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Sanctions – risk on lending transactions

Recent diplomatic wrangling in light of recent world events have served to highlight the importance of US and EU sanctions. Details of the sanctions in force can be found on the websites of the relevant authorities, which include:

<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

and

http://eeas.europa.eu/cfsp/sanctions/index_en.htm.

Legislation governing sanctions is constantly under scrutiny to reflect global geo political changes. It is important to be aware not only of what those requirements are, but also their impact on lending transactions.

Lenders will wish to ensure that the loans they make and the deals they are involved with are compliant with any applicable sanctions regimes for a number of reasons. In particular, there are risks of damage to reputation in the event that a lender is involved in a transaction which gives rise to a breach of sanctions or where a lender is thereby associated with a sanctions target even if the transaction is legal for the parties. With a greater focus on accountability and transparency from banks and lending institutions the potential for adverse publicity should not be ignored.

However, lenders could be subject to civil and/or criminal penalties for failure to comply with applicable laws and regulations, whether such failure is direct or arises as a result of the use by the borrower of the proceeds of a loan.

Furthermore, if sanctions affect a loan transaction, then there are potential credit issues which could put enforcement and recovery by the lenders at risk and impact on the lender's bottom line.

Sanctions risk may be assessed through detailed due diligence. Information on the borrower and transaction need to be considered on a case by case basis. The borrower and its wider group, sectors and the jurisdictions in which it operates need to be identified and any potential issues considered and addressed to minimise lender exposure to risks arising from sanctions.

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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