



Biography:

Tom Cummins

Tom is a partner in Ashurst's dispute resolution practice.

He has advised clients on a range of disputes with an emphasis on the energy, resources and infrastructure sectors.

As a member of Ashurst's Business Conduct & Risk Group and Sanctions Group, Tom regularly advises international corporations on sanctions compliance and related issues. His work has involved advising on the preparation of sanctions compliance policies and accompanying staff training products; on whether transactions are permitted under sanctions legislation and the consequences of sanctions breaches; on contractual drafting to take account of sanctions risk, both in commercial contracts and loan agreements; and on dispute resolution matters arising from the imposition of sanctions.

International Sanctions - Where Are We Now?

Abstract: The ever-increasing use of sanctions as a foreign policy tool has made managing sanctions risk paramount for corporates. This challenge is compounded by the speed with which sanctions can evolve, as witnessed by the wave of measures imposed on Russia in 2014. Compliance has also become more demanding, with the partial relaxation of sanctions against Iran posing new questions as to what is now permissible.

Tom Cummins, a partner in Ashurst's sanctions team, will discuss the sanctions landscape in 2017, with a focus on the main practical and legal issues facing energy companies.

International Sanctions: where are we now?

TOM CUMMINS
13 JUNE 2017

Introduction

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- ❖ Partner in Ashurst's dispute resolution practice
- ❖ Advises clients on a range of disputes with an emphasis on the energy, resources and infrastructure sectors
- ❖ Regularly advises on sanctions compliance and related issues

- ❖ Ashurst's Sanctions Portal

Sanctions in the news

**EU extends Russia sanctions over
Ukraine**

**UK drawing up post-Brexit
sanctions plan**

**US sanctions Iran after
missile test**

Outline of this session

Setting the scene



How do sanctions operate?



Practical implications



Particular issues for oil and gas companies



Setting the scene

WHAT ARE SANCTIONS?

- ❖ Political trade restrictions imposed on designated targets with the aim of maintaining or restoring international peace and security
- ❖ A geopolitical economic weapon
 - US and EU sanctions against Russia
 - Iran sanctions

Setting the scene: Sanctions

EU & US Economic Sanctions (May 2017)

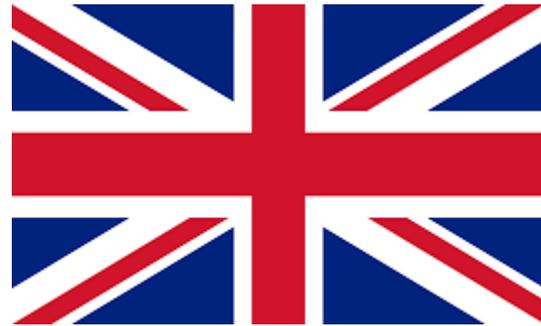
Key:



Note: Map does not show arms embargoes or travel bans.

Setting the scene

WHO IMPOSES SANCTIONS?



Setting the scene

WHO MUST COMPLY WITH SANCTIONS LAWS?

EU Sanctions

- ❖ Anyone within the EU
- ❖ Anyone on board any aircraft or vessel under EU Member State jurisdiction
- ❖ Any EU national
- ❖ Any company incorporated in the EU
- ❖ Any legal person in respect of any business done in whole or in part within the EU

Setting the scene

WHO MUST COMPLY WITH SANCTIONS LAWS?

US Sanctions

- ❖ Any US Citizen, Permanent Resident Alien
- ❖ Any entity organised under the laws of the US or any jurisdiction within the US (including foreign branches)
- ❖ Any person in the US
- ❖ Non-US subsidiaries of US companies (some regimes)
- ❖ US “secondary sanctions”

Setting the scene

BREXIT

- ❖ Many of the UK's powers to impose and implement sanctions flow from the European Communities Act 1972
- ❖ Will need to replace them to continue to meet our international obligations, Great Repeal Bill not sufficient to achieve this
- ❖ Government White Paper

Types of sanctions



Types of sanctions

EU/UK FINANCIAL SANCTIONS

❖ Financial Restrictions

- **All funds** and **economic resources** belonging to, owned, held or controlled by Targets shall be **frozen**
- **No funds** and **economic resources** shall be **made available**, directly or indirectly, to Targets

❖ Funds and economic resources

❖ 'Freezing'

- For funds: Preventing any move, transfer, alteration, use of, access to or dealing with
- For economic resources: Preventing their use (e.g. sale) to obtain funds, goods or services

Types of sanctions

EU/UK TRADE RESTRICTIONS

- ❖ Restrictions on the export of certain types of products to certain countries or regions
- ❖ For example:
 - Russia
 - Iran

Penalties

UK

Criminal

- ❖ Individuals: Imprisonment up to seven years and/or fine
- ❖ Companies: A fine and directors or officers of the company who consented to the breach may also be imprisoned or fined

OFSI

- ❖ For breaches committed after 1 April 2017: civil penalties
- ❖ Up to £1 million or 50% of the value of the breach, whichever is greater

Penalties

US – MORE VARIED

- ❖ Cautionary letter
- ❖ Transaction-based civil penalties
- ❖ Referral to US DoJ (criminal prosecution) for wilful violations: USD\$1 million fine and up to 20 years imprisonment

Notable Fines

The logo for Schlumberger, featuring the company name in a bold, blue, sans-serif font on a white rectangular background, which is itself centered within a larger green rounded rectangle.

- Violation of US sanctions, trading with Sudan and Iran
- US\$155.1 million criminal fine

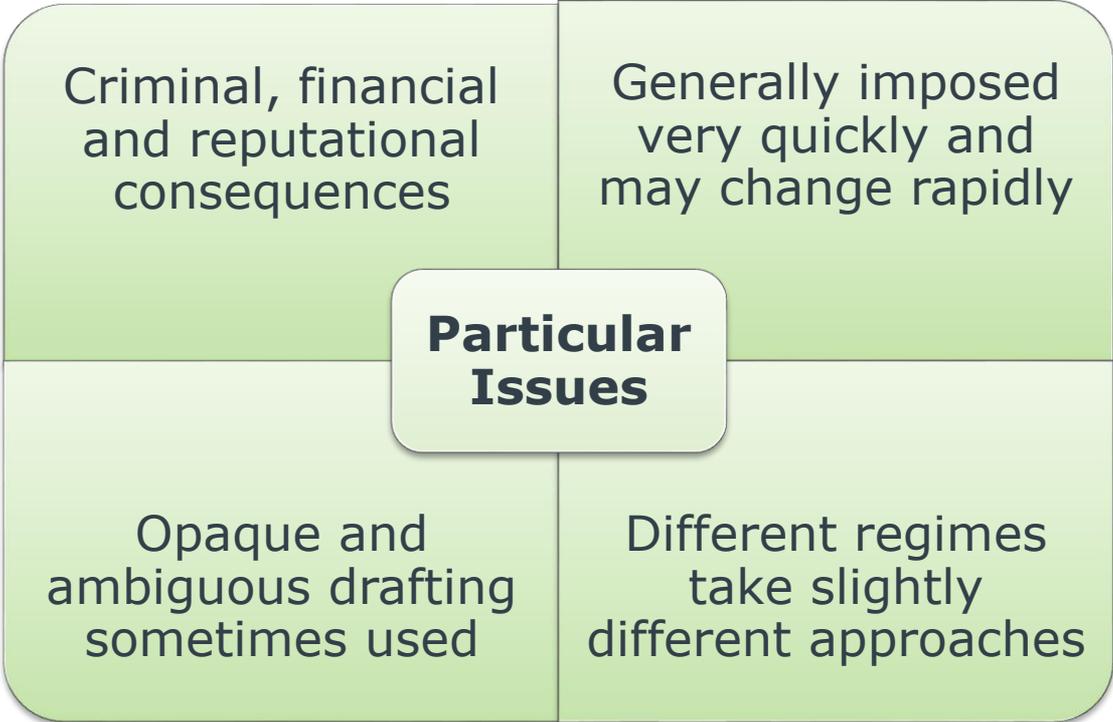
The logo for ZTE, featuring the letters 'ZTE' in white on a blue rectangular background, followed by the Chinese characters '中兴' in white on a blue rectangular background, all contained within a larger green rounded rectangle.

- Violation of US sanctions, trading with Iran and North Korea
- US\$892 million immediate criminal fine, potential for US\$300 million in future penalties

Other practical implications

- ❖ Compliance systems
- ❖ Due diligence
- ❖ Contractual drafting e.g. undertakings

Particular issues



Particular Issues

THE IRAN EXAMPLE

The lifting of sanctions against Iran - differences in approach EU and US

EU:
majority of nuclear
proliferation sanctions
lifted

vs

US:
primary sanctions
remain



US primary sanctions: what do they apply to?

- The activities of US persons;
- Non-US persons who cause US persons to violate the sanctions; and
- Transfers of US-regulated goods and technology to Iran.

Who is a US person?

- Entities organized under US law and their foreign branches;
- US nationals and US lawful permanent residents (wherever located); and
- Any person (regardless of nationality) present in the US.

Particular Issues

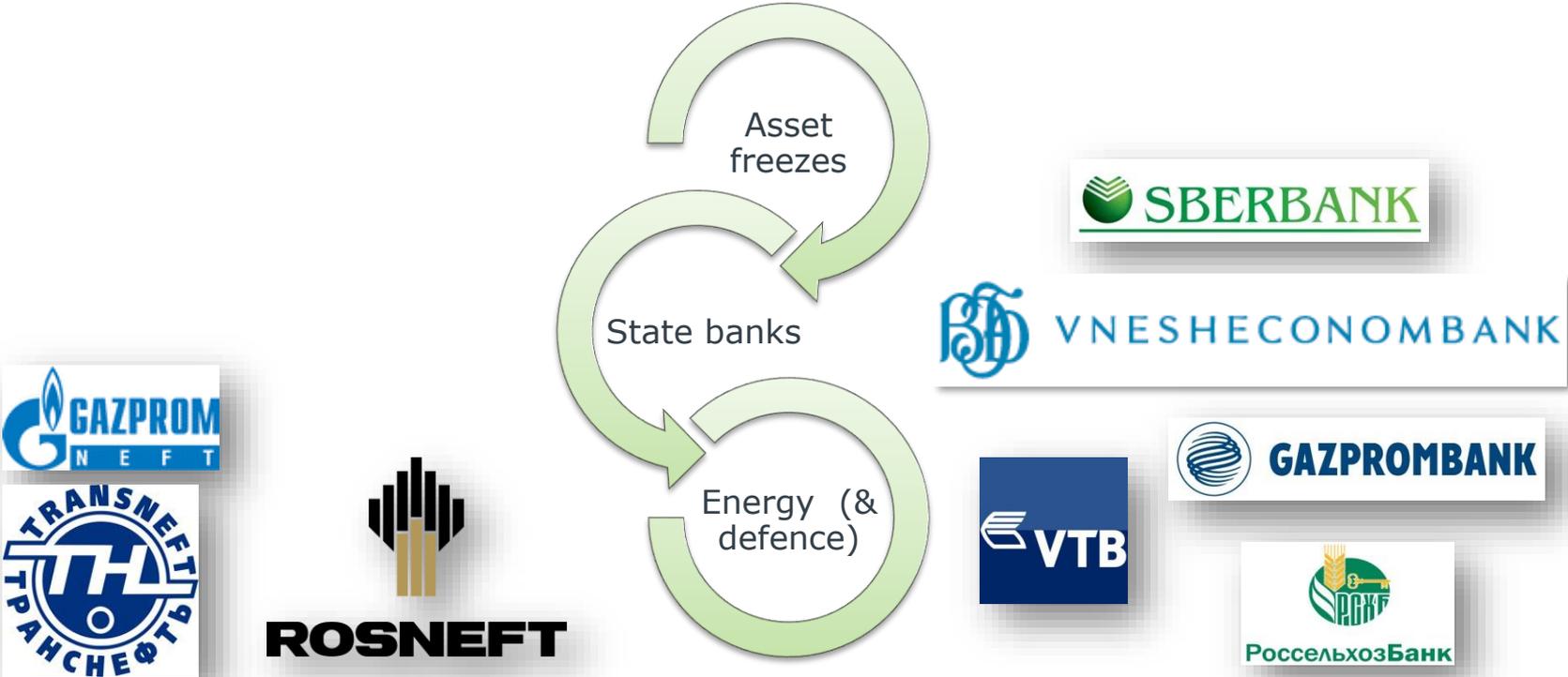
THE IRAN EXAMPLE

“Snap back”

- ❖ Previous UN Security Council resolutions would automatically be re-imposed
- ❖ They would not have retroactive effect (i.e., they would not render illegal contracts entered into during the interim period)
- ❖ It is unclear exactly how the EU or US sanctions will “snap back” into place – EU refers to “adequate protection” to be provided “to allow companies to wind down their activities”

Particular Issues

THE RUSSIAN SECTORAL SANCTIONS EXAMPLE



Particular Issues

THE RUSSIAN SECTORAL SANCTIONS EXAMPLE

Finance

- ❖ Prohibition on dealing with financial instruments:
 - with a maturity exceeding 90 days issued after 1 August 2014 (but prior to 12 September 2014) by **Sberbank, VTB Bank, Gazprombank, Vnesheconombank, and Rosselkhozbank**
 - with a maturity exceeding 30 days issued after 12 September by the **above banks and Rosneft, Gazprom Neft and Transneft** (and three defence companies)
- ❖ Financial instruments include “shares”, “bonds”, “other forms of securitised debt”
- ❖ “Dealing with” / investment services: includes “investment advice”

Particular Issues

THE RUSSIAN SECTORAL SANCTIONS EXAMPLE

Finance

- ❖ Prohibition extends to financial instruments issued by:
 - subsidiaries (over 50 per cent) outside EU of banks/energy/defence companies; or
 - persons acting at their direction or on their behalf.

- ❖ Additional prohibition on making loans or credit with a maturity exceeding 30 days to any banks/energy/defence companies

- ❖ Unless:
 - loans/credit for financing for non-prohibited imports/exports/non-financial services between EU and Russia; or
 - loans to provide emergency funding to the EU subsidiaries of the sanctioned Russian entities.

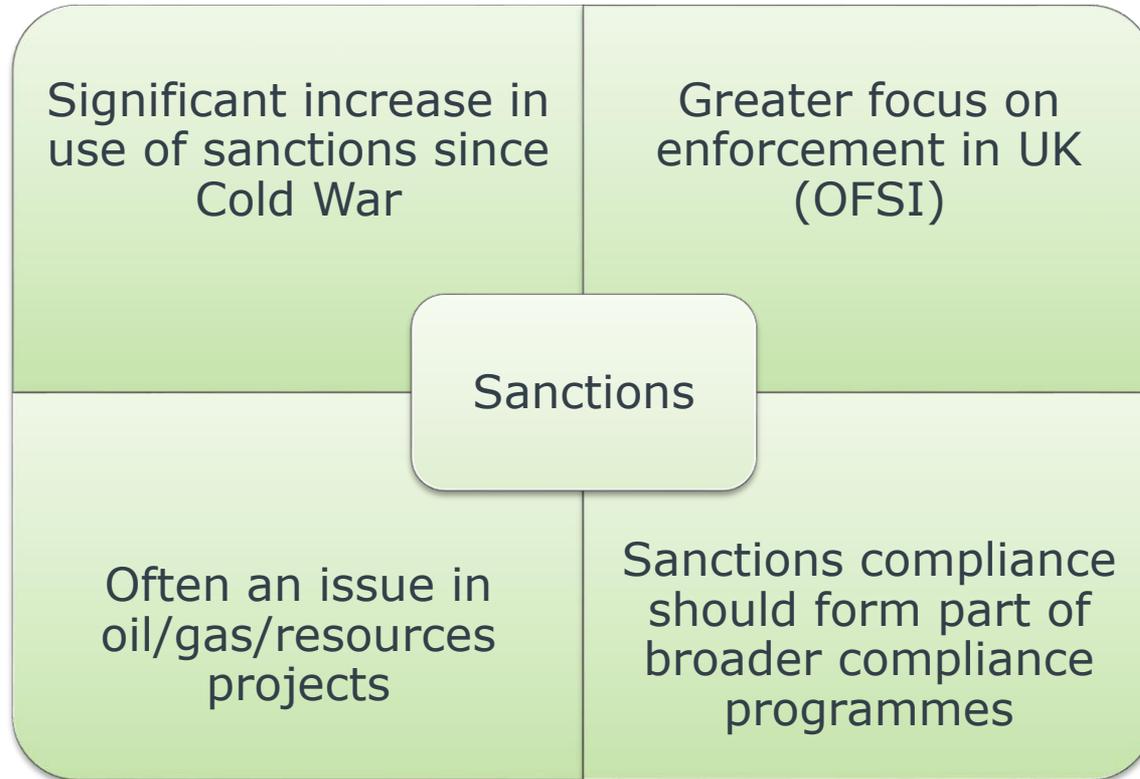
Particular Issues

THE RUSSIAN SECTORAL SANCTIONS EXAMPLE

Dual-use goods, military equipment, oil exploration

- ❖ the sale/supply/transfer/export, directly or indirectly of so-called '**dual-use' goods and technology** if may be intended for military use
- ❖ the sale/supply/transfer/export, directly or indirectly of certain **equipment and technology relating to the oil industry** for use in deep water, Arctic or shale oil
- ❖ technical assistance, brokering services, financing or financial assistance relating to that equipment and technology
- ❖ associated services necessary for **deep water oil exploration/Arctic oil exploration and production/ shale oil projects** drilling, well testing, logging and completion, supply of specialised floating vessels
- ❖ the provision of technical assistance, financing or financial assistance, directly or indirectly, to any person or entity in Russia or for use in Russia, relating to **military goods and technology**. The Regulation also prohibits the provision of technical assistance or brokering services

Conclusion



These materials are for training purposes only and are not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Please take legal advice before applying anything contained in these materials to specific issues or transactions. For more information please contact the presenters or your usual contact.