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МІЖНАРОДНІ ФІНАНСОВІ САНКЦІЇ: СПЕЦИФІКА ІМПЛЕМЕНТАЦІЇ

У статті здійснено огляд міжнародних санкцій як складової політики, інтегрованої у загальний процес "комплаєнс" (досягнення відповідності регулівним нормам та правилам), що регулює та захищає світову фінансову систему від використання з метою легалізації коштів та фінансування тероризму.
Автор визначає основні органи, що діють на міжнародній арені: Рада Безпеки ООН, яка приймає санкційні заходи, що передбачають широку низку опцій застосування впливу, та не включають застосування збройних сил; і поділяються на загальноекономічні та торговельні санкції; Європейський Союз, який застосовує санкції на "автономній" основі або шляхом прийняття зобов'язуючих постанов Ради Безпеки ООН, які містять в собі окремі специфічні та загальні торговельні обмеження, фінансові обмеження; Департамент контролю іноземних активів Державного департаменту казначейства США ("OFAC"), який запроваджує економічні та торговельні санкції, застосовуючи блокування активів та торговельні обмеження, публікує списки визначених ("підсанкційних") осіб.
З'ясовано, що практики застосування санкцій обумовлюють перебудову бізнес-моделей банків у світі, призводячи до так званого відходу від ризику, і в результаті до скорочення потоку міжнародних платежів, скорочення реалізованих операцій документарного бізнесу, а також припинення або обмеження ділових відносин.
Зроблено спробу інтегрувати (в єдину схему) багатовекторний та багаторівневий процес "комплаєнс" (досягнення відповідності вимогам) в межах однієї установи, та визначити місце процедур досягнення відповідності положенням про санкції.
Акцентовано, що поточні умови потребують від фінансових установ розширення проактивного підходу до оцінки наявних партнерських відносин та до постійного моніторингу їх прямих та непрямих клієнтів, а також посилення уваги до проведення комплаєнс.

Ключові слова: міжнародні санкції, комплаєнс, світова фінансова система, протидія легалізації коштів, одержаних злочинним шляхом, та фінансуванню тероризму; блокування активів (коштів), фінансові обмеження, міжнародні розрахунки; регулювання банківської діяльності, фінансовий моніторинг.

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INTERNATIONAL SANCTIONS AND TERRORIST FINANCING RISKS MULTI-EFFECT OF HIGHER CONCERN IN CONDUCTING CROSS-BORDER FINANCIAL OPERATIONS

The article deals with the general view on international sanctions as a part of policies integrated into the overall compliance process, regulating and protecting global financial system from money laundering, from being used for terrorist financing. Sanctions may restrict financial operations with the designated sanction targets: countries, political regimes, entities, persons, sectors of economy, maritime vehicles, certain goods and services, also with regard to the type of financial transaction itself being permitted or prohibited; sanctions are of collective and particular effect; operation-, goods or services-, activity- and party-based; sanctions are expressed in certain actions, including asset freeze, termination of operation and embargo. It is outlined that the "financial" side of sanctions refers to assets freeze and making no funds or economic resources available to a designated person.
The author defines the main bodies acting on the international arena: the United Nations Security Council adopting sanctions measures to encompass a broad range of enforcement options that do not involve the use of armed force, to range from comprehensive economic and trade sanctions; the European Union imposing sanctions either on an autonomous EU basis or implementing

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binding Resolutions of the Security Council of the United Nations comprising specific or general trade restrictions, financial restrictions; the U.S. Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury enforcing economic and trade sanctions using blocking of assets and trade restrictions, publishing lists of targeted persons.

The author emphasizes that the great stimulus to strictly adhere to sanctions is the size of asset freezes and fines imposed i.a. on financial institutions, not merely for rude violations, but also for sanctions' misinterpretation.

According to the empirical experience, the author agrees that the sanctions' application practices condition a reshape of banking business models around the world leading to so-called de-risking, embracing reduction of international settlements, documentary business and termination or restricting of business relationships. The de-risking process is aimed to be regulated by the comprehensive risk-based approach requiring assessment of money laundering and terrorist financing risks and taking the appropriate enhanced or simplified mitigation measures. With consideration of the de-risking process, correspondent banking relations once being the core acknowledged channel for facilitation of cross-country partnership and global movement of funds are more often assigned a high risk mainly for fear of non-compliance of respondent banks and increasing cost of regulatory compliance. To help conduct assessment instead of total termination of relations, the author has selected a number of world-practiced factors that financial institution should consider with regard to a partner bank, e.g. jurisdiction; information on ownership, major business activities, target markets, quality of banking regulation and supervision, details on originator and beneficiary in payment messages.

The author notes that there are licensing policies with respect to the otherwise prohibited transactions subject to an authorization on a case-by-case basis or general basis under certain terms (e.g. under the American law, exports to Iran of agricultural commodities (including food), medicine and medical supplies is possible under certain conditions, whereas other supplies remain prohibited).

Next, the article sheds light on the issues to consider when checking a transaction or parties to the transaction against sanctions lists: country risk; the exact sanctions' target, comparison with the designated lists of countries, economic sectors, persons, goods or services, or the transaction itself, considering source of funds and ambiguous nature of sanctions.

The author tries to integrate the multi-directional and multi-level compliance process of a single institution and define the place of compliance with sanctions regulations. The indicated process is based on legislative and internal regulations, includes due diligence on different stages of cooperation with a customer (including with a customer financial institution). The due diligence may be enhanced to the so called Know Your Customer's Customer policies in order to learn not only about its direct customers, but also about all intermediaries and ultimate ordering or beneficiary parties to a transaction to detect any direct or indirect exposures to entities or individuals subject to international sanctions.

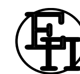
The author agrees that there is a dilemma in treating documentary instruments, as because of possible application of sanctions and related reputation risks, of particular concern are the commitments (including payments) under documentary instruments.

The author concludes that the current trends oblige financial institutions to promote a pro-active approach in the assessment of existing relationships and continuous monitoring of their direct and indirect exposures, to focus on compliance, which includes adherence to sanctions regulations, in order to ensure prior check and the following monitoring of an operation to avoid reputation risk.

Key words: international sanctions, compliance, global financial system, anti-money laundering and counter-terrorist financing, asset freeze, financial restrictions, international settlements, banking regulation, financial monitoring.

JEL: F51

International sanctions policies that appear to have recently grown wider, become the supranational regulation for cross-border movement of funds, and a security measure to protect global financial system from being used for terrorist or aggressor financing. On a broader scope, sanctions are sort of instrument of inter-country relations, political and financial pressure. Changing and widely-applied sanctions regulations led to elaboration of new compliance policies and measures. Sanctions regulations become integrated into the overall compliance process, comprising customer learning, anti-money laundering (AML) and counter-terrorist financing (CTF) measures.



Within the financial market, sanctions policies imposed on a country level as well as on the supranational level restrict financial operations with the designated *sanction targets:* countries, political regimes (senior officials), entities (e.g. state companies, state and commercial banks, other entities), organizations, persons, sectors of economy, maritime vehicles, certain goods and services, also with regard to the type of financial transaction itself being permitted or prohibited. Sanctions have therefore the defined types of influence: sanctions of collective and particular effect; operation-, goods or services-, activity- and party-based sanctions; sanctions expressed in certain actions, including asset freeze, termination of operation and embargo. The "financial" side of sanctions refers to assets freeze and making no funds or economic resources available to a designated person or entity, where "funds" or "assets" may include loans, credits, any types of guarantees, securities, financial commitments, bills of lading etc.

The United Nations Security Council adopts sanctions measures to encompass a broad range of enforcement options that do not involve the use of armed force, to have ranged from comprehensive economic and trade sanctions to targeted measures such as, for our case, financial or commodity restrictions. Today, there are 13 ongoing sanctions regimes, which focus on supporting political settlement of conflicts, nuclear non-proliferation and counter-terrorism. The Security Council sets up sanction systems by adopting a resolution, where the type of sanction (e.g. embargoes, freezing of assets) and the category of persons targeted is determined[1].

The European Union imposes sanctions or restrictive measures being instrument of a diplomatic or economic nature in response to violations of international law or human rights, or policies that do not respect the rule of law or democratic principles, either on an autonomous EU basis or implementing binding Resolutions of the Security Council of the United Nations. Restrictive measures imposed by the EU may target governments of third countries, or non-state entities and individuals (such as terrorist groups and terrorists) comprising specific or general trade restrictions, financial restrictions (p. 1 European Commission – Restrictive measures http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf). Economic and financial sanctions including targeted financial sanctions consist of i.a. bans on the provision of specific services (brokering, financial services), prohibitions on investment, payments and capital movements, to be applied by all persons and entities doing business in the EU, including nationals of non-EU countries, EU nationals and entities incorporated or constituted under the law of the EU Member States when doing business outside the EU (p. 5 European Commission – Restrictive measures http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf).

The U.S. represented by the Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury enforces economic and trade sanctions based on US foreign policy and national security goals, being either comprehensive or selective, using the blocking of assets and trade restrictions, against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC publishes lists of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers under programs that are not country-specific (https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx).

[1] https://www.un.org/sc/suborg/en/sanctions/information

The great stimulus to strictly adhere to sanctions is the size of asset freezes and fines imposed i.a. on financial institutions, not merely for rude violations, but also for non-notifications and non-authorizations of the permitted transactions. For example, OFAC alone has reported 37.6 million US dollar terrorist assets frozen under US sanctions as of 2015, 72.5% higher than as of end-2014. Around USD 2.3billion of assets have been frozen targeting Iran, Sudan, Syria and Cuba. In the UK, Her Majesty Treasury reported around GBP 100 thousand frozen as of September 2015 (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/tar2015.pdf). OFAC regularly announces its enforcement information, including on banks even if detected violations refer to transactions made even years ago (if sanctions regulations were in force), for non-compliance with its sanction policies.

OFAC Civil Penalties in 2012-7 months 2016

Detailed Penalties Information	Number, Penalized Subjects	Monthly Penalties, USD million
7 months 2016	6	11.27
2015	15	599.71
2014	23	1 209.30
2013	27	137.08
2012	16	1 139.16

Source: Civil Penalties and Enforcement Information https://www.treasury.gov/resource-center/sanctions/CivPen/Pages/civpen-index2.aspx

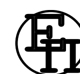
Sanctions effects

The following effects of the sanctions policies are important to outline in order to understand that the financial services' market and in general the movement of funds are strictly captured by sanctions-related limitations. Firstly, *on a country level,* both national and international sanctions raised to the form of a legal act entailed by non-dormant money laundering practices designed to extricate of legal restrictions the global terrorism threats, at the same time resulting in hindered cross-border trade, restricted flow of funds and to a certain extent, economic downturn, also implying that national sanctions may be an expression of a country policy to apply restrictions on same objects, say countries, sectors, banks, companies.

On the micro level, the security of a financial institution's, let us take a banking institution's, operation is confirmed by the institution's compliance with sanctions regulations, which is reputation-positive and paves the way to uninterrupted settlements without pick-up and delays, on the other hand being the impediment to those institutions, which comply, increasing the time expense and effort utilized for said compliance that might otherwise be utilized for core business purposes, and which do not comply, limiting their access to international cooperation.

Sanctions' application practices condition a turnaround of a number of business directions of a financial institution and contribute to the reshape of banking business models around the world, regarding that sanctions precede over commitments. This turnaround among other touches upon:

- the flow of settlements reducing their straight-through percentage and extending processing time-span, respectively cutting commission incomes;



- documentary business, where a transaction-linked payments or a document collection may be prohibited;
- correspondent relations in terms of adjusting their risk.

International sanctions precede other commitments, rules and practices. There is also the dilemma for the cross-border financial operation that the legality of parties or transactions varies from country to country, including when transacting a documentary instrument.

Risk-based approach for banks

A comprehensive risk-based approach (RBA) developed by Financial Action Task Force (FATF) in October 2014 requires countries, competent authorities, and banks assess and understand the money laundering and terrorist financing (ML/TF) risk to which they are exposed, and take the appropriate enhanced or simplified mitigation measures. Separately, the FATF defines *de-risking* as termination or restricting business relationships of financial institutions with clients to avoid, rather than manage, risk driven by concerns about profitability, prudential requirements, anxiety after the global financial crisis, and reputational risk. Restrictions however force entities into less regulated channels. FATF Recommendations only require financial institutions to terminate customer relationships, on a case-by-case basis, where the money laundering and terrorist financing risks cannot be mitigated, where at the same time, even total de-risking is not an excuse not to implement RBA. The RBA reads that countries may also regard the level of compliance in the banking sector of a third country, and the sector's approach to dealing with ML/TF risk. Countries whose financial services sectors are emerging, and where regulatory and supervisory frameworks are still developing, may mean that banks are not equipped to effectively identify and manage ML/TF risk and any flexibility allowed under the risk-based approach should therefore be limited. Then a more prescriptive implementation of the AML/CTF requirements may be appropriate (p. 8). For individual banks, supervisors should take into account the level of inherent risk including correspondents' size, business model, corporate governance arrangements, financial and accounting information, delivery channels, customer profiles, geographic location and countries of operation, quality of the risk management policy, internal audit function etc. (p. 13). For smaller or less complex banks, (for example where the bank's customers fall into similar categories and/or where the range of products and services the bank offers are limited), a simple risk assessment might suffice. Conversely, where the bank's products and services are more complex with multiple subsidiaries and/or their customer base is more diverse, a more sophisticated risk assessment process will be required (p. 17). *Risk-based Approach Guidance for the Banking Sector* http://www.fatf-gafi.org/publications/fatfgeneral/documents/rba-and-de-risking.html http://www.fatf-gafi.org/publications/fatfrecommendations/documents/risk-based-approach-banking-sector.html

Correspondent banking assigned an increased risk

Within the above list of the effected financial sector activities, correspondent relations became deemed high risk, being once the core channel for facilitation of cross-country partnership and global movement of funds. Correspondent banking as a part of the global payment system and an element within the infrastructure for cross-border transactions, is also a means to provide/use bank services in different jurisdic-

tions and a part of infrastructure to support international trade and financial inclusion as well as the channel of information and experience exchange.

However, currently, global banks are cutting back the number of correspondent relationships, especially for respondent (Loro) banks, for certain reasons, namely:

- increased perception of risk and uncertainties on the potential impact of non-compliance depending on the jurisdiction of domicile;
- outcome risk of access of terrorist organizations, and/or money launderers to compliant banking systems;
- compliance of respondents with data protection and data privacy laws and regulations;
- reduction of profitability because of the increasing cost of regulatory compliance, especially in relation to anti-money laundering and terrorism financing regulations;
- reluctance to provide correspondent services in certain currencies, in which there is risk of economic sanctions, regulatory burden related to AML/CFT or (even though unrelated to sanctions), possibility of currency controls for certain currencies. E.g., correspondent banking activities in US dollars are increasingly concentrated in US banks and non-US banks are withdrawing from providing services in this currency. Simultaneously, the very same non-US correspondent banks might still be willing to provide correspondent banking services in their domestic currency (p. 8; http://www.bis.org/cpmi/publ/d136.pdf)
- specifically, the risk of nested activity[2] and of using payable-through accounts[3] as well as lack of regulation for MT202COV[4] payment orders, general uncertainties in payment messages.

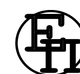
In view of enhancing due diligence with regard to correspondent relations, BIS summarized factors that financial institution should consider (selected):

- jurisdiction in which the respondent (Loro) bank is located;
- information about the respondent bank's management and ownership (presence of beneficial owners or PEPs), its reputation;
- major business activities of a respondent bank, customers and their locations; bank's target markets;
- purpose of the services provided to the respondent bank;
- the condition and quality of banking regulation and supervision in the respondent's country (AML/CFT laws and regulations);
- money-laundering prevention and detection policies and procedures of the respondent bank, including applied to its customers/any third-party entities that will be entitled to use the correspondent banking services and potential use of the account by other respondent banks in a "nested" correspondent banking relationship;

[2] Nested correspondent banking refers to the use of a bank's correspondent relationship by a number of respondent banks. The latter have no direct account relationship with the correspondent bank but conduct business through their relationships with the bank's direct respondent bank to execute transactions and obtain access to other financial services (e.g. a local bank conducts correspondent banking business indirectly via its regional savings bank). p.7 http://www.bis.org/cpmi/publ/d136.pdf

[3] Payable-through accounts, also known as "pass-through" or "pass-by" accounts, are similar to nested correspondent banking but, in this case, the respondent bank allows its customers to directly access the correspondent account to conduct business on their own behalf. p.8 http://www.bis.org/cpmi/publ/d136.pdf

[4] The cover method decouples the settlement from the payment information. The MT 103 with the payment information is sent directly through the SWIFT network from the originating bank to the receiving bank, whereas the settlement instruction (the cover payment) is sent via intermediary banks through the path of direct correspondent banking relationships. p. 25 http://www.bis.org/cpmi/publ/d136.pdf



- information on the AML/CFT policies and procedures may rely on any questionnaire filled by the respondent/on publicly available information (such as financial information or any mandatory supervisory information). (p. 29 http://www.bis.org/publ/bcbs275.pdf)

As determined by the FATF, the ML/TF risk associated with correspondent banking refers to high value transactions, limited information about the remitter and source of funds especially when executing transactions with a bank located in a jurisdiction that does not comply or complies insufficiently with FATF Recommendations, as well as to the possibility that PEPs are involved regarding the ownership of a bank.

The FATF continues to follow developments on the decline in correspondent banking, also referred to as de-risking, and has committed to develop guidance on the correct implementation of the risk-based approach.

BIS on its side defines solutions to reduce uncertainty in payment messages among measures to adhere to FATF Recommendation 16 on the provision of originator and beneficiary information in payment messages, and supports the idea of storing in a single repository relevant due diligence information on financial institutions globally (p.10-12 p.16-17 http://www.bis.org/cpmi/publ/d136.pdf)

Licensing policies

The prohibited transactions may be subject to an authorization in response to a legally provided application to the respective authority, that is to licensing on a case-by-case basis (incorporates prior specific licensing before the transaction and issued for e.g. a single transaction with a sanctioned entity under certain terms subject to the case-by-case application) or general basis, where a license is issued for a range of similar transactions or transactions with the same counterparty under certain terms otherwise prohibited (as distinguished by the U.S. sanctions policies).

For example, with respect to current Joint Comprehensive Plan of Action for Islamic Republic of Iran, the U.S. persons continue to be authorized to undertake a range of activities involving Iran pursuant to general licenses issued by OFAC, including for example, the longstanding authorization for exports to Iran of agricultural commodities (including food), medicine, and medical supplies.[5]

Other licensing-like activities mentioned in the European Commission regulations on restrictive measures against certain countries and persons are prior approval by or notifications to a competent authority of a member state, and in case of the UN sanctions regulations, the relevant Sanctions Committee of the Security Council. These are typically applicable to exemptions from sanctions (e.g. transactions up to a certain amount, cross-border trade in certain goods).

The USA as well as the European Union member states have licensing authorities, likewise the UN has its committees. While some transactions are allowed only upon receipt of a license in advance, general licenses do not require case-by-case applications. Licenses and authorizations are also applied for, if the position is uncertain.

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[5] Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day
https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf

Issues to consider when performing a transaction

An institution's written policies with regard to sanctions should provide for the preliminary review of a transaction or a relationship. Namely *the sanction targets,* let us call them the subject of sanctions, underlie the detection process when checking a transaction or parties to the transaction against sanctions lists.

Within the checkout process, an institution should consider the following issues:

1) country risk;

2) that, according to ICC Banking Commission Guidance, sanctions may be imposed by country of operation, country of incorporation or registration of an entity-party to a transaction, country of the currency or the place of payment, and any other jurisdiction whose laws govern the transaction;

3) ensuring the absence in the designated lists of the whole country, a definite economic sector, counterparties under the contract, all intermediary institutions, all beneficiaries, transporting vehicles and companies, owners (dependent on a sanction program, owners may be reviewed when possessing or controlling 50% and more of an entity), goods or services, or the transaction itself;

4) being aware of dual-use goods and define the criteria, when dual-use goods are intended for illegal purposes;

5) identifying the source of funds and the purpose and intended nature under a transaction, and/or business relationship between the counterparties;

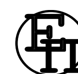
6) bespeaking the details of a transaction with a client or surfing the open data sources;

7) if an exception to the prohibited list exists, a party should apply for a license or an authorization separately for an intermediary and for a customer;

8) considering that sanctions may be ambiguous. For example, even after lifting a range of sanctions under JCPOA, foreign financial institutions need to ensure they do not clear U.S. dollar-denominated transactions involving Iran through U.S. financial institutions, given that U.S. persons continue to be prohibited from exporting goods, services, or technology directly or indirectly to Iran, including financial services, with the exception of transactions that are exempt or authorized by a general or specific license. In general, U.S. persons continue to be prohibited from engaging in any transactions involving Iran, including in currencies other than the U.S. dollar. (Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

In identifying and assessing the risk to which banks are exposed, while analyzing a transaction, according to FATF, another scale of factors to be considered include:

- nature, scale, diversity and complexity of their business;
- target markets;
- number of customers already identified as high risk;
- jurisdictions the bank is exposed to, either through its own activities or the activities of customers, especially jurisdictions with relatively higher levels of corruption or organized crime;
- distribution channels, including the extent to which the bank deals directly with the customer or the extent to which it relies (or is allowed to rely) on third parties;
- internal audit and regulatory findings;



- volume and size of its transactions, considering the usual activity of the bank and the profile of its customers (p. 18). http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Banking-Sector.pdf

The levels of *compliance* including with regard to AML/CTF/sanctions regulations as integrated into financial monitoring process may briefly be merged into the chart:

MULTI-DIRECTIONAL AND MULTI-LEVEL COMPLIANCE

PROCESSES	LEVELS	SUBJECT
Adherence to law	Legal and regulatory base	Domestic and international AML/KYC/CFT laws, sanctions regulations Lists of known or suspected terrorists issued by competent (national and international) authorities Internal policies on sanctions, KYC and AML
Due diligence: simplified - enhanced - KYCC - in all above cases screen against lists of known or suspected terrorists, bans, embargoes, other prohibitions	Object checked	Customer+affiliated persons Separately correspondent customer Transaction Jurisdiction
Checkout apparatus	Checkout	Manual search In-house and purchased automated databases Customer information upon request Open sources
Prior due diligence Initial due diligence Monitoring/frequent analysis Establishment of red flags in case of unusual movement of funds/if transactions make no economic sense		
CDD KYC AML/CFT Sanction screening	Compliance procedures	
Taking a decision Reporting of monitoring results to management/authorities	Decision-making level	Termination of contract/transaction Suspending/return of a settlement Interrupt/continue decisions as to the contract obligations Application for a license Reporting

Multi-directional and multi-level compliance comprises processes based on legislative and internal regulations that are implemented at respective levels applied as due

diligence prior to cooperation, initial due diligence in case of on-boarding and monitoring/frequent analysis during the time of cooperation, resulting in one of the decisions on cooperation or non-cooperation with a customer, correspondent bank, jurisdiction or in non-performing of a transaction. Customers, jurisdictions and transactions are on a recurring basis screened against lists of known or suspected terrorists, bans, embargoes and other prohibitions on transactions, including under the ongoing monitoring to verify new entries.

KYC tends to KYCC

Eager to control its operation, an institution might wish to develop its Know Your Customer policies to the so called Know Your Customer's Customer policies in order to learn not only about its direct customers, let us take correspondent banks or other intermediaries, but also about those correspondents' and intermediaries' counterparties, and finally the ultimate ordering or beneficiary party, be it entity or individual, considering that sometimes all of the named parties to a transaction operate in different countries – e.g. those imposing sanctions and those subject to sanctions. In the course of KYCC, checks are applied to detect any direct or indirect exposures to entities or individuals subject to international sanctions, and define ultimate jurisdiction and beneficiary to a transaction.

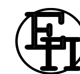
Within their AML/CTF and sanctions policies, banks determine to what extent they need to know their customers' customers. As mentioned, to avoid penalties and the related reputational damage, correspondent banks have developed an increased sensitivity to the risks associated with correspondent banking and cut back services for respondent banks. (p. 1 Correspondent banking – consultative report October 2015 http://www.bis.org/cpmi/publ/d136.pdf) What is evident, the further customer due diligence goes along the chain of correspondent relations between the pairs of partner banks, the higher the costs to ensure regulatory compliance.

Dilemma in treating documentary instruments

Sanctions as they precede other commitments may restrict a bank to perform its role under ICC rules, possibly subject to different sanctions regimes of multiple jurisdictions, therefore to mitigate the risks, a bank needs to develop internal sanctions policies and to use sanctions clauses.

If the sanctions clauses in trade finance-related instruments, including letters of credit or demand guarantees or counter-guarantees, allow the issuer a level of discretion as to whether or not to honor beyond the statutory or regulatory requirements applicable to that issuer, they bring into question the irrevocable and documentary nature of the letter of credit or guarantee, whereas an internal sanctions-related policy is created to go beyond what is required under the laws and regulations applicable to that bank.

On the other side, this is of particular concern with regard to a bank's commitment to fulfill its obligation. Banks refrain from issuing trade finance-related instruments that include sanctions clauses, being aware of the risks posed by such clauses if included by other banks involved in their transactions, on the other hand being recommended to refrain from bringing into question the irrevocable, independent nature of the credit, and/or demand guarantee or counter-guarantee, the certainty of payment or the intent to honor obligations.



Ending clause

The current trends oblige financial institutions to promote a pro-active approach in the assessment of existing relationships and continuous monitoring of their direct and indirect exposures.

The increasing effort is given to the identification of persons, end-owners and controllers of persons, end-purpose of an operation, forcing financial institutions as the subject of primary review and financial monitoring to boost expenses for financial monitoring process and focus on compliance, which includes adherence to sanctions regulations, in order to ensure prior check and the following monitoring of an operation.

Because some jurisdictions continue to restrict the ability of banks to transmit customer names and balances across national borders, it is an AML/CFT trend that banks be authorized to share information about their customers. (p. 18 http://www.bis.org/publ/bcbs275.pdf)

Without delay global financial institution freeze the funds or other assets of designated persons and entities or return for further review settlements or refuse transactions embracing suspicious activity, and report to national/supranational authorities. Therefore, to avoid reputation risk, financial institutions are insistently recommended to have systems in place to detect prohibited transactions (including those with entities designated by the relevant sanctions), unusual business relationships, and to adopt automatic screening systems in order to prevent money laundering or financing of terrorism.

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