

## Recognizing OFAC Prohibited Conduct Makes Good Business Sense

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U.S. sanctions against Russian-owned corporations, banks and individuals in the wake of the February invasion of Ukraine have had significant impact on the Russian economy and caused many businesses to reassess practices and holdings in Russia. U.S. businesses and individuals without a general or specific license to engage in otherwise prohibited transactions must comply with these and other regulations under threat of criminal and civil penalties – and ignorance of a regulation is no defense.

### Who implements sanctions?

- The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers a number of different economic and trade sanction programs against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the U.S. economy, security, and foreign policy. Because each program is a result of different foreign policy and/or security objectives, prohibitions may vary between sanction programs.

### Who must comply with OFAC regulations?

- Generally, all U.S. citizens, permanent residents and persons within the U.S. must comply with OFAC regulations. U.S. companies and all branches of U.S. organizations throughout the world and U.S. branches or offices (physically in the U.S.) of foreign corporations are also subject to OFAC regulation and can be restricted from doing business with certain countries, organizations, and/or individuals.
- A number of sanction programs prohibit facilitation of a transaction that would violate OFAC regulations. Facilitation occurs when a U.S. party subject to OFAC regulation aids a transaction that party would be prohibited from conducting itself. Facilitation includes referring the business to a third party or in any way providing assistance in a prohibited transaction. This could include transportation of cargo for a minor portion of the intended carriage.

### How do you identify whether an organization or individual is a specifically designated national?

- Some OFAC enforcement efforts are directed against people, businesses, and organizations on OFAC's Specially Designated Nationals (SDN) and Blocked Persons list, which is sometimes referred to as the "Bad Guy" list.
- Reviewing the Bad Guy list is a place to start, but there are many other sanction lists that could restrict and/or prohibit a proposed transaction. Consolidated sanctions list searches

### ATTORNEYS

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### CAPABILITIES

Corporate and Business Law

Finance and Lending

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that include SDNs can be conducted at <https://sanctionssearch.ofac.treas.gov/>.

#### **What are the potential consequences of non-compliance?**

- Last year OFAC reported \$268,190,007 in assessed penalties/settlements with the largest being \$8,572,500.
- OFAC sanctions have a strict liability component. Every violation, even if unintended, can result in negative consequences.
- Ignorance of trade restrictions, the OFAC sanctions lists, and/or the associated rules and regulations is not a defense.

#### **How can businesses proactively eliminate or minimize financial exposure associated with OFAC enforcement?**

- Sanctions programs administered by OFAC are constantly in a state of flux depending on foreign policy and national security objectives. Each separate sanction program varies in terms of scope and types of transactions restricted. As a result, there are pitfalls for the unwary.
- The following non-exclusive list can help your company improve its process for early detection of potential OFAC issues so they can be evaluated and resolved. Taking steps in this direction can also enhance mitigation and create opportunities to avoid and/or transfer risk associated with OFAC enforcement.
  - Designate a person or group in your company responsible for OFAC compliance with authorization to block and reject prohibited transactions and file reports with OFAC;
  - Develop and continuously update your OFAC compliance program;
  - Carefully screen customers and clients against government lists;
  - Implement a process for notifying management of red flags;
  - Include OFAC compliance language and the ability to conduct periodic audits for OFAC compliance in contract language; and
  - Confirm that your record retention policy is consistent with OFAC regulations.

Companies that take time to identify transactions and parties subject to OFAC economic sanctions can minimize their OFAC related risk. They should also be prepared to respond in the event of an OFAC inquiry.