

L/C's and sanctions: practical aspects and current issues

1. Sanctions and how to cope with them.
2. Sanctions on Iran and Russia: current status & practical issues and prospects
3. Effect of new sanctions and/or trade embargoes on pending L/C's

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1.Sanctions and how to cope with them

- Growing importance of sanctions and compliance rules = biggest change in L/C business over last 10 years...
- Not only growing number and complexity increased but also more restrictive policies of all banks. Often : “over-compliance” and a lot of confusion.
- “Over-compliance”, differences in bank-policies and lack of correct understanding of applicable laws = major source of disputes between banks and undue rejections.
E.g. some banks refuse to reimburse nominated/confirming banks just because the vessel called 3 months ago an Iranian port...But let’s not exaggerate the number of ungrounded rejections !

1. Sanctions and how to cope with them

- Warning: every embargo is different and a living matter! => you need in-depth analysis + processes to follow up and to implement in practice <= crucial
- Trade embargoes forbids supply goods & services; however, all direct or indirect related financial services like financing, insurance, payments, BG, LC, or other services like transportation etc are always also in scope and become prohibited! Sanctions relate to “designated” natural & legal “persons” and orders all to **freeze** all assets, payments (all forms), documents, etc. from or going to these persons.
- In reality often combination of trade embargo with sanctions

1.Sanctions and how to cope with them

- The plague of too broad sanction clauses in L/C's seems to be over its peak, but still exists despite ICC Paper on sanction clauses.
- What do you do if you receive an L/C with a broad sanction clause which refers to "local law", "own compliance rules" etc and you are requested to confirm? Do you return the L/C ? Or refuse confirmation ? Or do you make reservation to Bene?
- What do you do if you have honoured an export L/C but reimbursement is denied by Issuing bank due to "applicable sanction"? :
- ICC opinion in next BC in Tibilisi (if approved) says that Issuing bank should explain to which law they refer.



1. Sanctions and how to cope with them

- Analyse whether the rejection/ refusal is well grounded. If so, also under your law=> you may not pay the bene despite your confirmation (see further). You must freeze the trx
- In most cases rejection is ungrounded=> discuss alternative payment channel with commercial parties. Good cooperation with bene is detrimental!
- If this approach and negotiation do not succeed=> go to Court

1.Sanctions and how to cope with them

Requirements & expectations from external supervisors and internal rulings wrt screening of goods, parties etc. become a major hurdle for trade finance while in fact L/C's are the most transparent way of doing business. Regulators focus too much on Trade instruments while violations of sanctions, money laundering, terrorist financing, arms traffic etc. use mostly other channels...

Banks are becoming unpaid police agents, investigations officers, customs, tax collectors etc.... Banking industry and international companies should defend more their legitim business.

2 Sanctions on Iran & Russia/ Crimea: current status, practical issues and prospects: IRAN

- Iran: USA: after expiry of second wind down period on 4th Nov. all suspended US sanctions incl secondary sanctions will be re-instated=> in principle all parties which were not blacklisted anymore for non US persons will become SDN again.
- Possible risks & consequences of breaching secondary sanctions are far-reaching: denial of US clearing system, USD capital market, USA commercial markets etc => all EU companies want to avoid these risks...
- Humanitarian goods (= well defined by OFAC as food for humans & animals, defined medicines and medical devices) remain exempted from primary or secondary sanctions

2 Iran

- Facts are that even during the period when US stayed within JCPOA (= 1/16 till 5/18) 99% of all EU-banks remained closed on Iran => the high expectations on extra trade were not met...
- Re-imposition of all sanctions by US caused fundamental disagreement between US and EU (and China/Russia) => EU issued counter measure i.e. “Blocking Regulation” (into force on 8/8/2018): a) fines etc. imposed by US based on secondary sanctions are not valid or enforceable in EU;
b) EU-companies suffering damages by EU-companies which change their policy on Iran can claim compensation. However, the latter can request EU a waiver from complying with this regulation if it can proof it would suffer significant risks/damages by complying...

2 Iran

- Most insiders consider EU Blocking Regulation as “diplomatic/ political game” and ineffective as for all EU-banks the USA is more important than Iran; same goes for 99,99% of EU corp.
- Major questions/ issues are today:
 - 1) will ALL Iranian banks become SDN, without exception? If so, how will humanitarian trade be paid??
 - 2) will all Iranian banks be disconnected from SWIFT? If so => many operational issues=> end of any (direct) trade?
 - 3) what about BG's ifo Iranian parties with expiry after 4Nov?
 - 4) will the alternative channel construed by EU ever work?
- The real risk for all EU-banks are rise of “indirect” i.e. not transparent payments by Iran whereby every link with Iran is hidden. Part of trade will continue but go underground => higher risk on violation of embargoes /sanctions!



2 Russia

Increasingly complicated and expanding sanctions, and new to come...(especially by US).Below only a simplified selection:

By EU:

Financial : no securities or MM instruments with the big state banks. No new loans >30 days to Sberbank, VTB, Gazprombank, VEB, AgriculturalBank, or big energy conglomerates like Transneft, Rosneft, GazpromNeft,..

No goods & services for: arms etc., dual-use goods(unless licensed), deep water oil drilling & production, arctic oil exploration, shale oil,

2 Russia

USA sanctions are applicable if trx is in USD, or involves an US person (=incl branches), or goods are > 25% US origin.

Full embargo on Crimea

2014 : sectoral sanctions similar as EU

Later on many more sanctions

Part of new CAATSA sanctions are extra-territorial, so also for you (despite no US nexus)!



2 Russian US sectoral sanctions Directives

- Directive 1: no new debt or MM with Sberbank, VEB, Gazprombank
- Directive 2 : no financing for energy conglomerates Rosneft, Gazpromneft
- Directive 3: targets Russian defense sector: Rostec, United Instruments
- Directive 4: targets energy sector: ban on goods & services (direct or indirect) and technology for exploration or production in deep water, arctic, shale projects in Russia. Enlarged to worldwide projects initiated after 29/1/18 where Russian energy corp. have 33% interest

2 Russia: recent US sanctions

CAATSA: secondary sanctions for:

- Russian energy export pipelines (e.g. Nordstream)
- Significant trx with defense/ intelligence sector
- Significant investments in crude oil projects
- Non-US banks that engage in significant financial transactions with Russian SDNs
- Many government officials and family for acts of corruption
- Parties involved in human rights abuses (Magnitsky Act)

2 Russia: recent/ future US sanctions

- April: designation on 26 oligarchs and 15 big names (Rusal, EN+,GAZGroup...) and their 50% affiliates .
Blocking of all assets and trx. NB Due to unforeseen big impact US granted waivers for winding down Rusal deals, now renewed
- CBW sanctions (due to poisoning case): Congress instructs Trump to take far reaching sanctions in Nov
=>???
- Congress authorized Trump for extra sanctions for election interference (DETER)=> ???

3. Effect of new sanctions and/or trade embargoes on pending L/C's

- What about effect of new sanctions or embargoes on pending deals? Different approach between EU and US:
 - EU embargoes come immediately in force but foresee for pending deals the possibility to get a license from competent authority
 - US embargoes foresee a transition period to wind down but after that date it's the end (although OFAC can grant licenses...).

3. Effect of new sanctions on pending ELC's

Principle: if underlying trade becomes prohibited and/or your correspondent becomes sanctioned you may not support in any way that trade resp. You must freeze assets/payments to the sanctioned party but existing commitments which do not impact or support that trade resp. sanctioned party remain in force→

- If goods are not shipped or docs not presented before D (date coming into force embargo) => confirmation becomes invalid. If unconfirmed you may not accept the docs
- If LC is drawn before D but not paid yet: our confirmation remains intact. How to get reimbursed is the problem of the confirmer. In EU you will normally get license to receive payment from SDN party. If unconfirmed: you must freeze incoming funds (if any) from sanctioned party and ask a license.

3. Effect of new sanctions on pending ILC's and export documentary collections

Principle: you may not support the trade anymore and if you have to honour your engagement you must freeze the funds on a blocked account=>

- ILC: presentation accepted before D=> credit funds on a frozen account. If not drawn yet=> freeze the docs
- Out standing BG: claimed by sanctioned party=> credit a frozen account. It's uncertain whether we may extend if we get an "extend or pay" request.
- Export collection: refuse new ones. If goods shipped before D=> you may accept payment (if any).