

Compliance; OFAC, UN and EU rules

A bit of an overlap, sometimes
contradicting , but a sure high impact
on your business

Agenda and purpose of the training

In this hour we are going to talk about OFAC, UN and EU embargo rules, we are going to talk about the overlaps , the difference and potential impact these rules might have; direct and indirect

- Types of sanctions
- OFAC
- UN Embargo
- EU Embargo

The types of sanctions

- Weapons (and weapons related)
- Certain technologies and dual use goods
- Financial sanctions
- Travel restrictions against certain individuals

OFAC

- **The first set of rules we are going to talk about is not the most encompassing (that would be UN) however in practice it is the OFAC rules which have the most impact and therefore we will spend a bit more time on these rules**
- **From the official OFAC website**
- The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals 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 national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.
- The Treasury Department has a long history of dealing with sanctions. Dating back prior to the War of 1812, Secretary of the Treasury Gallatin administered sanctions imposed against Great Britain for the harassment of American sailors. During the Civil War, Congress approved a law which prohibited transactions with the Confederacy, called for the forfeiture of goods involved in such transactions, and provided a licensing regime under rules and regulations administered by Treasury.

OFAC

- OFAC is the successor to the Office of Foreign Funds Control (the ``FFC''), which was established at the advent of World War II following the German invasion of Norway in 1940. The FFC program was administered by the Secretary of the Treasury throughout the war. The FFC's initial purpose was to prevent Nazi use of the occupied countries' holdings of foreign exchange and securities and to prevent forced repatriation of funds belonging to nationals of those countries. These controls were later extended to protect assets of other invaded countries. After the United States formally entered World War II, the FFC played a leading role in economic warfare against the Axis powers by blocking enemy assets and prohibiting foreign trade and financial transactions.
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- OFAC itself was formally created in December 1950, following the entry of China into the Korean War, when President Truman declared a national emergency and blocked all Chinese and North Korean assets subject to U.S. jurisdiction.
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- <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/consolidated.aspx>

OFAC

- **1. What is OFAC and what does it do?**
- The Office of Foreign Assets Control administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. [09-10-02]
- **Who must comply with OFAC regulations?**
- **U.S. persons** must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. In the cases of certain programs, foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply. [01-15-15]
- **Can OFAC change its previously stated, non-published interpretation or opinion without first giving public notice?**
- Yes. OFAC, therefore, strongly encourages parties to exercise due diligence when their business activities may touch on an OFAC-administered program and to contact OFAC if they have any questions about their transactions. [09-10-02]
- OFAC's regulations are broader than the specific laws that deal with the terrorists and persons who support them. **All individuals and entities that fall under U.S. jurisdiction** should use OFAC's list of Specially Designated Nationals and Blocked Persons ("SDN List"). This list includes designated terrorists and is available on [OFAC's website](#). It is important to note that some OFAC sanctions, such as those pertaining to Iran, Sudan, and Cuba, apply to persons acting on behalf of those targeted governments even if those persons do not appear on the SDN list. It is also important to note that OFAC's Cuba sanctions prohibit most transactions with Cuban nationals, wherever located. U.S. persons are expected to exercise due diligence in determining whether any such persons are involved in a proposed transaction. [01-15-15]
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OFAC

- As you have noticed on the previous page I highlighted 2 parts
- **U.S. persons**
- **All individuals and entities that fall under U.S. jurisdiction**
- This would suggest that these rules might only apply to US citizens and the like and this is clearly not the case (!)
- The reach of OFAC is much wider than the literal text suggests in reality it touches all transactions which have (remote) link to the US
- As rules can change overnight, transactions which were allowed at the start of the transaction might become in breach of OFAC during its lifetime (UN and EU usually have a little bit more leeway)
- As company or private individual you might be asked to declare that you will not breach any OFAC rules when dealing with a US Subsidiary in Europe

OFAC

- it boils down to the following; if and when the transaction has any relation with the US, such as being in US dollars, or being handled by a US bank or if the transaction passes US soil or involves the sale or use of US technology OFAC can apply
- This explains why European bank even after having lifted the European sanctions for Iran are still quite hesitant to engage in doing business with Iran as the US has still sanctions in place and it for a bank is quite difficult to establish that there is no breach of OFAC rules even when engaging in a purely European transaction
- Example: a letter of credit issued by Bank A (Located in UAE), currency EURO, shipment from Hamburg to Bandar Abbas (Iran) , advised by Bank B who happens to have their computers servers in the US. As a result this transaction could result in a OFAC breach
- In this particular case the fact that the transaction virtually runs over US soil already makes it subject to OFAC , as beneficiary of such an l/c you may not even be aware that the transaction is in breach however as a result the funds could be seized and the involved bank may be fined
- Another example, shipment from Brazil to South Korea, transaction in USD, shipment took place (accidentally) on a Iranian vessel, as US Dollars were (and are) being paid through a US correspondent bank, a condition for payment was to mention the name of the vessel

OFAC fines, just some of the “highlights”

- Paypal USD 7.7 mio
- BNP USD 8.9 Billion *
- RBS USD 33 mio

- * please note that the fine for BNP was a combination of OFAC and fines given by the Southern District of New York, as they argue that the “crimes” were committed in their district (the banking district) N.b the NY fines are a multitude of the OFAC fine

UN Embargo

- From the United Nations website:
- The Security Council takes the lead in determining the existence of a threat to the peace or act of aggression. It calls upon the parties to a dispute to settle it by peaceful means and recommends methods of adjustment or terms of settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security.

UN

- The UN rules are all encompassing and in practice are taken over by “all” countries however as some members have a veto right in the UN it is difficult to come to an agreement as these rules need to be built on consensus, with some member having a veto right
- “local” rules such as OFAC or EU sanctions Embargo can therefore differ and be more strict (for instance sanctions against Russia, EU is more strict than US with their Ukraine Freedom Support Act, both being more strict than UN as the members of the UN could not reach consensus)

- Example of a UN sanction is the ban on Arms sales with Iran, this sanction is ofcourse much more limited when compared to the OFAC sanctions on Iran which have been in place much longer and are much more wide and basically prohibits all transactions with Iran (save for healthcare and food related transactions if and when licensed)
- In general you can state that UN sanctions follow major conflicts whereas US (and more or less EU) sanctions are more of a “bilateral” nature

- A more or less “infamous” UN sanction was the Oil for food programme, which tried to ensure that Iraq was only able to secure food, medicine and other humanitarian needs for the Iraqi population without Iraq allowing to grow its military capabilities, this sanction followed the Iraqi invasion of Kuwait and was instigated on an initiative by the US

EU sanctions

- From the EU website
- In general terms, the EU imposes its restrictive measures to bring about a change in policy or activity by the target country, part of a country, government, entities or individuals. They are a preventive, non-punitive, instrument which should allow the EU to respond swiftly to political challenges and developments
- These sanctions can be autonomous or in addition to UN sanctions and as stated earlier can be more strict more strict than UN sanctions,
- In case of the EU sanctions against Russia for instance EU maximizes finance to sanctioned parties to max 30 days, whereas the US has a 90 days cap

EU Sanctions

- EU sanctions typically apply to transactions where EU persons are involved. These are individuals of any nationality acting within the EU (including vessels and aircrafts under a member State's jurisdiction), nationals of a member state acting inside or outside the EU, legal persons, entities or bodies incorporated or constituted under the law of a member state, and any other legal, if the business is done in whole or part within the EU (please note this includes the special territories such British, France and Dutch overseas territories like the Dutch Antillies) However the Channel Islands are not part of the EU (yet they do adhere to the EU sanctions)

In summary

- OFAC rules have a big impact on Global business as most international trade is conducted in US dollars, however even when a transaction is not in USD it could be subject to OFAC rules
- EU and UN rules are more consensus based which lessens their effect a bit and tend to be a bit more “relaxed” on roll of existing business

I encourage you to visit the following websites

- <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>
- <http://www.bscn.nl/sanctions-consulting/sanctions-list-countries>
- http://eeas.europa.eu/cfsp/sanctions/index_en.htm