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INSIGHT: INTERNATIONAL BUSINESS

What sanctions mean for boards


by CHRISTOPHER MARKS AND NEIL RIGBY

As national governments face up to geopolitical challenges, how do sanctions and foreign investment rules affect corporate governance?

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SAVE ☆

Global investors have long had to navigate restrictions on investments into foreign countries. Rules such as sanctions or foreign investment regimes are used by governments to achieve economic or political objectives by controlling the activities of foreign actors or those who seek to deal with them. Increasingly, these tools are being applied more widely, in less predictable ways, and can change quickly according to political mood, making it important to be ready to manage this potential risk.

Sanctions have been used since ancient times and have evolved into a formalised and expansive instrument of foreign policy. They are used by both individual states and supranational bodies—such as the UN and the EU—to exert pressure, signal disapproval or induce behavioural change in other states.

Modern sanctions now encompass a wide array of measures, including asset freezes, travel bans, export controls, and restrictions on access to financial systems. These tools are often designed to target specific individuals, entities or sectors. In contrast, comprehensive sanctions are targeted against a specific country or region, by severely restricting or prohibiting all trade and other dealings.

The use of sanctions reached a new scale and intensity in response to Russia's invasion of Ukraine in 2022. Among others, the US, EU and UK coordinated an unprecedented package of sanctions targeting Russian banks, energy exports, oligarchs and even the Central Bank of Russia. These sanctions were designed not only to punish but also to isolate

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Russia from the global financial system, demonstrating how sanctions have become central to geopolitical strategy.

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However, foreign policy objectives are not always aligned between allies. The extraterritorial reach of some sanctions regimes, especially those of the US, has triggered legal pushback through so-called "blocking statutes".

For instance, the EU's Blocking Regulation, which came into force in 1996 in response to US sanctions against Cuba and was more recently a measure used to counter US sanctions against Iran in 2018, seeks to shield European entities from the effects of US secondary sanctions by prohibiting compliance with certain foreign laws and allowing recovery of damages caused by extraterritorial enforcement.

These legal countermeasures highlight the contested nature and complexity of sanctions, and the importance of being aware of contradictory regulations.

An important element in the administration of sanctions is the licensing regime. In many jurisdictions, licenses may be issued to authorise transactions that would otherwise be prohibited under sanctions laws. These licenses serve as a mechanism to permit humanitarian assistance, allow wind-down periods for businesses, or accommodate essential services without undermining the overall objectives of the sanctions.

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Foreign investment rules

More than 100 countries now have foreign investment regimes, and the scope of the rules is ever-more intrusive. Regimes often apply a broad concept of 'security' which has rapidly evolved from a traditional focus on the defence sector to now also encompass economic security.

For example, economically valuable sectors (such as artificial intelligence or quantum computing) or infrastructure (such as ports or telecommunications systems) are now subject to foreign investment or national security restrictions.

Political developments, such as changes in government, armed conflict, or international disputes, can rapidly alter the legal and commercial landscape.

Further, recent challenges in the globalised economy have seen governments consider whether other sectors (such as pharmaceuticals, steel or water) should be subject to similar restrictions on foreign ownership. Non-sensitive activities can also unexpectedly be caught, for example, cleaning or catering where staff have access to sensitive sites.

These restrictions apply to a wide range of investments, often applicable to acquisitions of only 10% with no minimum value thresholds, and sometimes even to internal reorganisations without any new investor acquiring an interest.

While many jurisdictions (such as EU member states or the US) apply restrictions based on whether the investor is foreign, others (such as the UK) apply these rules to all investors. State-backed investors may also trigger filings or attract more detailed scrutiny, depending on the specific governance structure of the investor.

Regimes can change rapidly in response to political pressure. For example, in the UK the proposed acquisition of *The Telegraph* newspaper and *The Spectator* news magazine by a government-affiliated investor attracted political scrutiny and prompted the UK government to adopt new legislation within a matter of weeks. This effectively prohibited the acquisition and imposed tight restrictions on future investment in this sector.

Similarly, Huawei 5G equipment was banned from use in the UK and other countries following political pressure several years ago, even after it had been installed widely in telecoms infrastructure, highlighting how quickly policy responses can change. Indeed, in a recent UK appeal case, it was noted that the regulator had consulted with at least six other government bodies during its review, creating significant risk for unexpected political considerations to arise.

In this environment, it is critical for businesses and investors to remain acutely aware of the political and regulatory climates in the jurisdictions where they operate or reside.

Political developments, such as changes in government, armed conflict, or international disputes, can rapidly alter the legal and commercial landscape through the imposition of sanctions, changes to foreign investment rules, or other restrictive measures, and transactions can unexpectedly become subject to political scrutiny.

Due diligence, risk assessments and scenario planning must now routinely incorporate geopolitical factors as an essential element of prudent international business strategy.

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