



Sanctions 101

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United States Export Control Laws

- Office of Foreign Assets Control (OFAC) regulations
- Export Administration Regulations (EAR)
- International Traffic in Arms Regulations (ITAR)
- Consolidated Screening Search: www.export.gov/csl-search

Office of Foreign Assets Control

- Regulation involves trade sanctions against certain individuals, entities, and foreign government agencies and countries who interests are contrary to use policy.
 - Financial transactions, very broad and expansive reach
 - Specially Designated Nationals and Blocked Persons List
 - Country- Region-Based sanctions (e.g., Cuba, Iran, North Korea, Russia, Syria, Eastern Ukraine)

Export Administration Regulations (EAR)

- US Department of Commerce Bureau of Industry and Security (BIS).
- Most likely export regulations you are likely encounter
- *Entity List and Denied Person List*
- Most aircraft, engines, and aviation components are controlled for export purposes by BIS under the EAR (10% US content)
- Licensing requirements are based on cross referencing the Export Control Classification Number (ECCN) found on the Commerce Control List (CCL) with the Commerce Country Chart.
- Generally, civil aircraft, engines, and aviation components can be freely exported to most countries without a license.
- Voluntary disclosure is an option, but risky, not a “*get out jail free*”.

International Traffic in Arms Regulations (ITAR)

- Administered by US Department of State, Directorate of Defense Trade Controls (DDTC).
- ITAR covers aircraft and related equipment and technologies which are listed on U.S. Munitions List (USML).
- Exporters must be registered with DDTC and obtain license to export aircraft and related equipment listed on USML.
- Export Control Reform: A number of aircraft and related equipment and technologies moved from USML and licensing jurisdiction of DDTC to CCL and the licensing jurisdiction of the BIS.

The different approaches that countries take

- United States very aggressive, combined approach
- Presumed guilty, burden of proof on the entity or person
- Criminal, civil, asset forfeiture, grand jury subpoena

Potential penalties

OFAC Violations

- Civil monetary penalties of up to the greater of ~\$295,000 or twice the amount of the underlying transaction may be imposed administratively against any person who violates, attempts to violate, conspires to violate, or causes a violation.
- Upon conviction, criminal penalties of up to \$1,000,000, imprisonment for up to 20 years, or both, may be imposed on any person who willfully commits or attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation.

EAR Violations

- Criminal penalties can reach \$1,000,000 and 20 years imprisonment per violation and the administrative penalties can reach the greater of \$300,000 per violation or twice the amount of the transaction that is the basis of the violation.
- Violators may also be subject to denial of their export privileges. A denial of export privileges prohibits a person from participating in any way in any transaction subject to the EAR. Furthermore, it is unlawful for other businesses and individuals to participate in any way in an export transaction subject to the EAR with a denied person.

European Union Sanctions

- EU Common Foreign and Security Policy – Treaty on European Union Art 11
- Implemented by Service for Foreign Policy Instruments and Member States
- Binding on all persons/entities when doing business in the EU, including nationals of non-EU countries, and also to EU nationals when doing business outside the EU
- Breach of sanctions may lead to heavy fines or imprisonment

Types of EU Sanctions

List based regimes

- Asset freezes and travel bans
- Prohibition on “making available funds or economic resources”
- “Specially designated nationals”

Activity based regimes

- Arms embargos
- Ban on activities in a sector
- Ban on supply of specified goods and technology
- Financial services, shipping, insurance
- Investments and joint ventures
- Financial sanctions – authorisation and notification above specific thresholds
- Credit and bond finance

EU Blocking Statute (Reg 2271/96)

- Applies to re-imposed US Iran sanctions from 7 August 2018
- Mitigate the impact of US sanctions “on the interests of EU companies doing legitimate business in Iran”
- Lists US statutes and regulations from which relief will be provided to EU persons
- Cannot shield EU persons from the consequences of failing to comply with US sanctions

OFAC'S Broad Jurisdictional Reach

- **INDIVIDUALS**
 - US citizens
 - Individuals, *regardless of citizenship*, physically located in the US
- **ENTITIES**
 - Organized under the laws of the US (including foreign branches)
 - Physically located in the US
- **TRANSACTIONS**
 - By foreign persons to the extent that they involve the US or have a US nexus

Effect on Non-US Persons

- Penalties vary, but can include:
 - Ban on loans from US banks
 - Ban on forex transactions and payment transfers through US banks
 - Ban on US Export-import bank guarantees and credit
 - Ban on receiving US exports and participating in US government contracts
 - Ban on right to enter the US or own property in the US
 - Ban on US investment in sanctioned person
 - Fines for transactions within the US

Example - EU and Russia (1)

“In response to the illegal annexation of Crimea and deliberate destabilisation of a neighbouring sovereign country...”

This includes:

- travel bans and asset freezes against individuals and entities
- restrictions on access to capital markets for certain financial and defence institutions
- restrictions on dual-use goods and technologies exportation
- restrictions on dealing with goods and services related to the oil industry

Example - EU and Russia (2)

- Regulation 269/2014 (17 March 2014) imposed financial sanctions and travel restrictions on specific individuals and entities listed in its Annex I
- Supplemented by a number of Regulations
- The EU Council updates the list monthly

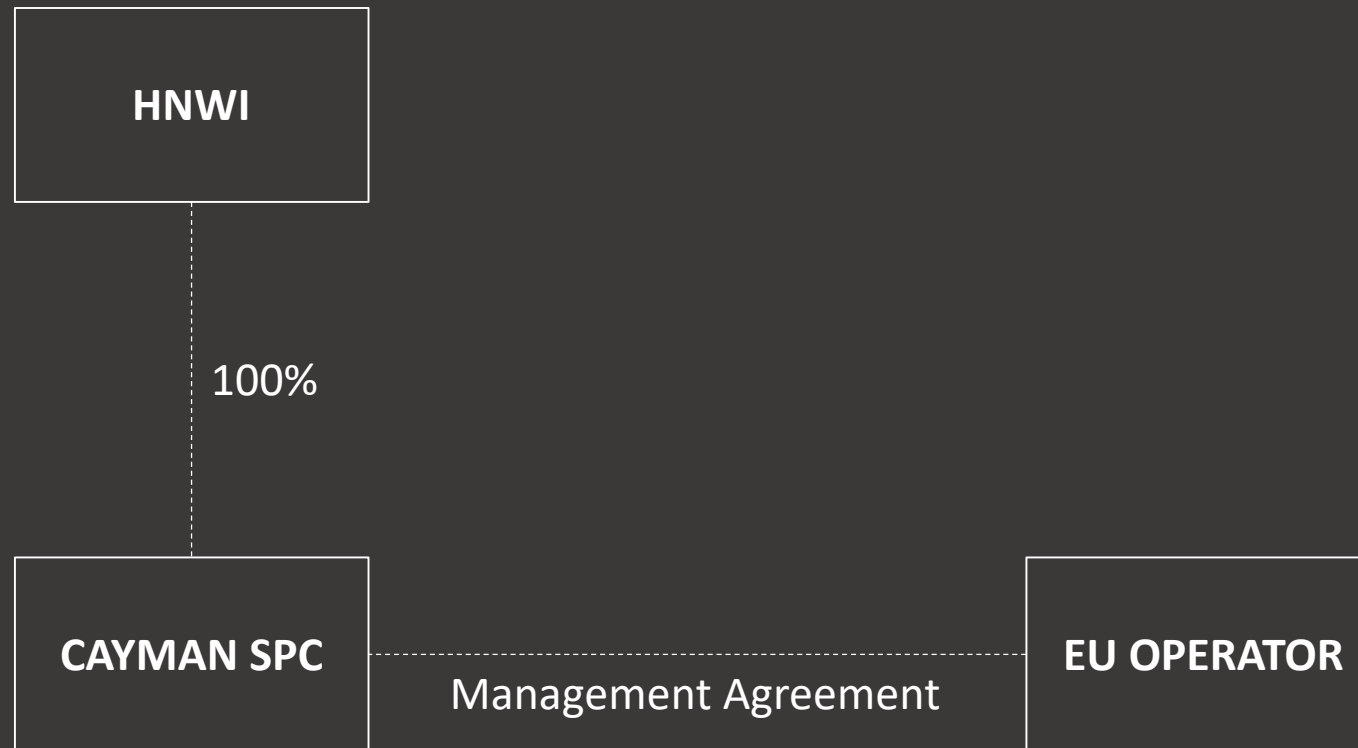
Article 2(1)

- All funds and economic resources belonging to, owned, held or controlled by any natural persons or natural or legal persons, entities or bodies associated with them as listed in Annex I shall be frozen

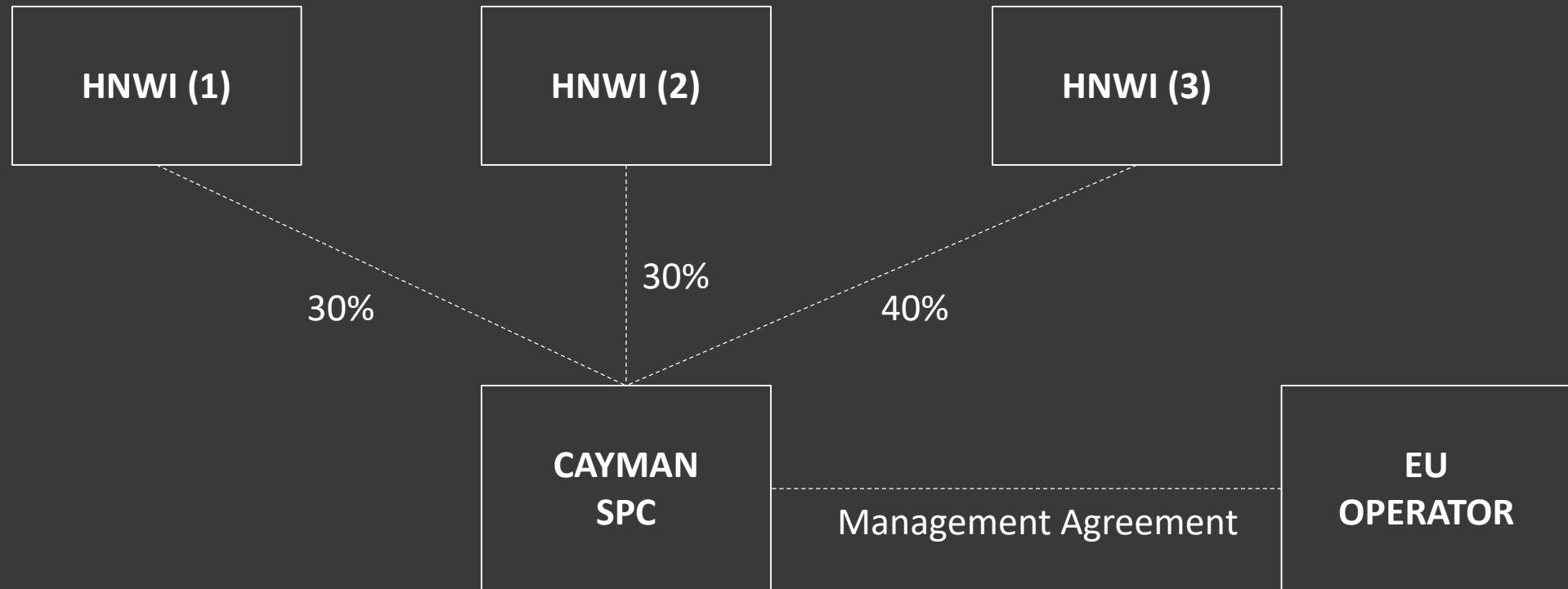
Article 2(2)

- No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural persons or natural or legal persons, entities or bodies associated with them listed in Annex I

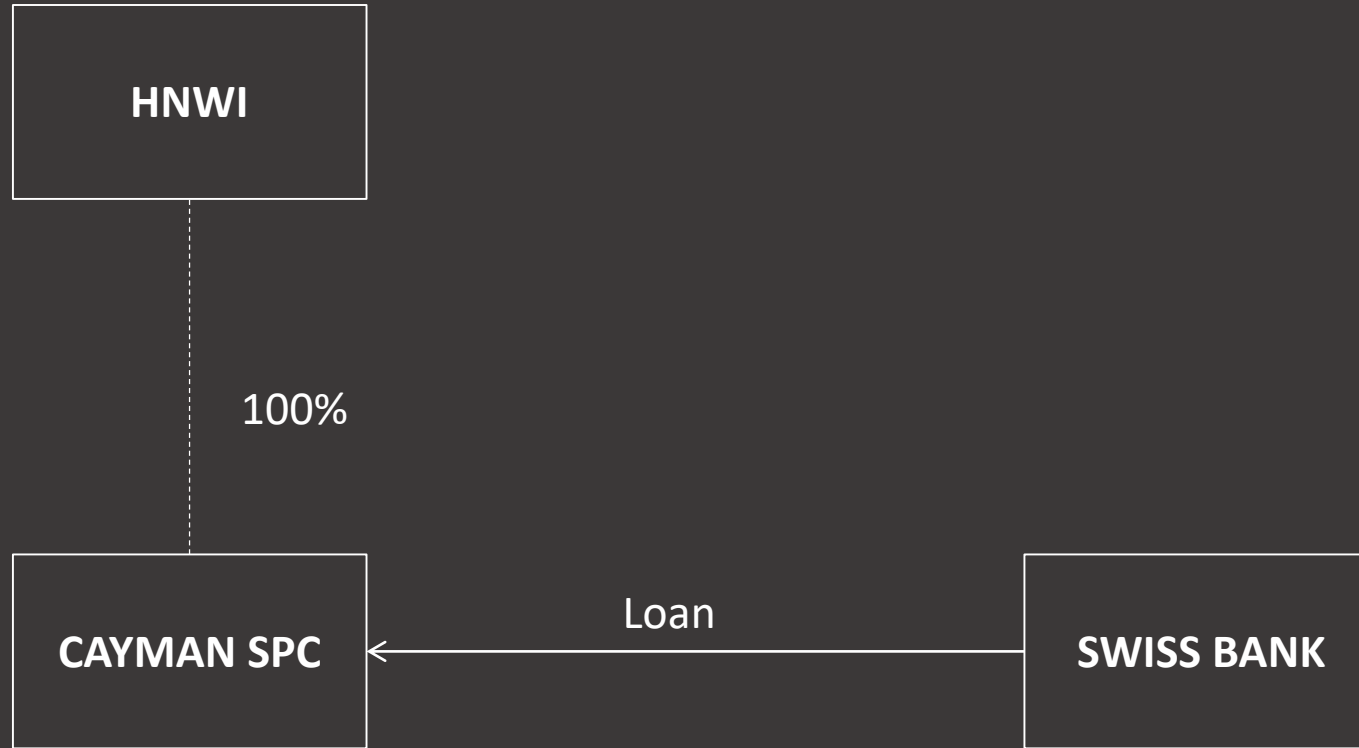
Example (1)



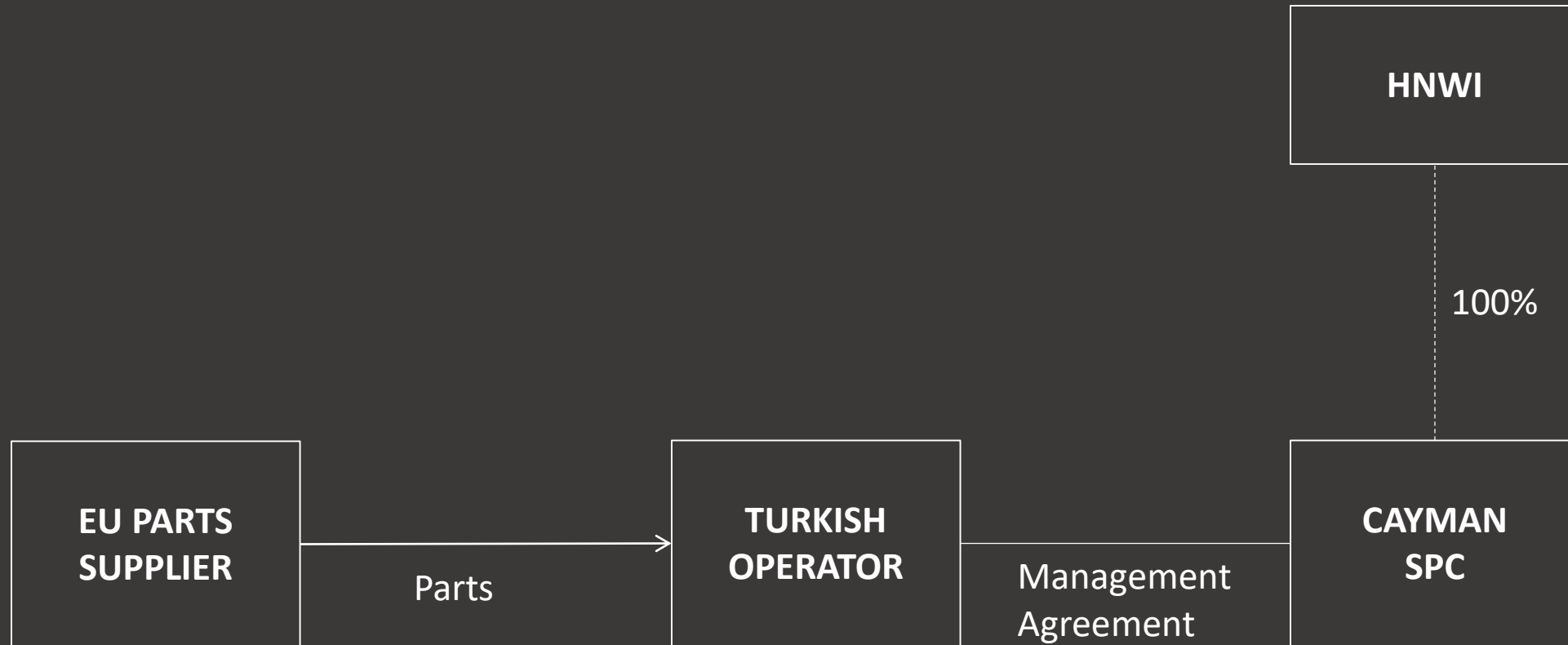
Example (2)



Example (3)



Example (4)



What to do if your client breaches sanctions

- Verify the relevant facts with the client, confirm accuracy of allegations
- Research applicable precedent and applicable law
- Develop a strategy, understand the worst case scenario
- Assess potential impact on business and freedom to travel
- Likelihood criminal, civil, asset forfeiture, grand jury subpoena action
- Determine whether voluntary disclosure an option

What happens when clients end up on the list

- Avoid discussing with anyone until able to verify the relevant facts with the client, confirm accuracy of allegations
- Develop a strategy, understand the worst case scenario
- Assess potential impact on business and freedom to travel
- Likelihood criminal, civil, asset forfeiture, grand jury subpoena action

Thank you & Questions!