

Guide to U.S. Economic Sanctions

What are U.S. Economic Sanctions?

U.S. economic sanctions are laws and regulations imposed by the U.S. government, related to specified foreign policy, national security, or other policy grounds, that restrict U.S. persons' ability to engage in activities involving designated countries or regions or specified parties.

Restricted activities may include, but are not limited to, imports, exports, financial transactions, donations, and technology transfers. The scope of the restrictions varies depending upon the sanctions program under which a restriction is enacted, or a party is designated as subject to sanction. Evasion or "facilitation" of sanctions evasion (*e.g.*, a U.S. person assisting or approving a transaction with a sanctioned party or redirecting a transaction from a U.S. person to a non-U.S. person to avoid sanctions) may also be prohibited.

To the extent sanctions provide for "blocking" of a sanctioned party's assets (which can include almost anything of value, tangible or intangible), any such assets that come within the jurisdiction of the U.S. (such as items within the U.S. banking system or within the customs territory of the U.S.) or come into possession or control of a U.S. person, must be "blocked" or "frozen."

Who Regulates and Enforces U.S. Economic Sanctions?

U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) – Regulatory agency responsible for publication and interpretation of sanctions regulations, issuance of licenses authorizing activities with parties subject to sanctions, and civil and administrative enforcement of penalties for violations of sanctions regulations.

U.S. Department of Justice (DOJ) – Authorized to prosecute criminal cases involving knowing or willful violations of sanctions laws.

U.S. Department of Commerce, Bureau of Industry and Security (BIS) – May have parallel jurisdiction over U.S.-origin exports to countries subject to comprehensive sanctions (as described below).

U.S. Securities and Exchange Commission (SEC) – Requires certain disclosures regarding business with sanctioned regions, countries, or targeted parties.

U.S. Department of State (DOS) – Sets policy and may be involved in regulatory designations of parties under certain sanctions programs (e.g., Cuba sanctions, Countering American Adversaries Sanctions Act (CAATSA)).

Who Must Comply with U.S. Economic Sanctions and Embargoes?

U.S. sanctions apply to any U.S. citizen (including dual nationals), permanent resident (“green card” holder), any entity formed under U.S. law, any person located in the U.S. or any person engaged in an activity within the U.S. This includes any employee, officer, or director of any organization who is a U.S. citizen or permanent resident, regardless of their physical location.

In some cases (e.g., Cuba and Iran sanctions), non-U.S. subsidiaries or entities majority-owned or controlled by U.S. persons are also subject to U.S. sanctions and embargoes. U.S. sanctions may also apply to non-U.S. persons where there is a sufficient U.S. nexus – for example, where transactions involve U.S.-origin goods or services, or financial transactions that are denominated in U.S. dollars. Under some sanctions programs, non-U.S. persons may also be subject to “secondary sanctions” (as described below) for engaging in certain activities with sanctioned parties.

What Are Comprehensive Sanctions?

The U.S. maintains some sanctions programs that broadly restrict U.S. persons from engaging in any business activities involving regions or countries. At the time of publication of this guide, the Crimea region, Cuba, Iran, North Korea and Syria are all subject to so-called “comprehensive sanctions” regulations, promulgated by OFAC. These sanctions programs may still vary with respect to the scope of application and availability of general licenses or specific licenses (see below), but are common in that the application of sanctions are based on a specific geographic region or country.

As noted above, comprehensive sanctions may extend restrictions to non-U.S. entities that are owned or controlled by U.S. persons and may restrict any “facilitation” by U.S. persons (which can include any approval, financing, or support) of transactions by non-U.S. persons with sanctioned parties.

What Are Targeted Sanctions?

A. Specially Designated Nationals List and Similar Sanctions Lists

The U.S. also makes extensive use of “targeted” sanctions, imposing blocking and asset freezes, trade restrictions, and other measures on designated individuals, companies, organizations,

government officials, or government bodies, through listing on the “Specially Designated Nationals and Blocked Persons List” (SDN List). SDNs may be designated under a number of sanctions authorities, including, but not limited to, country-specific sanctions, global terrorism, weapons of mass destruction (WMD) proliferation, and human rights violators. OFAC may also issue similar designations of parties as “Foreign Sanctions Evaders” (FSEs) or under other similar targeted sanctions programs. The SDN List and other U.S. sanctions lists are frequently updated, and these updates are posted to OFAC’s website.

It should be noted that BIS also maintain lists of parties that are subject to U.S. trade restrictions, but the scope of these restrictions is specifically focused on trade involving “U.S.-origin” items (as defined in the Export Administration Regulations regulations) and does not include the other types of activities restricted under OFAC sanctions programs.

B. 50% Rule

A key component of targeted sanctions programs is the “50% Rule,” whereby OFAC has issued guidance stating that entities directly or indirectly owned 50% or more in the aggregate by one or more designated sanctioned parties are considered subject to sanctions, regardless of whether such entities appear on OFAC’s SDN List or other sanctions designations.

OFAC has also issued guidance that states caution should be exercised when dealing with a non-sanctioned entity in which one or more sanctioned parties have a significant ownership interest that is less than 50% or maintain control other than through majority ownership, as such entities may be the subject of future designation or an enforcement action by OFAC.

What Are Sectoral Sanctions?

A. Russia Sectoral Sanctions

Sectoral sanctions apply to entities designated on the OFAC “Sectoral Sanctions Identifications List” (SSI List). Russia sectoral sanctions apply to persons that operate in Russia’s financial, energy, and defense sectors. U.S. persons are restricted from engaging in specific types of transactions with these entities. These restrictions apply to new equity investment and financing for entities in Russia’s financial sector and new financing for identified entities in Russia’s energy and defense sectors. Note that “financing” can include payment or trade terms. Sectoral sanctions also restrict U.S. persons from engaging in transactions related to development of Russian deep-water, Arctic offshore, or shale projects that have the potential to produce oil and, such projects worldwide in which those entities have an ownership interest of at least 33% or a majority of voting interests.

B. Venezuela Sectoral Sanctions

The U.S. has targeted the Venezuelan government, including PdVSA (the large Venezuelan government-owned energy company) and its subsidiaries, affiliates and related entities, blocking all transactions with some exceptions for humanitarian aid. These sanctions also specifically identify the possibility of “secondary sanctions” (as described below) against non-U.S. parties that seek to evade or circumvent these restrictions.

What Are Secondary Sanctions?

Secondary sanctions are restrictions imposed by the U.S. that seek to discourage non-U.S. persons from engaging in specified activities (*e.g.*, activities involving Iran’s energy, military or shipping sectors and Venezuela’s energy sector). Under such authorities, the U.S., through OFAC, may sanction non-U.S. persons for doing business with such sanctioned parties.

Communications with OFAC

A. Licensing

If a country/region or party is subject to U.S. economic sanctions, absent an exemption, U.S. persons can only engage in activities with the country, region, or party covered by such sanctions under either a specific license (requiring an application to and issuance of such license by OFAC) or a general license (either through a regulation or administrative publication by OFAC).

Specific licenses are typically limited to particular transactions and parties, time-limited (usually valid for two-year periods), and contain specific terms and conditions required for compliance.

It should be noted that, at the time of publication, processing time for license applications by OFAC has varied widely, sometimes up to more than one year from the time of application.

B. Reporting

OFAC may require certain reporting by parties either to comply with the terms and conditions of a license or to show the blocking of assets or rejecting transactions based on sanctions restrictions.

In particular, entities should be aware that reporting requirements for rejecting transactions based on sanctions restrictions extend beyond financial institutions and may include any entities refusing to engage in a transaction because it would violate sanctions, including transactions

related to wire transfers, trade finance, securities, checks, foreign exchange, and goods or services.

What Are Key Requirements for Compliance with U.S. Economic Sanctions and Embargoes?

OFAC has outlined a set of expectations for an effective OFAC compliance program.

A. Management Commitment

Senior management must ensure that the compliance program has adequate resources, including human resources (and potentially a dedicated OFAC sanctions compliance officer, depending on the size and risk profile of the organization), subject matter expertise, and information technology; that compliance units are given the necessary authority; and that the program is fully integrated into day-to-day operations.

B. Risk Assessment

Organizations should conduct a risk-based evaluation of specific clients, suppliers, products, services, and geographic locations to identify potential touchpoints for direct or indirect contact with OFAC-sanctioned persons, countries, or regions. OFAC notes that risk assessments and sanctions-related due diligence are particularly important in the context of mergers and acquisitions involving non-U.S. companies.

C. Internal Controls and Procedures

Organizations should have controls, including written policies and procedures, and potentially technology resources (such as sanctions screening software), that permit identification of sanctions risks. Such policies and procedures should be communicated to all personnel, particularly those in business units or functions operating in or with high-risk sanctions markets or sectors.

D. Testing and Auditing

A comprehensive testing and auditing function is important for identifying and remediating existing weaknesses in a sanctions program. Depending on the risk, audits can focus on a specific element of a sanctions compliance program or be enterprise-wide and should be appropriate to the risk and sophistication of the organization. In addition, testing and auditing personnel should have sufficient independence, authority, skills, expertise, and resources to be

effective and should develop a framework for identifying and remediating root causes of any weaknesses identified.

E. Training

Training should be tailored and risk-based; conducted periodically (or annually, at a minimum); provide customized, role-specific advice, delivered in easily accessible resources and materials; provided to all employees and, as appropriate, relevant stakeholders (such as clients and suppliers); and appropriately tracked to ensure effective delivery and completion.

Enforcement

A. Administrative Enforcement

As noted above, OFAC is responsible for administrative and civil enforcement of the sanctions regulations. In this role, OFAC is authorized to investigate and issue enforcement actions against parties found to have violated the sanctions regulations. Civil penalties for such violations can include monetary penalties as well as administrative actions that restrict the ability of the penalized parties to engage in activities with U.S. persons.

B. Criminal Enforcement

DOJ may investigate and prosecute cases referred by OFAC where OFAC has identified conduct it believes involves a knowing or willful violation, or where DOJ has independently identified such potential violations.

With respect to criminal investigations and violations, DOJ may impose a range of criminal penalties up to and including large monetary fines and imprisonment of individuals.

C. Voluntary Disclosures

Both OFAC and DOJ (and other government agencies, such as BIS) permit the filing of a voluntary self-disclosure (VSD) that describes violations or suspected violations of sanctions regulations and, ideally, describes a party's efforts to mitigate the harm caused by such violations and efforts to remediate the causes of such violations.

Filing a VSD can have several benefits with respect to reducing the likelihood and severity of monetary fines and administrative actions by the regulators in the event of the discovery of violations. Filing a VSD may also establish a positive relationship with such regulators in the event of any future regulatory issues.

Filing a VSD does entail some risk to the filer as it is an admission of potential improper conduct and can create additional liability or generate a referral from OFAC to DOJ. Consult with qualified legal counsel prior to making the decision to file a VSD to receive assistance in effectively assessing these risks and in the investigation and filing process. For more information, please refer to the Torres Law *VSD handbook* found in Mondaq's Trade Advice Center.