海问观察
Haiwen Alert

HAI WEN
海问律师事务所

北京 | 上海 | 深圳 | 香港 | 成都

Sanctions, Counter-Sanctions and Shipping: Making the Call Under Pressure

Author: Edward LIU

2026-11-27

The vessel is waiting off the load port. Cargo documents have been tendered, but the bank has raised a sanctions query and the P&I club wants more information. Charterers want an answer before the next tide. Owners need to decide whether to proceed, ask for alternative orders or refuse the voyage. The legal advice has to be useful before the berth is lost.

The immediate question is not whether the trade has a sanctions connection. It is what, precisely, prevents performance and what the contract permits the affected party to do about it. A legal prohibition, a bank's refusal to process payment and an owner's concern about sanctions exposure may produce the same operational result. They do not necessarily produce the same legal answer.

Recent English, Hong Kong and Chinese Mainland decisions expose different parts of this problem: contractual risk allocation, protection of the arbitration bargain and the consequences of giving effect to foreign sanctions. For a cross-border trade, those questions must be considered together. A contractual right to stop is of little comfort if exercising it creates liability elsewhere.

Shipping is where sanctions become operational

The review should not end at fixture. It should be revisited when the nominated vessel, shipper, cargo origin, discharge arrangements or payment instructions change. A concern discovered before loading may be manageable by alternative orders. The same concern discovered with cargo on board may leave owners

choosing between delay, deviation and a disputed refusal to discharge.

Start with the proposed act: loading, carriage, discharge, payment or settlement of an insurance claim. Who must perform it, where, and through whom? Then identify the restriction said to prevent it. A screening alert is a reason to investigate, not a legal conclusion. Nor does a rejected bank transfer, without more, establish that the debt cannot lawfully be paid.

The contract remains central

The English decisions do not supply a single sanctions defence. They show why a force majeure proviso, a prospective voyage-order clause and an insurance payment exclusion cannot be treated as interchangeable.

In RTI Ltd v MUR Shipping BV [2024] UKSC 18; [2024] 1 Lloyd's Rep. 621, the problem was expected delay in dollar payments following sanctions against the charterer's parent, not a legal prohibition on paying the freight. Charterers offered euros and agreed to bear the conversion costs. The UK Supreme Court nevertheless held that the reasonable-endeavours proviso did not require owners to accept non-contractual performance. Without clear wording, an obligation to take reasonable steps to overcome an impediment did not require surrender of the contractual right to dollars. For drafting purposes, the lesson is specific. If the parties want an alternative currency or payment mechanism to be compulsory, they should say so.

The voyage-order clause in Tonzip Maritime (Singapore) Pte Ltd v 2 Rivers Pte Ltd (The "Catalan Sea") [2026] EWCA Civ 641; [2026] 2 Lloyd's Rep. 202 addressed a different problem. It permitted refusal where, in owners' reasonable judgment, compliance was prohibited by sanctions or would expose specified persons or the vessel to sanctions. Read with the reference to "such risk", the exposure limb required an objectively reasonable judgment that compliance presented a real risk of sanctions liability, not proof that a breach would probably occur. The distinction matters where ownership or control is uncertain and an order must be answered promptly. It does not allow owners to substitute an unexplained preference for a reasoned assessment of the available evidence.

By contrast, Mamancochet Mining Ltd v Aegis Managing Agency Ltd [2018] EWHC 2643 (Comm); [2018] 2 Lloyd's Rep. 441 concerned payment of an accrued marine insurance claim. On that wording, payment had to be prohibited under the relevant sanctions law; a risk that an authority might wrongly penalise lawful payment was insufficient. The clause suspended liability while payment was prohibited, rather than extinguishing the claim. Tonzipexpressly distinguished that decision by reference to both wording and commercial context. Neither case should be presented as prescribing the meaning of "exposure" in every sanctions clause.

The wording can also protect against risks falling short of direct prohibition. In Lamesa Investments Ltd v Cynergy Bank Ltd[2020] EWCA Civ 821, the financing agreement protected non-payment to avoid US secondary sanctions, although US law did not directly prohibit payment. Conversely,Gravelor Shipping Ltd v GTLK Asia M5 Ltd[2023] EWHC 131 (Comm); [2023] 2 Lloyd's Rep. 239 concerned a sanctions-specific obligation to cooperate and take all necessary steps to resume payments. Neither result can be transplanted into a differently worded contract.

The analysis must extend to the security documents. In GTLK Malta Four Ltd v Pola Maritime Ltd and others [2026] EWHC 2514 (Comm), handed down on 2 October 2026, the Commercial Court granted summary judgment exceeding US$40 million plus interest against guarantors of a bareboat charterer. The ten-year charters were financing arrangements. Their broadly worded "hell or high water" clause placed the risk of loss of use on the charterer, although it did not expressly mention sanctions. The quiet enjoyment covenant did not transfer that risk back to the owner. The guarantees also contained an independent indemnity and savings provisions preserving liability if the underlying obligations became unenforceable, invalid or illegal.

The decision is a warning against assuming that frustration or termination of a charter disposes of the guarantee claim. The Court rejected the frustration case in light of the contractual allocation of risk and the substantial charter periods remaining; the guarantees provided a separate route to recovery. This was a first-instance summary judgment against guarantors, not authority that prohibited payments must be made. The Court did not separately decide whether the particular licence had revived the suspended hire obligation. Before advising that

payment can stop, the charter, guarantees and indemnities must be read together.

Prohibited, blocked, or merely risky

When the commercial team says "we cannot perform because of sanctions", the lawyer should ask which proposition it means. Is the promised act prohibited by an applicable law? Is it lawful but obstructed by a bank or intermediary? Or is there a prospective risk for which the contract gives a right to refuse? A fourth possibility is simply that the trade no longer fits the company's risk appetite. That may explain a commercial decision; it does not identify a contractual defence.

Foreign illegality also requires care. The Ralli Bros principle may be engaged where the contract necessarily requires an act in a foreign place and that act is unlawful there. In Celestial Aviation Services Ltd v UniCredit Bank GmbH (London Branch) [2024] EWCA Civ 628, the English Court of Appeal explained the limits of that principle and the need to address reasonable efforts to obtain an available licence. A party cannot safely move from "our bank will not process it" to "foreign law excuses performance" without examining the contractual place and manner of payment, the actual prohibition and the licensing position.

Hong Kong: keeping the arbitration bargain

In Linde GmbH and Linde plc v RusChemAlliance LLC [2023] HKCFI 2409, the Hong Kong Court of First Instance continued anti-suit relief supporting HKIAC arbitration seated in Hong Kong. It rejected the argument that EU sanctions deprived the Russian defendant of fair access to justice in Hong Kong, stating that those sanctions had no legal effect there. That was not a ruling that the sanctions were irrelevant to the parties' contract. Their effect on suspension, termination and payment remained a matter for the substantive arbitration.

In A Company v The Bank [2026] HKCFI 3169, the Hong Kong Court rejected a Canadian bank's attempt to set aside or stay enforcement of an arbitral award on sanctions and public-policy grounds. The Court would not reopen the tribunal's merits findings through an enforcement challenge, and Canadian sanctions policy did not determine Hong Kong public policy. The factual qualifications matter: the bank had not established a real risk of prosecution, and the Court considered

possible enforcement mechanisms that might not require voluntary payment by the bank. This was not an unqualified direction to breach foreign criminal law.

The same distinction appears in Bank A v Bank B [2024] HKCFI 2529: enforcing an agreement to arbitrate was not the same as enforcing EU sanctions. These decisions support the arbitration bargain and a narrow approach to the public-policy exception. They do not guarantee that an award can immediately be paid, licensed or enforced wherever assets happen to be located. Advice on the forum and advice on recovery must therefore be given separately.

Chinese Mainland: refusal may itself create liability

A Shanghai Maritime Court decision illustrates the risk in the carriage of goods. The anonymised dispute between a Hong Kong company and other claimants and a Singapore shipping company and a shipping (China) company was included in the Supreme People's Court's 2025 National Maritime Trial Typical Cases, released on 24 June 2026. According to the case summary, the Hong Kong shipper booked carriage in October 2022 for electronic goods worth more than RMB 4.99 million from Shanghai to Manzanillo, Panama. After shipment, the Singapore carrier refused to issue bills of lading because the shipper had been placed on a foreign sanctions list. It also refused delivery at destination. Following a maritime injunction issued by the Shanghai Maritime Court, the carrier issued the bills but returned the cargo to Shanghai without authorisation while those proceedings were ongoing.

The Shanghai Maritime Court ordered the Singapore carrier to compensate the Hong Kong company for the value of the goods, exceeding RMB 4.99 million, together with interest, and dismissed all of the carrier's counterclaims. No party appealed, and the first-instance judgment became effective. In explaining the case's significance, the Supreme People's Court stated that it was the first Chinese judgment expressly confirming the Anti-Foreign Sanctions Law's mandatory application. The Court's application of Article 12 established that unlawful foreign unilateral sanctions against Chinese citizens or organisations could not be relied on as a defence to refusal to perform contractual obligations.

For carriers, the warning is concrete: a sanctions concern raised after shipment does not put the obligations to issue bills and deliver cargo beyond judicial

scrutiny. Nor is returning the goods necessarily a safe way out. The reported decision shows how a refusal intended to avoid foreign sanctions exposure can instead produce liability in Mainland proceedings. It does not establish that every sanctions-related refusal is unlawful or that contractual and statutory damages are automatically cumulative. Carriers, banks and insurers should examine the particular foreign measure, the proposed response and the potential application of Article 12 before treating foreign sanctions compliance as a complete answer to a Chinese counterparty.

The Hong Kong position remains distinct. Again in Bank A v Bank B, the Court rejected an argument based on MOFCOM's Order No 1 of 2021, the Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures. The Court noted that the parties were a German bank and a Russian bank, neither a Chinese organisation or legal person, and explained why the Order did not require it to reflect the policy invoked when determining their contractual and arbitration rights. Its public-policy analysis also noted that the EU sanctions did not affect the rights or property of any Chinese entity or entity in Hong Kong. That decision concerned a different instrument and a different question. It does not determine Article 12's application in Mainland proceedings.

Practical implications

When the next sanctions query arrives, the file should answer four questions.

First, what do we know? Record the relevant parties, vessel and cargo, the ownership and control evidence, and the payment chain. Where a shareholding has changed after a designation, obtain the documents supporting the change rather than relying solely on a screening result. Record gaps in the information as gaps, not as findings that the trade is lawful or prohibited.

Second, what does the contract allow? Identify the precise trigger, who must form the relevant judgment, and whether the clause permits suspension, alternative orders or termination. Check notice requirements, time limits and the treatment of hire, freight, demurrage and additional expenses. Read any guarantees and indemnities alongside the charter: they may preserve exposure even where the underlying obligations are disputed. Do not assume that a right under the charterparty also protects the owner under bills of lading or preserves

insurance cover.

Third, what can still be done? Consider licences, alternative contractual payment routes and permissible alternative orders with operations, finance and insurers. Distinguish an option already available under the contract from a variation requiring agreement.

Fourth, can the decision be defended later? Keep a dated record of the evidence, advice, alternatives and reasons. If performance is refused, the notice should identify the contractual basis and the facts relied on. A bare reference to "sanctions concerns" is unlikely to satisfy a counterparty whose cargo is already on board.

A refusal must be defensible

The cases do not yield a single sanctions defence. An alternative payment may solve the banking problem without satisfying the contract. A reasonable assessment of sanctions risk may justify refusal under one clause, while another requires actual prohibition. A guarantee may preserve exposure despite a defence under the charter. And a refusal intended to avoid foreign sanctions may itself attract liability in Mainland proceedings. Each question requires its own answer.

The advice must still arrive before the berth is lost. It should identify what can lawfully be done, what the contract permits and what exposure remains if performance stops. Whether the answer is to proceed, seek a licence, agree alternative performance or refuse, the client should be able to explain the decision afterwards by reference to the evidence and the bargain, not merely to "sanctions concerns".

文章作者



刘 洋 (Edward Liu)

合伙人 Partner

edwardliu@haiwen-law.com

扫描二维码查阅律师简历

Scan QR Code for Attorney Profile