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## **CIF Weekly – issue 84**

### **A year in review**

As summer beckons for those in the northern hemisphere, we're excited to present a curated collection of the past year's insights from the vibrant minds at CIF Weekly. Our journey through the archives reveals recurring themes that reflect the central issues shaping the global economic stage.

#### **Sanctions: An era of accountability**

At the forefront of our discourse, sanctions emerge as a pivotal force. The geopolitical landscape has seen a seismic shift over the past decade, with sanctions evolving into a favoured stratagem for nations to enforce accountability. This trend has cast a profound shadow over international trade, demanding astute awareness from all market players.

#### **Regulatory ripple effects across borders**

The intricate web of our globalized economy means that a regulatory change in one region can have implications worldwide. Our Regulatory and Investigations team offered a duo of thought-provoking articles. These pieces dissect critical legislation and forecast the ripple effects that could reshape the business landscape far beyond their origins.

#### **Decarbonisation: Navigating the green transition**

The green revolution is upon us, but it's a path fraught with the peril of missteps. Over the past year, we've sent out five articles exploring the multifaceted world of decarbonization. Our coverage delves into the lessons that can be gleaned from pioneers and the strategies for industries to navigate this transformative era successfully.

#### **Limitation and the GAFTA Default Clause**

Turning to black letter law, our focus has sharpened on pivotal legal cases, especially those concerning limitation and the GAFTA default clause. This clause has come under the judicial microscope twice in the last year. The outcomes of these cases hold significance that may extend their reach well beyond the confines of the soft commodity sector.

Join us as we reflect on these pivotal themes and the knowledge we've garnered. It's a chronicle of the year that was, and a glimpse into the future we're shaping.

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## Sanctions

### **Celestial Aviation Services Limited and Constitution Aircraft Leasing (Ireland) 3 Limited and another v UniCredit Bank AG (London Branch)<sup>1</sup>– Can sanctions imposed against Russia excuse compliance with standby letters of credit?**

The Commercial Court addressed the impact of sanctions imposed against Russia on payment obligations under standby letters of credit.

Please click [here](#) to view the full article.

**UPDATE:** UniCredit appealed the decision of the lower court in relation to Regulation 28(3)(c) of the Russian (Sanctions) (EU Exit) Regulations 2019, SI 2019/855 (the "UK Regulations"). On 11 June 2024, the Court of Appeal handed down its judgment.

The appeal was partially allowed, with the Court of Appeal finding that UniCredit's payment obligations were affected by the UK Regulations, which prohibited the provision of funds in connection with the supply of aircraft to or for use in Russia. However, the Court of Appeal also held that UniCredit could not rely on US sanctions as a defence, because it did not make reasonable efforts to obtain a licence from the US authorities to make the payments. The Court of Appeal's decision clarifies the scope and application of the UK sanctions regime and the Ralli Bros principle, which prevents the enforcement of a contract that requires an act to be done in a place where it would be unlawful.

See the full decision [here](#).

### **Standing in the way of control – When is a company controlled by a sanctioned Russian entity?**

In the High Court case of Litasco SA -v- (1) Der Mond Oil and Gas Africa Sa (2) Locafrique Holding SA [2023] EWHC 2866 (Comm), Litasco SA (Litasco) was awarded summary judgment against the Senegalese entities Der Mond Oil and Gas Africa Sa (Der Mond) and Locafrique Holding SA (Locafrique) in connection with a breach of contract claim relating to the delivery of 950,000 barrels of Nigerian crude oil.

The case is of interest regarding the scope of UK sanctions in the wake of the Russia-Ukraine war, specifically whether a party, who is not themselves

the subject of direct sanctions, is 'controlled' by a party who is the subject to sanctions, and therefore whether a counterparty is prohibited from making payments to such party.

Please click [here](#) to view the full article.

### **Singapore Court of Appeal decision in Kuvera Resources Pte Ltd v JPMorgan Chase Bank, NA**

It is increasingly common for parties to include as an additional term of the contract a clause that gives a party the right to either suspend or terminate a payment obligation in the event of a breach of sanctions. In the case of Kuvera Resources Pte Ltd v JPMorgan Chase Bank, NA<sup>2</sup>, the Singapore Court of Appeal decided that under Singapore law, a sanctions clause must be construed objectively and strictly in order for a party to rely on it.

Please click [here](#) to view the full article.



<sup>1</sup> [2023] EWHC 663 (Comm) (23 March 2023) and [2023] 1071 (Comm) (5 May 2023)

<sup>2</sup> Court of Appeal Decision can be accessed here: [https://www.elitigation.sg/qd/s/2023\\_SGCA\\_28](https://www.elitigation.sg/qd/s/2023_SGCA_28)

### New sanctions rules on Russian metals: How will they impact global trade?

In a move to "clamp down harder"<sup>3</sup> on the trade of Russian metals, the UK and the US have blocked the London Metal Exchange (LME) and the Chicago Mercantile Exchange (CME) from trading new aluminium, copper and nickel produced by Russian producers. The LME and the CME are the two largest metal exchanges worldwide and provide global benchmark prices for the trade of base metals.

Please click [here](#) to view the full article.

### Sanctions risk... you have been warned!

In response to the Russian Federation's ongoing conflict with Ukraine, the United Kingdom and the European Union have introduced extensive financial and trade sanctions designed to limit the Russian government's ability to finance its war operations.

Please click [here](#) to view the full article.

### Supreme Court clarifies limits of force majeure: No obligation to accept non-contractual performance

In *RTI Ltd v MUR Shipping BV*,<sup>4</sup> the Supreme Court has held unanimously that a force majeure clause requiring an affected party to use "reasonable endeavours" to overcome a force majeure event did not oblige that party to accept an offer of non-contractual performance.

This article focuses primarily on the Supreme Court's decision and its practical implications for parties agreeing or seeking to comply with force majeure clauses in commercial contracts. A detailed overview of the procedural history of the proceedings can be found [here](#).

Please click [here](#) to view the full article.

### Regulatory risks

#### Risk management issues in the context of bribery and corruption and how to deal with them

The Bribery Act 2010 (the "UKBA") defines a bribe as any advantage given (or received) to influence a person in the carrying out of a function, usually connected with their work or role. The intention of the bribe must be to influence the 'bribee' to carry out that function improperly, or to obtain some form

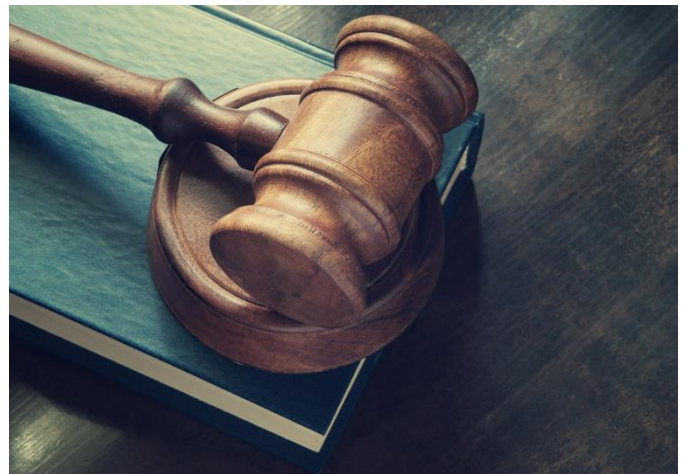
of benefit or advantage from a public official. It can be delivered directly or indirectly.

Please click [here](#) to view the full article.

### Market abuse and commodities

Justin McClelland and associate Maeve Mohan from Stephenson Harwood's commercial litigation team in London consider market abuse in the commodities sector and the recent changes to the regulatory landscape which have led to an increase in enforcement action being taken.

Please click [here](#) to view the full article.



### Decarbonisation

#### Demand & Integrity in the Voluntary Carbon Markets – The Publication of the VCM Claims Code of Practice

This article explores the voluntary carbon market's evolving approach to the use of carbon credits with the recent publication of the VCM's Claims Code of Practice. The use case for carbon credits is still subject to scrutiny, and ensuring integrity is seen as a crucial step to boost prices and expand this emerging market. The article explains how the still developing Claims Code of Practice proposes that companies approach the use of carbon credits, in particular distinguishing between the "value chain" targets which companies should pursue without using carbon credits and the "beyond value chain mitigation" efforts for which they are encouraged to use carbon credits. With the recent crack-down by regulators and action by other interested parties on companies perceived to engage in 'greenwashing', it is increasingly important that companies have clear

<sup>3</sup> <https://www.gov.uk/government/news/uk-and-us-to-clamp-down-harder-on-the-trade-of-russian-metals>

<sup>4</sup> [2024] UKSC 18

strategies on when and how to use carbon credits in a credible and transparent manner.

Please click [here](#) to view the full article.

### International Chambers of Commerce publishes Principles for Sustainable Trade: Wave 2

Global trade represents as much as 30% of all carbon emissions<sup>5</sup>. With the aim of increasing the role of global trade in helping businesses meet the Paris Agreement objective of limiting the global temperature increase to 1.5oC above pre-industrial levels, the International Chambers of Commerce ("ICC") cooperated with stakeholders from trade banks, corporates, technology players, and the Boston Consulting Group (BCG) to launch the ICC's Principles of Sustainable Trade (the "Principles") in September 2021.

Please click [here](#) to view the full article.



### Sustainability in supply chains: New regulations on Forest Risk Commodities

Commodities such as beef, leather, palm oil, cocoa and soy have been identified as some of the key drivers of deforestation, accounting for an estimated 64% of the UK's tropical deforestation footprint. WWF estimates that between 2016 and 2018 around 88% of the UK's land area was required overseas each year to satisfy the UK's demand for these products<sup>6</sup>. In order to address these issues, the Secretary of State for Environment, Food and Rural Affairs has announced the UK's intention to ban the import of commodities linked to deforested land.

This legislation follows similar EU Regulation 2023/1115 but is narrower in scope and indicates a

step away from voluntary approaches to sustainable commodity sourcing, with the government taking more direct action to help retailers meet deforestation targets and improve supply chain accountability.

In-scope businesses should be aware of the increased requirements for sustainability and transparency in supply-chains and how conformity with the new regulations may impact their business.

Please click [here](#) to view the full article.

### In scope but out of line? The SBTi's relaxation of rules round Scope 3 emissions reporting

Andrew Green and Ben Bryant consider the possible implications of a recent statement issued by the Science Based Targets initiative (**SBTi**) in which it is suggested that companies may be permitted to reduce their reported scope 3 emissions using "environmental attribute certificates" (**EACs**). The statement has divided the market, this article goes into why that is and what the potential impact may be.

Please click [here](#) to view the full article.

### Investigation into potential greenwashing by 20 airlines – a growing trend?

The European Commission has recently announced that it and the Consumer Protection Cooperation Network (the "**CPC Network**") had sent letters to 20 airlines concerning a variety of "potentially misleading green claims and inviting them to bring their practices in line with EU consumer law within 30 days". In this week's edition of CIF Weekly, we discuss what those claims were, what actions the airlines now have to take and how participants in other transport classes can avoid a similar investigation, given the current scrutiny on emissions and carbon reduction.

Please click [here](#) to view the full article.

### Limitation of liability

#### MSC Mediterranean Shipping Co SA v Stolt Tank Containers B.V. an ors [2023] EWCA Civ 1007

We consider the Court of Appeal's dismissal of MSC's appeal on the question of limitation. The Court held that MSC was not entitled to limit its liability for claims brought by owners Conti in respect of damage

<sup>5</sup> [World Trade Organization \(2021\), Trade and Climate Change Information brief no 4.](#)

<sup>6</sup> WWF Report 'Riskier Business: The UK's Overseas Land Footprint' July 2020.

to the MSC Flaminia on the basis that MSC as charterer, was only entitled to limit its liability in respect of claims that originate with an entity which does not fall within the extended definition of "shipowner" in the 1976 Convention on Limitation of Liability for Maritime Claims.

Please click [here](#) to view the full article.



### EE Limited v Virgin Mobile: exclusion clauses examined

In *EE Limited v Virgin Mobile Telecoms Limited* [2023] EWHC 1989 (TCC) the Court found that a clause excluding claims for 'anticipated profits' prevented the claimant ("EE") from bringing a claim for revenue lost as a result of the defendant's ("Virgin Mobile") alleged breach of contract.

This decision is another reminder that the courts will in principle uphold wide-ranging exclusions of liability – in this case EE was prevented by the exclusion clause from bringing any damages claim for its loss of bargain (i.e., not getting what it had contracted for). When entering into agreements you should therefore carefully consider with your legal team the effect of any proposed exclusion clauses and the impact they may have on any future claims.

Please click [here](#) to view the full article.

### Limitation clauses: construction and reasonableness – Tornado Wire Limited v John Good Logistics Limited [2024] EWHC 212 (KB)

In dismissing a summary judgment application, the Court considered the interpretation of a limitation clause in the standard terms of the British International Freight Association. The judgment

highlights the centrality of the rules of contractual interpretation, even where the result may put one party in a difficult position and considers the applicability of UCTA 1977 to limitation clauses.

Please click [here](#) to view the full article.

### GAFTA Default clause

#### Ayhan Sezer Yag ve Gida Endustrisi Ticaret Ltd Sirket v Agroinvest SA – London Circuit Commercial Court clarifies meaning of "date of default" under GAFTA Default clause for anticipatory repudiatory breach

On 5 March 2024 the London Circuit Commercial Court handed down judgment in **Ayhan Sezer Yag ve Gida Endustrisi Ticaret Ltd Sirket v Agroinvest SA** [2024] EWHC 479 (Comm), finding, among other things, that, in the case of an anticipatory repudiatory breach, the "date of default" in clause 23(c) ("Default") of Gafta Contract No. 100, was the date of breach by the defaulting party.

Please click [here](#) to view the full article.

#### Sharp v Viterra – Supreme Court clarifies the law of damages in GAFTA Default Clause case

On 8 May 2024, the Supreme Court handed down judgment in *Sharp Corp Ltd v Viterra BV* [2024] UKSC 14<sup>7</sup>, finding that the compensatory principle and principle of mitigation were both fundamental to the law of damages. In respect of the GAFTA Default Clause, this meant that damages were to be assessed by reference to "*the market in which it would be reasonable for the seller to sell the contract goods*" at the date of default.

Please click [here](#) to view the full article.

### Contact us

Please contact your usual SH contact. Alternatively, please contact the commodities team by [clicking here](#).

<sup>7</sup> <https://www.supremecourt.uk/cases/docs/uksc-2023-0029-judgment.pdf>