

**Around
the
world in**



**eight
sanctions
regimes**

How companies should respond to the
ever-changing world of sanctions risk



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Seed Company
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for Foreign
Assets Control**

Introduction

Sanctions are imposed on regimes, entities or individuals by governmental and intergovernmental bodies, in the hope of curbing or changing their behaviour. They come in many forms, including asset freezes, flight bans, and restrictions on trade and other financial transactions. These bodies regularly publish and update their sanctions lists, which presents a significant risk of an unintentional breach to companies of all sectors that trade internationally. If a firm breaches sanctions, it can expect to face serious legal, financial and reputational repercussions. Punishments can include a civil or criminal legal conviction, a large regulatory fine, or a ban on bidding for future national or World Bank contracts.

In the last few months alone, sanctions around the world have changed significantly. To measure the current extent of these changes, LexisNexis Business Insight Solutions has compiled this report with the latest information on sanctions regimes at governmental and intergovernmental level. The report focuses on how sanctions have changed in eight countries: the US, UK, Russia, Iran, Myanmar, Cuba, Democratic People's Republic of Korea (North Korea), and the Democratic Republic of Congo (DRC). The report goes on to look at the steps companies can consider to mitigate the risks of breaching sanctions.

Why are sanctions so difficult to monitor?

Sanctions come in many forms. They can be issued by a country, as in the case of OFAC, which administers and enforces US economic sanctions programmes, or by an intergovernmental body such as the United Nations (UN) or the European Union (EU). Economic sanctions can lead to a ban on all trade with a particular country, with a particular sector in a country, with individual companies, or with senior government officials or other politically exposed persons with close links to a regime. The different levels of sanctions, and the sheer number of sanctions in place around the world, make it difficult for companies that operate in more than one jurisdiction to keep up to date on where and with whom they can legally do business.

Sanctions regimes can shift in different directions. A country might face increased restrictions to curb a particular policy or perceived regional threat. For example, North Korea faces a number of new sanctions measures aimed at further encouraging the regime to stop its nuclear tests.

Conversely, a regime that has historically faced tougher sanctions may see such measures being reduced. For example, in recent years the US has gradually lifted many of its long-standing sanctions against Cuba after improvements in relations with Cuba's government.

The task ...
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Don't believe the hype

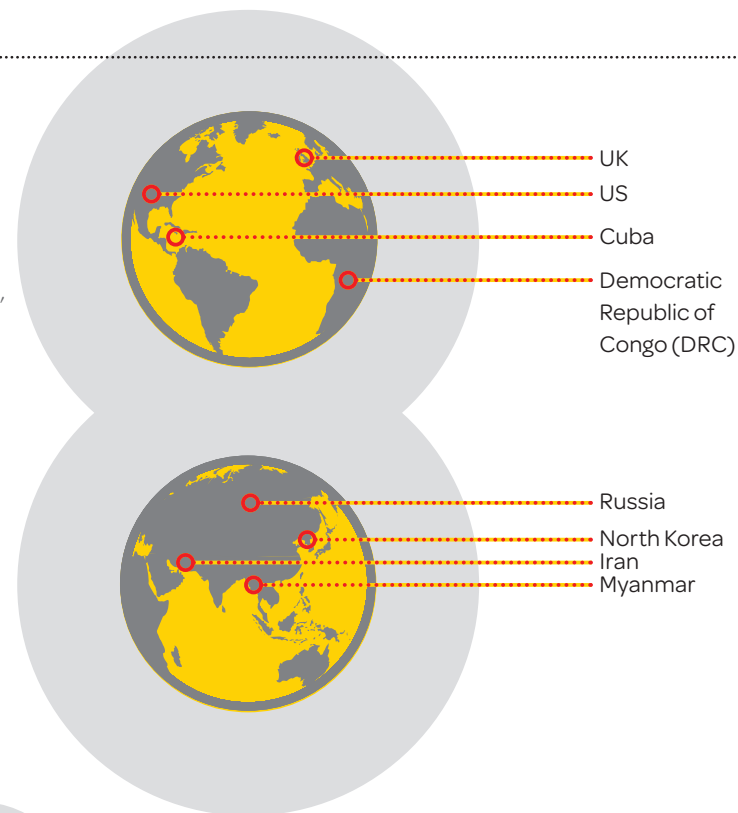
The risk of trading with sanctioned entities is complicated by the way some sanctions may be used as a political football. Politicians and the media will often declare that sanctions on a particular country have been lifted. But the devil is in the detail, and some organisations, businesses or individuals may still remain

on a watchlist even after most sanctions have been reduced. Moreover, an agreement to lift sanctions does not necessarily mean that these sanctions are lifted – the process of amending sanctions policy can often take time.

Sanctions around the world

Countries and intergovernmental bodies constantly change their lists of sanctioned entities. This section highlights the latest developments in sanctions around the world. But while the below is true in November 2016, it is likely to quickly become outdated as sanctions regimes change. So a company should ensure it implements a thorough, risk-based, regularly reviewed sanctions monitoring process of its own to avoid breaching changing policies.

In September 2016, PanAmerican Seed Company paid \$4.32 million to settle potential civil liability with the US Office for Foreign Assets Control (OFAC) for alleged violations of Iran sanctions by exporting seeds to two Iranian distributors. OFAC said this amount was a reduction on the normal fine, in part because PanAmerican Seed responded by implementing a compliance programme and training staff on mitigating sanctions risks.



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Democratic People's Republic of Korea (North Korea)

The UN held an emergency meeting in September after North Korea carried out a fifth nuclear test. All members of the UN Security Council agreed to pursue appropriate measures under **Article 41** of the UN Charter. This gives the UN Security Council the power to decide what non-military measures to use, including economic sanctions, in response to threats to international peace and stability. In a separate statement, Russia's foreign ministry spokeswoman **said** Moscow supports sanctions against North Korea.

China is North Korea's biggest trading partner, and Chinese state media have reported that foreign

minister Wang Yi thinks unilateral sanctions would be "unhelpful". But Mr Yi has pledged to support the UN's additional measures, and US President Barack Obama and Chinese Premier Li Keqiang have **agreed** to work more closely together to take enforcement action against companies breaching sanctions to operate in North Korea. They are **investigating Liaoning Honxiang Industrial**, a Chinese conglomerate that the US alleges has a role in assisting North Korea's nuclear programme. Subsequently, UN diplomats have **reported** that the US and China are considering new sanctions against North Korea's energy trade.

Cuba

The US imposed a trade embargo on Cuba after the Cuban revolution of 1959. But since December 2014, President Obama has been gradually reducing sanctions on the country by using Executive Orders. More than 100 US business delegations have since visited Cuba. For example, when President Obama visited Cuba in March, hotel company Starwood announced it had become **the first US firm** to agree a deal with the Cuban authorities.

Yet in September, the US extended its remaining trade sanctions on Cuba until 14 September 2017. This means most transactions between the US and Cuba are still prohibited. The reduction of Cuba's sanctions has largely come from President Obama's use of Executive Orders, rather than through Congress. So the sanctions policy might change when Donald Trump enters office in January 2017.

Russia

The EU imposed sanctions on Russia's energy, defence and banking sectors after its annexation of the Crimea in 2014. These were due to expire at the end of July 2016 but EU leaders decided to renew these sanctions until January 2017. In September, the EU also extended sanctions against Russian officials and pro-Moscow

separatists in Ukraine by six months. This means that asset freezes and travel bans against 146 officials and 37 firms or entities will be in place until 15 March 2017. The US Commerce Department added 81 Russian individuals to an export-control list in September.



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Russia announced in September that it would add salt imports from a number of western countries to its list of embargoed food products, effective on 1 November 2016. This includes the EU member countries, the US, Canada, and Australia.

Both the EU and the US are coming under increasing pressure to make a more concrete decision on sanctions against Russia, in light of the ceasefire with Ukraine that was agreed in September. The Wall Street Journal **reported** that EU leaders were due to discuss sanctions on Russia in October and likely to make a decision in December

Democratic Republic of Congo

The US **imposed** targeted sanctions on senior officials close to the DRC's President Joseph Kabila in September, after the deaths of protestors and the President's apparent reluctance to hold an election. An army general and former police chief had their assets frozen and France's foreign minister Jean-Marc Ayrault **said** European governments "will discuss" imposing further sanctions.

The UN, EU, Australia, and many other countries already maintain sanctions against the DRC. These include an arms embargo, freezing of the assets of

certain politically exposed persons, a travel ban on named individuals, suspension of certain aid and development programmes, and suspension of high-level bilateral government visits.

The DRC is one of the world's richest countries in natural resources, with **African Business Magazine** that it has \$24 trillion in untapped mineral wealth in 2009. The UN and EU sanctions have benefited Chinese businesses. China bought **half** of the country's raw mineral exports in 2012.

Myanmar

There has recently been a significant step forward in relations between the US and Myanmar. In 2012, the US lifted many of the trade sanctions put in place against Myanmar in 1989 because of human rights abuses. In September, President Obama announced that the country should also benefit from preferential tariffs as it emerges from decades of military rule, and sanctions were reduced further in **October**.

Myanmar has vast resources in oil, natural gas, and other minerals, yet most of its trade and foreign investment is with Asian countries. An advisor of Myanmar's leader Aung San Suu Kyi **referred** to the reduction of sanctions as a "gold pot" for the country.

Despite this, some sanctions will **remain** in place. A watchlist includes at least 100 companies and individuals with links to the former military junta, and trade in jade and rubies.

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Iran

Sanctions imposed on Iran by the international community have been reduced in recent years. In January, the five permanent members of the UN Security Council plus Germany, and the European Union, agreed to remove sanctions against Iran after it made commitments to give up parts of its nuclear programme. US businesses have now begun to re-enter Iran. In September, the US Treasury Department allowed Airbus and Boeing to deliver planes to its capital Tehran.

But sanctions remain in place, in particular around banking restrictions. Sanctions that have been lifted could return if Iran fails on its nuclear commitments. Non-American manufacturers wishing to sell to Iran must obtain an export license from the US if their products include American-made materials. Some members of Congress have been critical of the President granting licenses to deal with Iran.

UK

In April, a report by the UK House of Commons' Foreign Affairs Committee warned that if the UK left the EU, it would have to "reassess its sanctions regimes". It said the UK had been one of the most influential foreign policy players in the EU, noting that it had helped to lead negotiations around sanctions on Russia and Iran. The UK voted to leave the EU on June 23. Article 50 has not yet been triggered, so the UK is unlikely to leave until at least 2018. At that point, it will no longer be bound by the EU's policy on sanctions.

However, much of the UK's sanctions policy comes from UN resolutions, which will still bind the UK after it leaves the EU. The UK also signed the deal to lift some of Iran's nuclear sanctions as a separate signatory to the EU. In March 2016, the UK set up an Office of Financial Sanctions Implementation, which suggests it is still committed to maintaining a tough sanctions regime.

Nonetheless, once the UK leaves the EU it will be looking to sign new trade deals, which might change its economic strategy and as a consequence its sanctions policies. Companies in the UK that are keen to secure new business at an uncertain time for the country's economy might be tempted to make deals without doing proper due diligence. British firms, and their prospective trading partners in countries such as Australia, must keep a close eye on any changes to the UK's sanctions policy once it leaves the EU.

"Entering sanctioned markets requires substantial knowledge of the country, the contract parties and the political environment a company will be dealing with. A company's enhanced customer due diligence is essential for a satisfactory country-risk assessment and to manage its risks and legal requirements in sanctioned countries."

Sebastiaan Bennink, Lawyer at B&A Law

How can you help prevent sanctions breaches?

Given the various levels of sanctions, and the constantly changing nature of watchlists, it is vital that companies follow best practice when implementing sanctions procedures. As part of sanctions policies and procedures companies should consider the following:

1. Ensure senior management understand company's sanctions obligations and endorse policy process
2. Prepare company policy & procedures, including disclosure requirements
3. Communicate policy & procedures to employees and third-parties (eg. Contracts, sales agents etc)
4. Implement regular training to ensure staff and third-parties understand obligations and procedures
5. Implement a screening process appropriate to the nature, size and risk of the company's business
6. Align sanctions screening process to associated third-party due diligence procedures
7. Ensure procedures include escalation contacts for sanctions enquiries and to report violations
8. Audit and regularly review policy & procedures, training and screening systems
9. Reinforce policy & procedures with independent audit and testing
10. Don't wait for enforcement as a trigger to implement above actions

For legal, financial and reputational reasons, any company that trades or invests across an international border should ensure they are protected. LexisNexis Business Insight Solutions has a range of resources to help companies negotiate the international sanctions regimes, maintain compliance with them and continue to adapt to what is a constantly evolving area.

LexisNexis delivers interconnected and flexible product modules aligned to the customer workflow including:

- PEP, watch list and negative news screening and monitoring
- Enhanced due diligence and reporting
- Outsourced due diligence, compliance and risk advisory
- Content integration and data feeds into proprietary systems

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