

Sanctions: Just the FAQs

A Primer on Sanctions and
A Framework for Sanctions Compliance

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Topics

What are sanctions?

- Various barriers to trade and economic relations to achieve a variety of governmental objectives.

Why should you care?:

- Regulatory regimes are constantly changing, and no longer in parallel.
- The US DOJ now calls sanctions prosecutions “the new FCPA.”
- Violations are *strict liability offenses*.
- Most companies are spectacularly ill-equipped to ensure compliance.
- Violations could result in catastrophic consequences.

What can you do about it?:

- ✓ I’m glad you asked...

SPOILER ALERT!

Before explaining the problem,
I'm going to give you the
solution...

PROBLEMS!

Problem #1:

US Sanctions are COMPLEX.

Problem #2:

Foreign (i.e., non-US) sanctions only partially overlap and parallel those of other countries.

Problem #3:

Sanctions regimes are constantly changing.

DEFINITION TIME

Economic sanctions operate as a barrier to trade and economic relations to achieve a variety of governmental objectives, such as:

DIPLOMATIC OR POLITICAL OBJECTIVES

For example, economic sanctions against Russia in response to its invasion of Ukraine.





NATIONAL SECURITY OBJECTIVES



For example, those related to
rogue states, terrorism, and
weapons of mass destruction.



HUMANITARIAN OBJECTIVES



For example, economic sanctions against Chinese Communist Party officials of the Xinjiang Autonomous Region (who are accused of maintaining ethnic concentration camps and conscription regimes).

LAW ENFORCEMENT OBJECTIVES



For example, those against international drug syndicates and their members.





DEFINITION TIME

Embargo

(not a legal term)

- a vernacular for comprehensive economic sanctions regimes that effectively halt all trade and financial transactions.





TOPICS TO BE AVOIDED*

**aka, the Voldemort Slide*

Export Controls (under Commerce)

Visa Bans (under State)

Anti-Kleptocracy Measures (under Justice)

...and most other sanctions regimes of most other countries



THE WALTZ TOWARDS A (US) SANCTION

Step 1: the President makes a foreign policy decision (pursuant to the International Emergency Economic Powers Act) OR Congress passes a statute (pursuant to the Constitution).

Step 2: the Office of Foreign Assets Control (“OFAC”), under Treasury, drafts, administers, and enforces the resultant economic sanctions regime.






TYPES OF (US) SANCTIONS

- | | |
|-----------------|--|
| Country-based: | embargoes targeting countries and the individuals and entities “ordinarily resident” within that country |
| SDN List-based: | pecially designated nationals (SDN) lists targeting specific individuals and companies (and what they own / control) |
| Non-SDN listed: | lists focusing on narrow targets (e.g., specific activities or uses, industries, sectors, regions, financing terms, or products) |

OFAC SANCTIONS LIST SEARCH

**OFAC**
Office of Foreign Assets Control

Sanctions List Search

This Sanctions List Search application ("Sanctions List Search") is designed to facilitate the use of the Specially Designated Nationals and Blocked Persons list ("SDN List") and other sanctions lists administered by OFAC, including the Foreign Sanctions Evaders List, the Sectoral Sanctions Identifications List, the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions, the Non-SDN Palestinian Legislative Council List, the Non-SDN Menu-Based Sanctions List, and the Non-SDN Communist Chinese Military Companies List. Given the number of lists that now reside in the Sanctions List Search tool, it is strongly recommended that users pay close attention to the program codes associated with each returned record. These program codes indicate how a true hit on a returned value should be treated. The Sanctions List Search tool uses approximate string matching to identify possible matches between word or character strings as entered into Sanctions List Search, and any name or name component as it appears on the SDN List and/or the various other sanctions lists. To aid users of the tool, Sanctions List Search contains a feature entitled "Minimum Name Score" that functions on a sliding scale, allowing for a user to set a threshold (i.e., a fuzziness rating) for the closeness of any potential match returned as a result of a user's search. This feature enables Sanctions List Search to detect certain misspellings or other incorrectly entered text, and will return near, or proximate, matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. Sanctions List Search is one tool offered to assist users in utilizing the SDN List and/or the various other sanctions lists; use of Sanctions List Search is not a substitute for undertaking appropriate due diligence. The use of Sanctions List Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

[Download the SDN List](#)[Sanctions List Search: Rules for use](#)[Visit The OFAC Website](#)

[Download the Consolidated Non-SDN List](#)[Program Code Key](#)

Lookup

Type:

Type:

Name:

Name:

ID #:

ID #:

Program:

All
561-Related
BALKANS
BALKANS-EO14033

Address:

Address:

City:

City:

State/Province*:

State/Province*:

Country:

All

List:

All

WWW.SANCTIONSSEARCH.OFAC.TREAS.GOV



HOW TO EVADE SANCTIONS*

1. The 50% Rule: take advantage of being a minority partner but still sharing in the profits.
2. UBO: Become an “ultimate beneficial owner,” i.e., an unregistered and unreported third-party beneficiary.

*This is, of course, an illustrative expression merely meant for humorous effect. There will be no instruction delivered, directly or indirectly, on unlawful sanctions evasion.



TYPES OF OFAC LICENSES

Licenses:

exceptions to otherwise-prohibited activity

General License:

general “whitelisting” of transactions that have been granted clemency (e.g., humanitarian missions, medical supplies, or agricultural goods)

Specific License:

specific permission (though applications are often “presumed denied”)

(US) SANCTIONS VIOLATIONS



Sanctions violations: a *strict liability* offense with *little judicial review*.

Criminal: up to 20 years imprisonment, US\$1MM in fines, or both, *per violation*

Civil: the greater of (approx.) US\$308,000 or twice the amount of the underlying transaction, subject to statutory adjustment

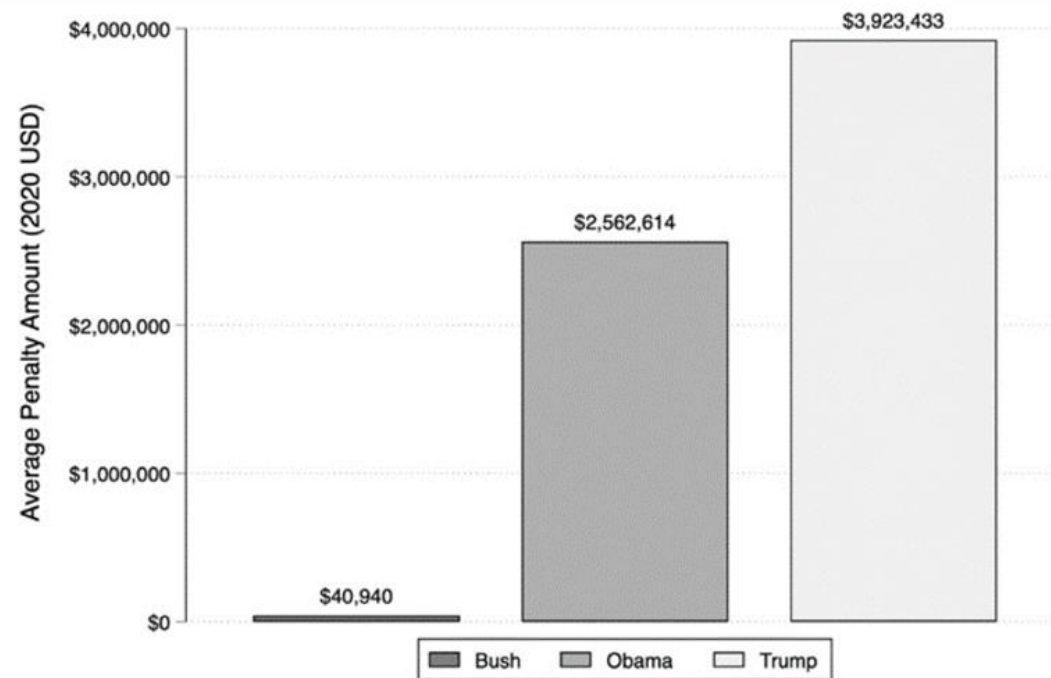


WHY SHOULD I WORRY?

1. ROI: the US government makes BANK from sanctions enforcement.
2. Political Utility: sanctions are often popular with the electorate.
3. Evidence of Intent: the US government is seeking unprecedented budgetary increases to supervise its sanctions process and upgrade its systems and staffing.
4. Inadequate Mitigation Strategies: “[m]any small and middling Western firms are “spectacularly ill equipped” to conduct the required due diligence on business partners, counterparties or supply chains...” [The Economist, 19 Mar 2022]

WHY SHOULD I WORRY? (Part Deux)

Figure 4: Average penalty against non-financial services entities across U.S. administrations (2003 to January 2021).



Source: <https://warontherocks.com/2021/02/the-past-present-and-future-of-u-s-sanctions-enforcement/>

BUT I'M NOT AMERICAN...



Tough.

Secondary Sanctions target non-US parties, including foreign companies that do business with any US person or entity.

If a company conducts business with a specified designated entity, then US companies may be restricted from conducting business with that company. (Basically, it forces foreign companies to choose the US economy or a sanctioned economy.)



BUT MY STUFF IS NOT AMERICAN...

It may not matter.

US sanctions apply to goods assembled in other countries if “controlled content” exceeds a minimum threshold, and/or if the end product is “the direct product of US-origin software or technology.”

OK, I'M WORRIED. WHAT DO I DO?

Figure out what to address...

“There are known knowns; there are things we know we know.

“We also know there are known unknowns; that is to say we know there are some things we do not know.

“But there are also unknown unknowns—the ones we don't know we don't know.”

- Donald Rumsfeld





PROPOSED SOLUTIONS

1. Technology. (e.g., third party screening)
2. Legal advice. (e.g., escalations for red flags; end user certifications and contractual terms)
3. Systems and controls.



THE OFAC FRAMEWORK

OFAC's "Framework for Compliance Commitments" released
(May 2019)

OFAC assesses compliance with the Framework as an aggravating or mitigating circumstance, tracking a violation against the Framework

ERGO...

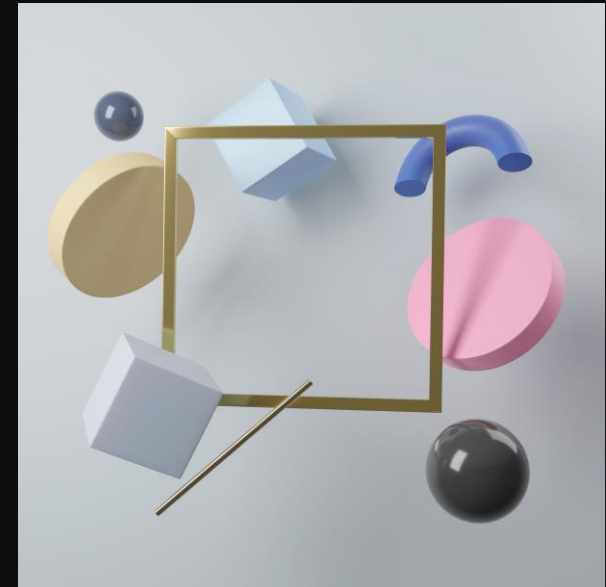
A strong compliance program in line with the Framework is a
key factor in avoiding OFAC enforcement actions

THE OFAC FRAMEWORK - OVERVIEW

Provides FIVE essential components:

1. Management Commitment
2. Risk Assessment
3. Internal Controls
4. Testing and Auditing
5. Training

Outlines several root causes that have led to violations of sanctions in the past.



THE OFAC FRAMEWORK – MANAGEMENT COMMITMENT



Delegation of sufficient autonomy and authority

Allocation of adequate resources

Promotion of a culture of compliance

Demonstrated recognition of compliance failings and intent to prevent, minimize, or quickly escalate a reoccurrence

THE OFAC FRAMEWORK – RISK ASSESSMENT

A holistic review of the organization to assess risk from:



clients
customers
products
services
supply chain
intermediaries
counterparties
transactions
geographic locations



Demonstrated mitigation strategies to evidenced risks

THE OFAC FRAMEWORK – INTERNAL CONTROLS



Policies and Procedures

Technology

Contract Terms

End User Declarations

THE OFAC FRAMEWORK – TESTING AND AUDITING



Auditors should be qualified, independent, and with sufficient authority, skills, and resources.

Confirmed negative findings should be promptly addressed.

THE OFAC FRAMEWORK – TRAINING

Provide adequate instruction with appropriate frequency.





Most lawyers are not “sanctions specialists”.

Don't let a psychiatrist perform your brain surgery! Get the right expert for the right procedure!

LET US HELP YOU!



CONTACT DETAILS



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