

Russian sanctions – ignore at your peril

Why should companies in the Middle East be concerned about EU, UK and US sanctions? Robert Dalling, Alexis Early and Karam Jardaneh of Jenner & Block talk about why developing a risk-based approach to sanctions compliance is key to avoid exposure.

The unprecedented sanctions the EU, UK and US imposed on Russia have dramatically impacted Western companies but are also increasingly affecting Middle Eastern companies. Not only is the territorial scope of these sanctions expansive (particularly US sanctions) but the EU, UK and US have shown willingness to designate non-Russian entities in the Middle East that are viewed as facilitating trade with Russia allegedly in circumvention of sanctions. With sanctions authorities ramping up their enforcement efforts, we expect a focus on circumvention efforts in regions with continued Russian trade, including the Middle East.

Given Middle Eastern companies are not isolated from international sanctions risks, they are advised to assess and mitigate their exposure.

TERRITORIAL SCOPE OF SANCTIONS

US sanctions apply to “US persons” including US citizens and permanent resident aliens wherever located, persons within the US, and US-incorporated entities and their unincorporated foreign branches. US sanctions also apply to transactions with some other US nexus, such as US intermediaries or clearing banks

in US dollar transactions. Therefore, Middle Eastern companies may find themselves caught by US sanctions where they have US employees or are transacting in US dollars.

Even in the absence of a US nexus, Middle Eastern financial institutions also face the risk of becoming subject to “secondary sanctions.” In December 2023, Executive Order (E.O.) 14114 amending E.O. 14024 authorised the imposition of sanctions on foreign financial institutions (“FFIs”) that have engaged in certain transactions involving persons designated under E.O. 14024 or Russia’s military-industrial base. In practice, this leaves FFIs with little choice: either they cut off US-designated persons or they could get cut off from the US.

While the reach of EU and UK sanctions is less expansive, they are still quite broad. EU and UK sanctions respectively apply to EU or UK nationals and companies (wherever in the world they operate), and to any persons or conduct within the EU or UK. Like US sanctions, EU¹ and UK² sanctions can extend to overseas actions of foreign subsidiaries if an EU or UK parent is directing or green-lighting such conduct. This means that Middle Eastern companies with EU, UK or US parents or employees or otherwise conducting business in the EU, UK or US may need to comply with the relevant sanctions.

DESIGNATION OF COMPANIES IN THE MIDDLE EAST

The consequences of being designated under sanctions are severe; it means that no-one required to comply with such sanctions can directly or indirectly deal with you. Companies which continue to trade with Russia are at risk of being designated, and the past year has seen an uptick in the designation of Middle Eastern companies. The G7 has promised³ continued action against third-country actors supporting Russia.

In the US, in addition to secondary sanctions, individuals and entities furthering “specified harmful foreign



activities” of Russia can be designated. E.O. 14024 allows sanctions to be imposed on individuals or entities operating in certain sectors in Russia and on persons that support them. The US has frequently used these powers to designate parties in third countries. In April 2024, the US designated⁴ 60 targets in Azerbaijan, Belgium, China, Russia, Slovakia, Türkiye and the UAE that enable Russia to acquire goods from abroad. This included a UAE-based entity, Albait, due to its operations in the Russian manufacturing sector.

The EU and UK do not have secondary sanctions regimes as such but have powers to designate those facilitating the circumvention of sanctions. For example, the EU designated the UAE shipping company, SUN Ship, for allegedly helping Russia circumvent oil-related sanctions. In November 2023, the UK designated⁵ UAE companies supporting Russia’s gold and oil industries and in February 2024, it designated Fractal Marine for operating in the Russian energy sector as part of Putin’s shadow fleet. Fractal’s first attempt to overturn⁶ its designation on the basis that it would otherwise be forced into liquidation was rejected by UK courts.

ENFORCEMENT

Recent commentary on EU, UK and US Russia sanctions policy emphasises a shift in focus from introducing new sanctions to tackling circumvention and pursuing enforcement. In addition to the rise in designations of those suspected of circumventing sanctions, we also expect a rise in enforcement. The US’s Office of Foreign Assets Control (“OFAC”), took the lead with its first enforcement case⁷ involving trade with Russians designated under E.O. 14024, resulting in a USD3.74 million settlement. The case involving a Swiss-based banking group illustrates how foreign companies can face US enforcement. OFAC has always shown willingness to pursue foreign companies, including UAE companies. In November 2020, UAE-based Essentra settled⁸ with OFAC for North Korea sanctions violations. Essentra exported cigarette filters to North Korea through front companies in third countries and received payment for the goods into a foreign branch of a US bank.

While the EU and UK lag behind the US on enforcement, there are signs that these authorities are ramping up their

enforcement efforts. The EU recently introduced⁹ EU-wide standards for criminalising sanctions violations. The UK’s Office of Financial Sanctions Implementation (“OFSI”) indicated¹⁰ that its enforcement team has grown by 175 per cent and has 172 cases under investigation, with the first enforcement action regarding post-2022 Russian sanctions expected in 2024.

COMMERCIAL RISKS

In addition to the regulatory risks, companies around the world (including in the Middle East) often face contractual risks in the context of international sanctions. Given the expansive reach of EU, UK and US sanctions, Western banks and/or counterparties may contractually require Middle Eastern companies to comply with EU, UK and US sanctions.

CONCLUSION

With mounting¹¹ concerns from the EU, UK and US about Russian sanctions circumvention through the UAE, we expect increased focus by enforcement agencies on companies there. Although Russian sanctions have presented a particular challenge to the region, Middle Eastern companies could face similar obstacles in respect of trade with other sanctioned countries like China or Venezuela. Companies in the Middle East should pay close attention to EU, UK and US sanctions to avoid being targeted. While the level of risk for companies will vary, companies should assess their exposure and develop a risk-based approach to sanctions compliance. 📌

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References 1 - 11 are available on the web version of the article on the Oath's website.



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