UK FINANCE

YEAR 1

SANCTIONS SCHOOL

What are Sanctions?

Sanctions are a complex mixture of foreign policy and instruments to help curb some criminal activity. They are legally binding on all UK citizens and registered companies, they have regulatory layers for some industries, they have an international reach, and for global businesses they often introduce a conflict of laws.

Like war and diplomacy, they are a foreign policy instrument for governments to use to fulfil foreign policy objectives.

Sanctions are a fast changing, reactive, legislative area that covers a mixture of foreign policy, international trade, criminal prohibitions, financial restrictions, and travel or visa bans.

Law and sanctions

Sanctions legislation is domestic law, though it is one of the areas with **extra-territorial** reach, so the requirement to adhere to UK legislation is absolute for UK nationals and UK registered companies. This is often referred to as a **nexus**.

International corporations, especially those in banking can find this mixture of extra-territorial legal requirements extremely complex and costly to manage.

The UK Finance sanctions school is free to everyone and builds knowledge and understanding of the international sanctions environment.

Year 1 materials cover the foundations of what sanctions are, their history, what types of sanctions are imposed, the key regulators for UK based companies and the licences, reporting, and enforcement that sanctions programmes have.

This is lesson 1 which covers what sanctions are. The other lessons, tests, and the end of year exam are available on the UK Finance website along with links to accompanying podcasts for each lesson.

Why impose sanctions?

The aim of sanctions is usually to help enforce a change of behaviour in the target, or to send a political or foreign policy message.

They are imposed in response to behaviours such as threats against peace or security; human rights abuses; engaging in terrorism; committing public acts of corruption; or the proliferation of weapons of mass destruction. Governments and international authorities will typically issue laws and regulations to create restrictions in pursuit of the objectives outlined above. It is important to note that sanctions are no longer imposed on a country (which denotes that every person of that country is sanctioned) but rather in relation to a country (which denotes that certain groups (such as politicians or business leader) in a country are sanctioned).

They are used to:

- change the behaviour of a targeted government of a country, region, or regime
- act as an enforcement tool when international peace and security have been threatened and diplomatic efforts have failed
- restrict the funding of individuals, entities or groups associated with criminal or terrorist activity.

Who imposes sanctions and who is the target of sanctions?

Sanctions are imposed by international bodies, such as the UN or EU, or governments against a particular group or groups. Governments, like the UK or the US, can also have an **autonomous sanctions program**.

In the UK, there has been a relatively recent adoption of an autonomous sanctions program, since before the vote for the UK to exit the EU, the UK Sanctions regime consisted of implementing sanctions from the EU and the UN. UN and EU sanctions (which will be explored more in papers 107 and 108) work through the UN/EU deciding who will be designated, but then the member states are responsible for implementation, enforcement and **licenses**.

Sanctions can be imposed against individuals, such as a travel or visa ban. They can also be imposed against companies or groups, this may be an asset freeze or a prohibition on certain forms of trade.

Sanctions may be issued against the following actors and activities:

- Governments of countries, jurisdictions or regions.
- Individuals.
- Trading activities: Sanctions can apply to trade in certain goods, services and technology.
- Sectors - For example, there is an internationally established Sectoral Sanctions Identification (SSI) List prohibiting certain types of debt financing and equity, in response to Russia's annexation of parts of Ukraine.

What form do sanctions take?

Sanctions can take many forms and can be financial, trade, travel, sporting, criminal, behavioural, or a combination. We can classify sanctions into two general types; targeted sanctions, which affects those named on a list, so asset freezes and travel bans are examples of targeted sanctions, and non-targeted sanctions, which are less precise in who they affect, with trade sanctions being an example of non-targeted sanctions.

The wider trade sanctions are closely linked with **export controls**, but have a more targeted application. Trade sanctions would target specific goods, or goods above a set value. So it may be that a £100 watch can be traded, but a luxury £2000 watch would be prohibited.

Sanctions can take numerous forms. The most relevant types of sanction for businesses are:

- financial sanctions programmes
- trade sanctions
- non-financial sanctions. (Visa restrictions etc)

Why sanctions get complicated quickly

Sanctions are a Foreign Policy tool and as such invoke international complications.

A single trade can be subject to the Sanctions programmes of many governments of countries and international obligations, minimum three (seller country, buyer country and UN) but this can go up to include the **currency controller**, the nationality of the shipping owner, the nationalities of any staff involved in the transaction and any points of call during the voyage.

A UK based bank, operating internationally would need to consider the following as minimum Sanctions requirements:

- UK Sanctions
- UN Sanctions (incorporated in UK Sanctions)
- US Sanctions
- EU Sanctions

Typically the EU, UK and US programmes each have >100 updates a year. A single update may contain many new entities and cover more than one Sanctions programme, such as DPRK, Cuba, Proliferation etc.

Accounting for the wide reach of sanctions law, it is inevitable that different sanctions regimes will apply to the same transaction. This creates a complex picture of interwoven law and jurisdiction and issues when the different sanctions regimes are not aligned with each other, and in some cases even contradict each other.

The fast-changing nature, with amendments to the guidance, legislation and laws makes sanctions complex and essential for businesses to keep up-to date.

Recent international political developments and unrest have brought the threat of terrorism to the forefront of domestic and international political agendas. It is critical that firms and compliance functions fulfil their legal and regulatory sanctions obligations, in support of the wider political aims of the international community.

How sanctions affect businesses

Financial institutions and financial sector businesses act as a front line against financial crime. It is also a regulatory requirement for financial institutions to combat **money laundering**, terrorist financing and sanctions breaches.

Other industries are also required to ensure that they are not exposed to sanctions risks. For example, oil and gas companies will consider prohibitions relating to petrochemicals, commodity traders will have to consider prohibitions relating to materials such as gold and precious metals.

Firms are required to do no business that is connected to individuals, entities, government of countries, regions or activities subject to sanctions. While it is not possible to prevent every instance of sanctions-related activity, firms must establish **controls** through a programme of detection and appropriate action to avoid risks or at least mitigate the effects of those that materialise, in line with regulatory obligations and industry best practice. These controls should apply to both international and domestic sanctions regimes.

When sanctions go wrong

As a regulated industry, breaches can lead to significant action via civil prosecutions for banks and the fines imposed can be severe. For a criminal prosecution, the penalty could result in serving a prison sentence of up to 7 years. The UK moved to a **strict liability** approach to sanctions in respect of **civil prosecution** in June 2022, and the need for treasury to no longer prove the defendant had knowledge or reasonable cause to suspect further skews the UK position on sanctions as a penalty to UK based banking. (See paper 12 for more detail on enforcement).

Glossary

Extra-territorial

– refers to a law being valid or having power outside the territory of the country which has issued the law – this could be done by the law applying to the country's citizens, whichever country they are in for example.

Nexus

– refers to the extra-territorial scope of sanctions legislation, in which a business might get caught in – for example the US nexus incorporates involvement by a US person, US-originating goods

Autonomous sanctions program

– a program of sanctions which an individual country implements wholly by its own governmental processes, not on the direction of an international body which it is a member of, such as the UN or EU. Countries such as the US, UK and Australia all have autonomous sanctions programs.

Licenses

- the term for an exemption to sanctions. Can be specific so for one business for one transaction or general, covering a humanitarian exemption for example (See Paper 111 for a more detailed introduction).

Sectors

– refers to large grouping of companies with similar business activities, such as professional services (law firms, accountancy firms, consultancies) or extraction of natural resources (oil and gas companies)

Export controls

– refers to legislation which regulates the movements of goods, software and technology from a country. Often used for military equipment or restricted products such as uranium etc.

Currency controller

– This is the body responsible for a particular currency. The Bank of England is responsible for Sterling which uses the GBP (Great Britain Pounds) code. The Federal reserve is responsible for the US Dollar which uses the USD (US Dollar) currency code. Any trade or transaction involving USD creates a nexus with US sanctions.

Financial institutions (FIs)

– a group of companies which focus on handling financial transactions, such as investments, loans and deposits. Often regulated.

Money Laundering

– the process of concealing the origins of money obtained by illegal methods in order to make the funds appear legitimate. In the UK the Proceeds of Crime Act 2002 is the primary legislation that covers this area, though there are many others that have touch points on various aspects of the money laundering framework, but this is out of scope for this resource.

Commodity traders

– an individual or business who focuses on investing in physical goods such as oil, gold or agricultural products rather than shares

Strict Liability

– the status in UK and US law with no defence being able to be offered for a breach of sanctions

Civil Prosecution

– a non-criminal prosecution when fines are imposed rather than custodial sentences. In the UK, this is what OFSI can use as a penalty, and in the US, OFAC perform the same function.

OFSI

– Office of Financial Sanctions Implementation – the governmental body in the UK responsible for the enforcement of financial sanctions

OFAC

– Office of Foreign Assets Control

Authors

Neil Whiley
Director, Sanctions
Economic Crime

Anila Haleem
Manager, Sanctions
Economic Crime

Francesca Flynn
Intern, Sanctions
Economic Crime

Additional authors

Maya Lester KC