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Sanctions and the Hotel Industry

Recent years have seen a significant increase in the use of economic and financial sanctions as a tool of foreign policy, with tightening restrictions, companies under heightened scrutiny and enforcements becoming increasingly frequent and expensive. Against this backdrop, there are a number of ways in which the hotel industry, in particular, has been affected by the myriad of international sanctions laws and regulations imposed by the US, UK, UN, EU and others.

Those operating or investing internationally face a constant risk of engaging in activity prohibited by expanding sanctions laws and regulations, and need to monitor the restrictions in different jurisdictions to ensure their assets are protected.

Two cases in the past few years have highlighted some of the different and perhaps unexpected ways in which international sanctions have affected the hotel industry:

Libya

In the midst of the "Arab spring" in 2011, widespread sanctions were imposed in relation to Libya, targeting not only Qaddafi and his aides, but also the assets of the Libyan Investment Authority and other Libyan sovereign wealth funds. As a consequence of the EU and US designation of such entities, their widespread ownership stakes in several prominent European businesses, including hotel management companies, meant that those businesses in some cases required licences from the relevant authorities before their operations, performance of contractual obligations and access to bank accounts could continue. The sanctions also affected the use by Libyan-owned hotel companies of US-based internet booking vehicles until the relevant licences were in place.

Cuba

The United States maintains a range of economic sanctions that are extra-territorial, in the sense that they extend to foreign persons acting outside the United States. Among these are US sanctions against Cuba, which generally prohibit US persons, (as well as non-US entities that are US-owned or controlled (such as subsidiaries of US entities located in third countries)) engaging in transactions with Cuban nationals, wherever located. The extra-territorial application of these sanctions is opposed in a number of jurisdictions, including in the EU where a blocking regulation prohibits compliance with the US measures.

The competing nature of these regulations has affected, among many others, US-owned or controlled hotel chains operating internationally. In March 2006, the Mexican government fined a Sheraton hotel in Mexico City for expelling Cuban guests in accordance with US sanctions, in contravention of local law. A similar controversy erupted in January 2007, when Hilton hotels in Norway and the UK refused bookings by Cuban trade delegations because of the US sanctions. Following a complaint made to the UK authorities in connection with a breach of discrimination legislation and the threat of a proposed boycott, Hilton reversed its ban on Cuban

delegations staying at its hotels in Europe, and called on both Britain and the US to resolve the issue of the competing laws.

There was a partial resolution of the issues in January 2011, when the US Treasury Department's Office of Foreign Asset Control (OFAC), the authority responsible for the administration of most US economic sanctions, added a general license to the relevant US regulations, authorising US persons "*to engage in any transaction with an individual national of Cuba who has taken up permanent residence outside of Cuba*", subject to certain limitations.

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The breadth and scale of sanctions can present a constant operational risk for international hotel chains, and investors and other trade partners are required to look carefully at the complex restrictions imposed to ensure they are not exposing themselves to risk.

Sanctions in relation to targeted countries are not necessarily co-ordinated, and so compliance with one source of sanctions, for example the US, does not guarantee compliance with another. A breach of any one of the sanctions incurs liability, and parties are therefore strongly advised to consult each relevant sanctioning authority. In general terms, the various sanctions regimes preclude dealings not just with named countries or persons that appear on official lists, but also entities owned or possibly controlled by sanctioned country governments or persons.

In the US, responsibility for implementing and enforcing sanctions primarily lies with OFAC and civil penalties are up to $250,000 or twice the transaction value, whichever is greater, per violation for most OFAC sanctions programs (civil penalties for Cuba- related violations are up to $65,000 per violation), with criminal penalties of up to $1,000,000 and 20 years imprisonment in certain cases. In the UK, responsibility for implementation lies with the Foreign and Commonwealth Office for overall policy, HM Treasury for international financial sanctions and for licensing exemptions and the Department for Business Innovation and Skills for trade sanctions. Violations can attract penalties of up to 7 years imprisonment and/or an unlimited fine. As well as civil and criminal penalties, investors and operators should consider the reputational risks associated with a sanctions violation.

Risks to those in the hotel industry can arise in connection with operations in sanctioned countries, or as in the case of the Libya sanctions imposed in 2011, joint ventures with, or operations in countries that become subject to sanctions following a change in political circumstances. Applicable sanctions could also potentially be violated if hotel services are provided to guests who are or become designated targets of sanctions, in the absence of relevant exemptions or licences.

Under the broad prohibitions against making funds or economic resources available to designated persons, customary hotel services such as currency exchanges and cashing travellers' cheques could contravene sanctions and a hotel could in principle be required to freeze a credit card or deposit provided by a sanctions target.

For investors and operators, among the steps that can be taken to manage the risks of violation, are the following:

- Due diligence of any proposed target's business and processes could identify the scope and magnitude of any possible risk of violation as a result of acquisition of the business.
- Implementation of processes to flag any booking that could violate the sanctions aided by the increasingly sophisticated and integrated software of international hotel operators.
- Monitoring the evolving applicable sanctions regimes so that any processes are constantly updated.
- Consideration of any general licences or general exemptions that might apply to specific activities.

Mergers and acquisitions in the industry could increase the risks, as parties acquire businesses with different risk mitigation policies and procedures or operational practices.

Clifford Chance has extensive experience in advising clients on the full range of sanctions, export controls and related regulatory risks under EU, US, UK and other applicable laws and regulations. Leading corporations and financial institutions in all the major markets rely on Clifford Chance for counsel on their most complex sanctions and export control related challenges, among other risk management expertise provided by our firm.

The multi-jurisdictional reach of our experience, and our ability to deliver highly-specialised and integrated local law advice is a distinguishing feature of our practice.

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