view prior to approaching OFSI for guidance or submitting a licence application; and
- OFSI expects insurers and brokers to be well placed to be able to obtain sufficient information to conduct appropriate sanctions checks against clients and beneficiaries of insurance cover.

Applicability of Financial Sanctions (OFSI Guidance)

All individuals and legal entities who are within or undertake activities within the UK's territory must comply with the EU and UK financial sanctions that are in force. All EU nationals and legal entities established under EU law must comply with the EU financial sanctions that are in force, irrespective of where their activities take place.

All UK nationals and UK legal entities established under UK law, including their branches, must also comply with UK financial sanctions that are in force, irrespective of where their activities take place. Subsidiaries which are incorporated under EU or UK law must comply with EU and/or UK financial sanctions that are in force, irrespective of where their activities take place.

Compliance for Businesses (OFSI Guidance)

If they undertake an act that is prohibited by financial sanctions and at the time they did so, they knew or had reasonable cause to suspect that the act was prohibited, then they will have breached financial sanctions and may face criminal prosecution.

OFSI is of the view that financial sanctions are generally widely publicised and that businesses, particularly those operating in an international context, will have reasonable cause to suspect that sanctions might be engaged, and so will not be able to avoid liability simply by failing to consider their sanctions risks.

OFSI expects all businesses who engage in activities where financial sanctions apply to stay up to date with the sanctions regimes in force, to consider the likely exposure of their business to sanctions, and to take appropriate steps to mitigate those risks taking into account the specific nature of their activities. It is important to remember in this context that designated persons i.e. named on HM Treasury sanctions lists, live and operate in the UK.

Does NMU give advice about sanctions?

Since we do not give advice on general insurance matters, it follows that we cannot give advice on compliance with financial sanctions or trade sanctions.

If an agent, broker or insured is unsure as to their legal obligations in a given case, they should take independent legal advice or contact OFSI:

Office of Financial Sanctions Implementation
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

ofsi@hmtreasury.gsi.gov.uk

020 7270 5454 (9am-5pm weekdays)

Other Legislation

As well as statutory instruments that implement EU directives, UK domestic legislation includes:

- Terrorist Asset-Freezing, etc. Act 2010
- Counter-Terrorism Act 2008
- Anti-Terrorism, Crime and Security Act 2001
- Export Control Order 2008

More information can be found on the websites of:

- [The United Nations](#)
- [The European Union](#)
- [The US Office of Foreign Assets Control](#)

Agents and Brokers (OFSI Guidance)

Because they deal directly with clients, OFSI is of the view that they should be well placed to obtain sufficient information to allow them to conduct appropriate sanctions checks against the clients and the beneficiaries of the insurance cover at the time the cover is issued.

Insurers, Reinsurers and Underwriters (OFSI Guidance)

OFSI is of the view that they should undertake reasonable enquiries to identify whether the underlying clients or claimants may be designated persons or entities.

What is the role of the FCA in Sanctions Compliance? (OFSI Guidelines)

The Financial Conduct Authority (FCA) as part of its objective of enhancing the integrity of the UK financial system requires firms to protect themselves from being misused for financial crime. This includes compliance with UK financial sanctions.

The FCA has published its financial crime guide for firms to illustrate examples of good practice for designing systems to mitigate sanctions risks. You can also read more from the FCA at www.the-fca.org.uk/financial-sanctions?field_fcasf_pagecategory=451&field_fcasf_sector=unset

Other Resources

Consolidated information from the Department for International Trade, the Export Control Organisation and the Office of Financial Sanctions Implementation, can be found at www.gov.uk/guidance/sanctions-embargoes-and-restrictions

A full list of sanctions regimes currently in force in the UK is freely available at www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases

A number of commercial services are also available. Try searching online for “sanctions checking”. If you are a BIBA member, you may be entitled to use their sanctions checking facility. Visit biba.org.uk to find out more.

Further Information and Help

If a broker or insured is unsure as to their legal obligations in a given case, they should consider taking independent legal advice or contacting OFSI.

The important points to remember are:

1. Know who you're trading with.
2. Keep up to date with the various sanctions regimes.
3. If you are in any doubt, seek legal advice.

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Our NMU branches underwrite:

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- Freight Liabilities
- Marine Trade
- Engineering
- Marine Equipment
- Terrorism
- Motorsport

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