



## **LIBYA: SANCTIONS**

by The Swedish Club and Reed Smith LLP  
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### **1) LIBYA: UNITED STATES SANCTIONS**

#### **Who do the U.S. sanctions on Libya apply to?**

The U.S. sanctions regime with respect to Libya applies to the following “U.S. persons”:

- (a) U.S. citizens;
- (b) Permanent residents of the U.S. (e.g., green-card holders);
- (c) Entities organized under the laws of the U.S. or any jurisdiction within the U.S., and any foreign branches thereof;
- (d) All individuals physically located in the U.S.;
- (e) All persons physically located in the United States.

#### **What do the U.S. sanctions on Libya prohibit?**

The U.S. sanctions on Libya are limited to a prohibition on dealings with persons placed on the Specially Designated Nationals and Blocked Persons (the “SDN List”) pursuant to Executive Order 13566 of February 25, 2011 and Executive Order 13726 of April 19, 2016. U.S. persons are prohibited from engaging in virtually all transactions with persons and entities on the SDN List as well as entities they own 50 percent or more.

Activities that can result in a person being designated under the Libyan sanctions program include but are not limited to the illicit production, refining, brokering, sale, purchase, or export of Libyan oil or other natural resources, or the provision of logistical or technological support to the Libyan Navy.

Notwithstanding the limited scope of these sanctions, the United States maintains strict export controls and an arms embargo against Libya and therefore, all exports to Libya of U.S. origin goods should be reviewed for compliance with applicable U.S. regulations.

## 2) LIBYA: EUROPEAN UNION SANCTIONS

### Who do the EU Sanctions apply to?

The EU sanctions regime applies:

- (a) within the territory of the EU, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the EU, who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State; and
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU.

This will include Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU.

The sanctions do not apply to non-EU companies. However, if those companies take any action which is in breach of sanctions, associated EU companies and employees who are EU citizens may face penalties under the EU regime.

In addition, under point (e) above, non-EU companies may face sanctions in respect of any business they do which is done in whole or in part within the EU. Note that the sanctions would be limited to that particular business, and would not extend to exclusively non-EU business carried out by those companies.

### Prohibitions: Overview

The prohibitions of greatest significance to the shipping sector relating to Libya are:

#### A. Asset freezes

All funds and economic resources belonging to, owned, held or controlled by listed parties are to be frozen. In addition, no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of listed parties. These provisions have a very wide scope, and are intended to go beyond affecting only the funds and economic resources of listed parties. Indirect payments, such as payment to a non-listed party who then in turn pays the money to a listed party, are prohibited.

#### B. Import and Export Restrictions

Prohibitions are in place in respect of certain goods. Generally prohibitions will relate either to the “sale, supply, transfer or export, directly or indirectly” to or for use in Libya or the import into the EU and/or purchase of goods from Libya.

Broadly speaking, the restrictions cover items used for internal repression, items which could be used for the smuggling of migrants and trafficking in human beings and Common Military List items.

There are also restrictions on providing services associated with the import/export of listed goods. The most common prohibitions are on the provision of technical assistance, financing and financial assistance.

### C. Petroleum Restrictions

It is prohibited to load, transport or discharge petroleum, including crude oil and refined petroleum products, from Libya on designated vessels flying the flag of a Member State unless authorised by the competent authority of that Member State after consultation with the Government of Libya focal point. Related financial transactions, including the provision of credit or insurance, are also prohibited.

There are also explicit prohibitions in place relating to the provision of access to EU ports and to bunkering and supply services to designated vessels, with only limited exceptions, for example, for humanitarian or safety purposes.

Further guidance on these restrictions can be found at pages [4-9](#) below.

### Due diligence as a defence to liability

The EU Regulations implementing these prohibitions include a defence to liability where the person or entity concerned “*did not know, and had no reasonable cause to suspect*”, that their actions would infringe the relevant prohibitions.

Conducting thorough investigations into any particular trade or transaction involving sanctioned jurisdictions, therefore, critical; well documented investigations and screenings may serve as a defence to unintentional sanctions violations.

### Anti-circumvention

The Regulations contain anti-circumvention wording that provides that it “*shall be prohibited to participate, knowingly and intentionally, including indirectly, in activities the object or effect of which is to circumvent the prohibitions ...*” Therefore, even if a transaction is not in direct breach of sanctions, if it is intended to circumvent sanctions, a violation and liability may still arise.

## A. Dealing with Designated Parties: Asset Freezes

### What is prohibited?

1. Funds and economic resources belonging to, owned, held or controlled by designated parties are to be frozen.

→ *What does this mean?*

This provision is largely aimed at banks and financial institutions, who must freeze all accounts belonging to, owned, held or controlled by designated parties.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of designated parties.

→ *What does this mean?*

No payments can be made to any party designated by the EU regime, either directly or indirectly (e.g. making the payment to a non-designated party in the knowledge that they will pay it on to the designated party).

No payments can be made “for the benefit of” a designated party. This includes, for example, making payments to a non-designated company which is owned or controlled by a designated party.

The prohibition extends beyond the payment of monies to “economic resources”. These are defined by the EU regime as “assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services”.

The wide scope of this provision emphasises the importance of thoroughly investigating all parties involved in a particular transaction or trade.

### How can I find out which parties are designated?

A full up to date list of all parties designated by the EU regime can be found [here](#).

### How can I avoid a breach?

Thorough investigations must be carried out in order to determine whether any party involved in a transaction is designated. If so, there is a risk that involvement in the transaction will amount to sanctionable conduct, even if the listed party is not a direct contractual counterpart.

The following investigations should be carried out:

- (a) Identify all parties involved in the transaction, for example shippers, receivers, agents and any intermediaries.

- (b) Investigations must go further than simply identifying the names of the parties and checking them against the asset freeze lists. The prohibitions extend to parties owned and controlled by designated persons. Where possible the corporate structure, ownership and control of all companies involved in the transaction must be investigated.

It is also necessary to consider whether a non-designated party is owned or controlled by a designated party.

A party is considered to be “owned” by another party which is in possession of more than 50% of its proprietary rights, or which has a majority in it.

There is no definitive meaning of “control” for the purposes of the EU sanctions regimes. Factors to take into account when determining whether a designated party controls a company will include:

- (i) the size of that party's shareholding;
- (ii) the nature of the shares held (some may carry voting rights, whilst others may not);
- (iii) the composition of the board of directors;
- (iv) the provisions of the company's Articles of Association; and
- (v) the designated party's ability to exercise power over matters affecting the running of the company.

### **Are there any situations in which payments can be made to a designated party?**

Payments to designated parties may be authorised in certain specified circumstances. The majority of these are not relevant to a commercial situation, and reflect circumstances such as satisfying the basic needs of designated parties, or the payment of fees or service charges for the maintenance of frozen funds.

Funds may be added to frozen accounts where they reflect payments due under contracts, agreements or obligations that were concluded or arose before the date on which the designated party in question was listed. Those funds must then be immediately frozen.

NB: these payments must be authorised by the relevant authority in the Member State of the party making the payment. Those authorities are listed in Annex IV to Regulation 2016/44. The payment must also be notified to the EU Sanctions Committee, who must not object to the payment.

Even if it appears that a particular payment may be permitted, it should never be assumed that authorisation will be given.

### **Are there any situations in which funds may be released from a frozen account?**

Funds may be released from frozen accounts, with prior authorisation, in certain specified circumstances, including:

- (a) if the funds in question are the subject of a judicial, administrative or arbitral lien established before the party was designated, or of a judicial, administrative or arbitral judgment rendered prior to that date;

NB: these funds must be used exclusively to satisfy claims secured by such a lien or recognised in such a judgment; the lien or judgment must not be for the benefit of a designated party; recognising the lien or judgment must not be contrary to public policy in the relevant Member State; and the Sanctions Committee must have been informed.

- (b) if a payment is due under a contract or agreement concluded, or an obligation that arose, before the party was designated provided that payment will not contribute to any prohibited activity, and will not otherwise contravene the asset freeze provisions.

## B. Export and Import Restrictions

### Carrying cargo to Libya – what cargos are prohibited?

It is prohibited to sell, supply, transfer or export, directly or indirectly, to any Libyan party or for use in Libya, the following goods:

1. Items which might be used for internal repression (as listed in Annex I of Regulation 2016/44).

→ *Are there any exceptions?*

The prohibition does not apply to protective clothing temporarily exported to Libya by representatives of the media and humanitarian and development workers for their personal use only

Member States may authorise transactions related to Annex I items where they consider that the equipment is intended solely for humanitarian or protective use.

2. Without prior authorisation, items which could be used for the smuggling of migrants and trafficking in human beings (as listed in Annex VII of Regulation 2016/44).

→ *Are there any exceptions?*

Authorisation is not required for transactions between authorities of Member States and the Libyan Government.

### Carrying cargo from Libya – what cargos are prohibited?

It is prohibited to purchase, import or transport from Libya equipment which might be used for internal repression (as listed in Annex I of Regulation 2016/44), whether or not the item concerned originates in Libya

### How can I avoid a breach?

In order to avoid falling foul of the cargo prohibitions, the following questions should be asked:

- (a) What is the cargo? It should be identified as precisely as possible.
- (b) What is the origin of the cargo?
- (c) What is the location of the cargo? This may be different to the cargo's origin.
- (d) What is the destination of the cargo? This should include the cargo's final destination and any intermediate destinations.
- (e) Who will be the ultimate receiver of the cargo? Will the cargo pass through the custody of any intermediaries before reaching the ultimate receiver and if so, who are they?

- (f) What will the cargo be used for?

### **Services related to the Import and Export of Cargo**

It is prohibited to provide the following services, both directly and indirectly, in respect of Annex I items and items on the Common Military List and prior authorization is needed in order to provide the following service in respect of Annex VII items:

- (a) technical assistance;
- (b) brokering services;
- (c) financing; and
- (d) financial assistance.

## C. Petroleum Restrictions

### What is prohibited?

It is prohibited to:

1. load, transport or discharge petroleum, including crude oil and refined petroleum products, from Libya on designated vessels flying the flag of a Member State unless authorised by the competent authority of that Member State.

→ *Are there any exceptions?*

Only where authorisation is provided by the competent authority of the Member State as listed in Annex IV of Regulation 2016/44.

2. accept or provide access to ports in the EU to designated vessels, as specified by the Sanctions Committee.

→ *Are there any exceptions?*

Where entry to a port in the EU is necessary for an inspection, in the case of an emergency or where the vessel is returning to Libya.

3. provide bunkering, ship supply and other services to designated vessels, including the provision of fuel or supplies, as specified by the Sanctions Committee.

→ *Are there any exceptions?*

The competent authorities of Member States, as listed in Annex IV of Regulation 2016/44, may grant exemptions where necessary for humanitarian or safety purposes, or where the vessel is returning to Libya.

4. engage in financial transactions including the sale, the use as credit and the taking out of transport insurance, with respect to petroleum, including crude oil and refined petroleum products, aboard designated vessels, as specified by the Sanctions Committee.

→ *Are there any exceptions?*

The prohibition will not apply to the acceptance of port fees where entry to a port in the EU is necessary for an inspection, in the case of an emergency, or where the vessel is returning to Libya.

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