

International Comparative Legal Guides



Practical cross-border insights into sanctions law

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

The U.S. Government maintains a range of economic sanctions, administered primarily by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC").

Most U.S. sanctions are considered "primary sanctions". To violate U.S. primary sanctions, a transaction must generally involve both (i) a U.S. nexus, and (ii) a sanctioned person (entities or individuals) or a sanctioned jurisdiction. A transaction can have a U.S. nexus if it involves a U.S. person or U.S.-origin products, software, or technology, or if it causes or involves activity within U.S. territory. Importantly, non-U.S. companies and individuals can engage in U.S.-nexus transactions and thereby violate U.S. sanctions.

Primary sanctions encompass several types of sanctions:

- **List-based blocking sanctions** generally prohibit U.S.-nexus transactions with designated persons (individuals, entities, vessels, aircraft, etc.), which OFAC has placed on its Specially Designated Nationals ("SDN") List. OFAC maintains a number of sanctions programmes, including country-specific programmes and programmes targeting international narcotics trafficking, proliferation, malicious cyber activity, human rights abuses and corruption, and other illicit activity. OFAC has authority to designate persons that satisfy a programme's criteria and then add those persons to the SDN List. Any property or property interests of SDNs that come within U.S. jurisdiction must be "blocked" or frozen. The blocked funds must be placed into separate suspense accounts and cannot be released absent specific authorisation from OFAC. (List-based sanctions are discussed below in question 2.4.)
- **Targeted sanctions** generally prohibit *specified* U.S.-nexus dealings with particular persons. As a result of Russia's invasion of Ukraine, the U.S. government imposed a number of sanctions restricting U.S. persons from engaging in certain activities related to Russia. OFAC also maintains so-called "sectoral sanctions", which prohibit certain categories of activity with persons designated on the Sectoral Sanctions Identification ("SSI") List. (These sanctions are discussed further below in question 2.8.)
- **Comprehensive country or region sanctions** broadly target countries or regions (together, "jurisdictions") and generally prohibit almost all U.S.-nexus transactions with those jurisdictions. Currently, there are seven jurisdictions subject to comprehensive U.S. sanctions: Cuba; Iran; North Korea; Syria; and three regions of Ukraine (the Crimea region, the so-called Donetsk People's Republic, and the so-called Luhansk People's Republic).

In addition, pursuant to "secondary sanctions", the U.S. government has threatened to sanction non-U.S. persons that engage in specific activities involving targeted countries, industries, and/or persons, even in the absence of a U.S. nexus. Secondary sanctions are discussed further below at question 2.12.

These various forms of U.S. sanctions can co-exist. For example, with respect to Russia, there is a U.S. embargo on the Crimea region and so-called Donetsk and Luhansk People's Republics, various Russian companies and individuals have been designated SDNs or SSI, and specified activities in Russia are prohibited for U.S. persons and/or subject to the threat of secondary sanctions for non-U.S. persons.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

OFAC administers and enforces economic sanctions based on U.S. foreign policy and national security goals.

Jurisdictions become the target of U.S. sanctions by means of executive orders signed by the President of the United States ("the President"). Persons can become the target of U.S. sanctions by being named in executive orders or by OFAC's exercise of authority delegated by the President (where the President provides criteria for imposing sanctions), in consultation with the U.S. State Department and sometimes other agencies (such as the U.S. Department of Justice ("DOJ")). OFAC also has primary responsibility for licensing transactions that would otherwise be prohibited by U.S. sanctions. Additionally, OFAC has the power to investigate and impose civil monetary penalties against persons (including non-U.S. persons) that violate U.S. sanctions laws and regulations.

The DOJ criminally investigates and prosecutes "wilful" violations of U.S. sanctions. The federal banking agencies, including the Office of the Comptroller of the Currency and the Federal Reserve Board of Governors, also have the authority to impose civil penalties for violations of U.S. sanctions laws and regulations. The New York Department of Financial Services (which supervises certain financial institutions operating in New York) also plays a high-profile role in sanctions enforcement under New York state-law requirements.

Finally, the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") administers and enforces U.S. anti-money laundering laws. Its Section 311 authority under the USA PATRIOT Act to designate a jurisdiction or non-U.S. entity as of "primary money laundering concern" can have effects similar to sanctions.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

There have been a number of developments and updates to U.S. sanctions over the course of the last year. The most notable have been the waves of sanctions targeting Russia (and, to a lesser extent, Belarus) as a result of the invasion of Ukraine. As a result of these sanctions, hundreds of individuals and entities in Russia and Belarus, including most major Russian and Belarussian financial institutions and a number of major Russian manufacturing and state-owned companies, have been added to the SDN List, broadly cutting off their ability to do U.S.-nexus transactions. Blocking sanctions were also imposed on a number of prominent Russians and Belarussians and their family members, including, among others, President Putin, his two adult daughters, various oligarchs and government officials, including Russian Duma members.

The U.S. government has also imposed targeted sanctions prohibiting any direct or indirect U.S.-nexus transactions with the Central Bank of Russia, the Russian National Wealth Fund, and the Russian Ministry of Finance. The U.S. government has also imposed prohibitions on a U.S. persons' ability to deal in the new debt of greater than 14 days maturity or new equity of 13 major Russian companies, including Gazprom. In coordination with the European Union, seven Russian banks were also removed from the SWIFT messaging system. OFAC has also imposed sanctions that prohibit various types of activity relating to Russia by U.S. persons, including "new investment" in Russia, the import of various Russian-origin energy and luxury good products into the United States, and exports of U.S.-origin accounting and management consulting services to Russia. Although a distinct regulatory regime from U.S. sanctions, the U.S. government also imposed heightened export controls for Russia on a wide range of higher-tech U.S.-origin goods, software, and technology.

There were also several updates to U.S. sanctions targeting China, including President Biden's issuance of an executive order replacing and revamping what had been known as the "Communist Chinese Military Companies" sanctions programme (now known as the "Chinese Military-Industrial Complex Companies" sanctions programme) that prohibits U.S. persons from buying or (after a divestment period) selling the publicly traded securities of dozens of specified Chinese companies.

OFAC has also actively been making designations of individuals and entities onto the SDN List beyond Russia and Belarus, and has been particularly active in making designations pursuant to the Iran, North Korea, and Global Magnitsky (human rights and anti-corruption) sanctions programmes.

Finally, OFAC has continued to increase its focus on the digital assets space, including by bringing enforcement actions against crypto companies, as well as by designating crypto exchanges and other companies onto the SDN List for allegedly processing illicit transactions.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Under various statutory authorities, the President has broad discretion to regulate commerce where there is an unusual and extraordinary threat from outside the United States to the United States' national security, foreign policy or economy. The President imposes new sanctions programmes and exercises his

sanctions-related powers by means of executive orders and then delegates administration of specific sanctions programmes to U.S. agencies, with much of this administration being delegated to the U.S. Treasury Department. Executive orders sometimes have an annex in which the President himself sanctions certain persons, in addition to providing criteria for further designations. Executive orders can also prohibit certain activities, such as imports or exports to certain countries or regions. In some instances, Congress will enact or codify certain sanctions, which then limits the President's discretion.

The International Emergency Economic Powers Act ("IEEPA"), Title II of Pub. L. 95-223, 91 Stat. 1626, codified at 50 U.S.C. §§ 1701 *et seq.*, is the main source of statutory authority for most U.S. sanctions programmes. Other statutory authorities include the Trading with the Enemy Act, which is the basis of the Cuba sanctions programme, and the Foreign Narcotics Kingpin Designation Act. Congress has also passed a series of laws authorising or requiring sanctions targeting particular jurisdictions or activities. For example, in 2017, Congress passed and the President signed the Countering America's Adversaries Through Sanctions Act ("CAATSA"), which expands sanctions targeting Iran, North Korea and Russia.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Generally, yes. Almost all jurisdictions and persons that are the target of United Nations sanctions are also the target of U.S. sanctions. The imposition of U.S. sanctions on U.N.-designated parties follows OFAC's standard process of making such designations under existing sanctions programmes or, in some cases, the President issues an executive order empowering OFAC to make such designations.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

The United States is a member of numerous regional bodies. To the extent such bodies call upon members to impose sanctions (which, to date, has been rare), the United States is normally a participant.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

OFAC maintains a number of lists of sanctioned individuals and entities, the most significant of which is the SDN List. These lists include:

- **SDN List:** U.S. law generally prohibits U.S.-nexus transactions with the thousands of individuals, companies, vessels, and other entities on the SDN List. Also, U.S. persons (including, in the case of Cuba and Iran sanctions, non-U.S. companies owned or controlled by U.S. companies) are required to "block" the property and property interests of SDNs. "Blocking" is discussed further at question 3.2, below. The SDN List is available on OFAC's website (<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

- **Foreign Sanctions Evaders (“FSE”) List:** OFAC may designate persons for violating, attempting to violate, conspiring to violate, or causing a violation of U.S. sanctions imposed on Syria or Iran, and such persons are placed on the Foreign Sanctions Evaders List. This list also includes non-U.S. persons determined by OFAC to have facilitated deceptive transactions for or on behalf of sanctioned persons. U.S.-nexus transactions with persons on the FSE list are generally prohibited, however, unlike the SDN List, there are no blocking requirements.
- **SSI List:** This list contains entities from four sectors of the Russian economy (financial, energy, defence, and oil exploration/production). Certain categories of U.S.-nexus dealings with entities on the SSI List are generally prohibited. The SSI List is discussed further at question 2.8 below.
- **2022 Russia-related Sanctions Directives:** OFAC issued four directives targeting various Russian entities and government agencies for specified sanctions. These directives include the following prohibitions for U.S. persons: (i) dealings in the primary or secondary market for Russian sovereign debt; (ii) maintaining correspondent or payable-through accounts for listed Russian financial institutions; (iii) dealings in the new debt of greater than 14 days maturity or new equity of listed Russian entities; and (iv) dealings with the Central Bank, National Wealth Fund, or Ministry of Finance of Russia. OFAC’s 50 per cent rule also applies to several of these directives.
- **Chinese Military-Industrial Complex Companies (“CMIC”) List:** This list contains dozens of Chinese companies, the publicly traded securities of which U.S. persons are prohibited from buying or selling, subject to a divestment period from the date of such entities’ designation onto the CMIC List.
- **The Correspondent Account or Payable-Through Account Sanctions (“CAPTA”) List:** This list contains non-U.S. financial institutions for which the opening or maintaining of a correspondent account or a payable-through account in the United States is prohibited or is subject to one or more strict conditions, pursuant to Russia/Ukraine, North Korea, Iran, and Hizballah-related sanctions. The specific sanctions applying to each sanctioned entity are enumerated within the CAPTA List.

Notably, under OFAC’s “50 per cent rule”, any entity that is 50 per cent or more owned directly or indirectly by one or more SDNs is considered blocked (*i.e.*, treated as an SDN) even though it does not appear on the list. The ownership interests of multiple SDNs in a single entity are aggregated for the purposes of this rule. For example, if SDN X owns 25 per cent of Entity A, and SDN Y owns another 25 per cent of Entity A, Entity A is treated as an SDN. The 50 per cent rule also applies to SSI entities.

The U.S. Department of State also maintains sanctions lists, including certain non-proliferation sanctions, which it coordinates with OFAC such that entities designated are also designated on OFAC’s sanctions lists.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Yes. Individuals or entities that are designated on an OFAC sanctions list may submit a request for removal to OFAC that provides reasons why the circumstances resulting in the designation no longer apply and/or the designation was in error. In the case of the SDN List, such requests for removal are governed by 31 C.F.R. § 501.807. If OFAC declines, this decision may be challenged in court.

2.6 How does the public access those lists?

OFAC maintains copies of its sanctions lists on its website and has a consolidated search function for all of the lists available (<https://sanctionssearch.ofac.treas.gov/>). OFAC also publishes notices of additions or removals to its sanctions list on its website and distributes them by email. This information is also published in the Federal Register.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

The United States maintains comprehensive sanctions against Cuba, Iran, North Korea, the Crimea region, Syria, and the so-called Donetsk and Luhansk People’s Republics in Ukraine. With limited exceptions, U.S.-nexus transactions with these countries or regions are prohibited.

2.8 Does your jurisdiction maintain any other sanctions?

Yes, following Russia’s invasion of Ukraine, OFAC has imposed a series of activity-based sanctions prohibitions targeting specified activities by U.S. persons that relate to Russia. These include the following prohibitions for U.S. persons (each of which is subject to various exceptions): (i) “new investment” in Russia after April 6, 2022 (“new investment” is defined to mean “the commitment of capital or other assets for the purpose of generating returns or appreciation”; OFAC published extensive Frequently Asked Questions about this prohibition on June 6, 2022); (ii) the importation of Russia-origin energy products (*e.g.*, oil, liquified natural gas, coal, and related products), fish, seafood, alcohol, or diamonds into the United States; and (iii) the export of U.S.-origin accounting services, trust and corporate formation services, and management consulting services to Russia.

OFAC also maintains certain “sectoral sanctions” under the Russia/Ukraine sanctions programme. Sectoral sanctions were designed to impose a “targeted” impact on the Russian economy, as compared to more traditional OFAC sanctions. These sanctions prohibit certain categories of dealings involving U.S. persons or U.S. territory with parties named on OFAC’s SSI List. OFAC has issued four directives (the “SSI Directives”), with each directive targeting a different sector of the Russian economy: financial; energy; defence; and oil exploration/production. Generally, the SSI Directives prohibit U.S.-nexus transactions that involve certain *enumerated activities* with SSIs designated from these four sectors of the Russian economy. For the first three sectors, the prohibited transactions involve certain equity and debt transactions. OFAC applies its 50 per cent rule (discussed above at question 2.4) to SSIs.

The U.S. Government has also imposed a series of sanctions targeted at the Maduro regime in Venezuela, the most significant of which imposed a blocking order on the Government of Venezuela (including entities owned or controlled by the Government of Venezuela), with certain limited exceptions.

2.9 What is the process for lifting sanctions?

Generally, the President has the authority to rescind or amend an executive order to change the nature of, or completely remove, a sanctions programme. However, some sanctions programmes (such as the U.S. embargo against Cuba) are set by statute either in whole or in part, and Congress would have to pass new legislation for such sanctions to be fully lifted.

As for sanctions against specific individuals or entities, OFAC normally has the authority to remove persons from its sanctions lists, subject to interagency consultation.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

The United States has two main export control regimes: (i) the Export Administration Regulations (“EAR”) administered by the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”); and (ii) the International Traffic in Arms Regulations (“ITAR”) administered by the U.S. Department of State’s Directorate of Defense Trade Controls (“DDTC”). The EAR controls the export, reexport, and in-country transfer of most U.S. origin items, software, and technology (including items manufactured outside the United States that contain a certain amount of controlled U.S.-origin content). The ITAR controls the export and retransfer of, as well as brokering in, U.S. defence articles and technologies listed on the U.S. Munitions List. Violations of the EAR and ITAR are subject to civil and criminal penalties.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions’ sanctions or embargoes?

The United States has certain “anti-boycott” laws and regulations, administered by BIS, that prohibit U.S. persons from participating in non-U.S.-sanctioned boycotts (*i.e.*, boycotts of which the U.S. Government does not approve). Currently, the most notable such boycott is the Arab League’s boycott of Israel.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as “secondary sanctions”)?

The U.S. government utilises “secondary sanctions” to discourage certain specified activities by non-U.S. persons that do not involve a U.S. nexus. These sanctions threaten to place a non-U.S. person on the SDN List (or impose other, lesser sanctions) if the non-U.S. person engages in certain identified activities. For example, under Executive Order 13810, non-U.S. persons that engage in a range of activities involving North Korea – whether or not those transactions have a U.S. nexus – may be added to the SDN List. In these situations, the U.S. government effectively forces non-U.S. persons to choose between engaging with the United States and engaging in activity with the sanctions target. Importantly, while the consequences of violating primary sanctions is a potential enforcement action, secondary sanctions cannot be “violated” because they are threats, not legal prohibitions. The consequence for engaging in activities that are the subject of these threats is designation on the SDN List or the imposition of some other trade restriction with the United States.

Secondary sanctions can be threatened by the President through an executive order or can be threatened by Congress in legislation that either requires or authorises the President to impose sanctions on parties that engage in certain types of activities. The President maintains significant discretion even with respect to imposing “mandatory” secondary sanctions because such authorities require the President to sanction persons that the President determines have engaged in certain activities, and the President enjoys discretion as to whether to make such determinations.

Currently, the U.S. government threatens secondary sanctions against non-U.S. persons for specified activities involving Hizballah, Iran, North Korea, Russia, and Venezuela. The U.S. government also threatens certain secondary sanctions against non-U.S. financial institutions that conduct certain “significant” transactions with persons that are the target of certain terrorism-related sanctions. Due to the enactment of the Hong Kong Autonomy Act in July 2020, secondary sanctions are also threatened against non-U.S. financial institutions that participate in certain “significant” transactions with persons identified as having contributed to the undermining of Hong Kong’s autonomy. Non-U.S. companies with activities involving these countries, entities, or individuals should carefully evaluate any applicable secondary sanctions.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction’s sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

To violate U.S. primary sanctions, a transaction must generally involve both (i) a U.S. nexus, and (ii) a sanctioned person or jurisdiction. A U.S. nexus can arise in a variety of ways, including the involvement of U.S. persons (defined below), the involvement of U.S.-origin products, software, or technology, or causing or involving activity within U.S. territory (such as the use of U.S. dollar transactions that transit the U.S. financial system).

OFAC generally defines “U.S. person” to include: any U.S. citizen, wherever located; any U.S. permanent resident alien, wherever located; any entity organised under the laws of the United States or any jurisdiction within the United States (including non-U.S. branches of U.S. banks); or any person while present in the United States. With respect to the Cuba and Iran sanctions programmes, non-U.S. entities owned or controlled by U.S. persons are also considered to be “U.S. persons”.

Accordingly, any U.S.-nexus transactions with parties listed on the SDN or FSE lists are generally prohibited. It is also generally prohibited to engage in U.S.-nexus transactions that directly or indirectly involve comprehensively sanctioned jurisdictions, including companies organised under the laws of a sanctioned jurisdiction, the governments of sanctioned jurisdictions, persons usually resident in sanctioned jurisdictions, and third-country entities or individuals (including so-called “front companies”) where the benefits of the transaction will flow to a sanctioned jurisdiction.

Importantly, non-U.S. persons can conduct transactions that have a U.S. nexus and can thereby violate U.S. sanctions. Examples include transactions involving U.S. person employees or U.S. business partners, transactions (whether in U.S. dollars or other currencies, including cryptocurrencies) that are processed through the United States (including non-U.S. branches of U.S. banks), or the export or reexport of U.S.-origin goods. Further, OFAC’s sanctions programmes generally prohibit transactions that evade or avoid, have the purpose of evading or avoiding, cause a violation of, or attempt to violate prohibitions imposed by OFAC. Non-U.S. persons may expose themselves to U.S. sanctions liability by “causing” a violation of primary sanctions by U.S. persons or involving U.S. territory. By contrast, when non-U.S. persons conduct business that does not involve a U.S. nexus, primary sanctions do not apply.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

U.S. persons are required to block the funds or other assets of persons listed on the SDN List and persons captured by the 50 per cent rule. Any blocked funds must be placed into separate suspense accounts and cannot be released without specific authorisation from OFAC.

The fact that a particular transaction is prohibited under OFAC regulations does not necessarily mean that it is subject to a blocking requirement. In many cases, the transaction must simply be rejected. For example, a U.S. bank would have to reject a wire transfer between two third-country companies (non-SDNs) involving an export to a non-SDN located in Syria. Because U.S. sanctions prohibit the U.S. bank from indirectly providing financial services to Syria, the bank would not be able to assist in the wire transfer.

There are also reporting requirements associated with blocked and rejected funds, as described in question 3.4.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Yes, OFAC maintains a number of exemptions and general licences under its various sanctions programmes. These exemptions and general licences can be found in OFAC's regulations and on OFAC's website (<https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>). For transactions or activities not expressly permitted by an exemption or general licence, parties can submit specific licence requests to OFAC.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Generally, U.S. persons who come into possession or control of blocked property or who reject a transaction must submit a blocked property or reject report to OFAC within 10 days of blocking the property or rejecting the transaction. Holders of blocked property must also submit an annual report to OFAC detailing all blocked property in their possession.

Additionally, parties making use of certain general licences must report the specifics of such use to OFAC as required by the particular licence (e.g., annually).

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

OFAC regularly publishes guidance and FAQs regarding sanctions restrictions and compliance expectations on its website. In addition, in May 2019, OFAC published "A Framework for OFAC Compliance Commitments", which describes the elements of an effective sanctions compliance programme – for both U.S. and non-U.S. entities – organised around five "essential components of compliance": (i) management commitment; (ii) risk assessment; (iii) internal controls; (iv) testing and auditing; and (v) training. In October 2021, OFAC published guidance that discusses these compliance expectations in the context of cryptocurrencies and the digital assets space.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes, there are criminal penalties for "wilfully" violating U.S. economic sanctions laws and regulations.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The DOJ has responsibility for the prosecution of criminal sanctions offences. The DOJ and OFAC often pursue parallel investigations, and violations can be subject to both criminal and civil penalties. State criminal authorities can also prosecute conduct related to sanctions violations (for example, sanctions-related violations of state banking laws).

4.3 Is there both corporate and personal criminal liability?

Yes. U.S. and non-U.S. corporations and individuals can be held criminally liable for violations of U.S. sanctions laws and regulations.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

The maximum criminal fine for violations of most U.S. sanctions programmes is \$1 million or 20 years in prison for each violation. Under the Kingpin Act, certain narcotics-related sanctions violations can trigger criminal fines of up to \$5 million or 30 years in prison per violation. Funds related to sanctions violations can also be subject to criminal forfeiture. There is no statutory ceiling on the size of the total penalty or forfeiture that could be imposed, and there have been several recent criminal sanctions enforcement actions that resulted in penalties and/or forfeitures of hundreds of millions and even billions of dollars.

4.5 Are there other potential consequences from a criminal law perspective?

Yes. For example, a corporate compliance monitor can be imposed as part of a guilty plea or other resolution, such as a deferred prosecution agreement.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

Yes, monetary penalties can be imposed for civil violations of U.S. sanctions. Civil violations are "strict liability" offences, meaning that a person can be liable for committing a civil violation of OFAC sanctions regardless of that person's knowledge or degree of fault.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

OFAC is primarily responsible for investigating and enforcing civil economic sanctions violations.

4.8 Is there both corporate and personal civil liability?

Yes. U.S. and non-U.S. corporations and individuals can be held civilly liable for violations of U.S. sanctions laws and regulations.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

OFAC has authority to impose significant civil fines. Currently, for OFAC sanctions programmes authorised under IEEPA, OFAC may impose a maximum civil fine of \$330,947 per violation. For TWEA violations (involving Cuba sanctions), the current maximum civil fine is \$97,529 per violation. Violations of the Kingpin Act are currently subject to a maximum civil fine of \$1,644,396 per violation. These amounts are subject to periodic inflation adjustments.

4.10 Are there other potential consequences from a civil law perspective?

Yes. For example, to the extent that an entity or individual found to have civilly violated sanctions laws or regulations has a specific licence from OFAC or is applying for one, OFAC may withhold, deny, suspend, modify, or revoke licence authorisations as a result of the civil violation. Where appropriate, OFAC may also refer a matter to the DOJ for criminal prosecution.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

OFAC may initiate an investigation of a potential sanctions law violation based on a number of sources, including press reports, leads from other agencies (domestic and international), blocking and reject reports, suspicious activity reports, voluntary self-disclosures, and “tips” from employee whistleblowers or competitors.

OFAC’s Economic Sanctions Enforcement Guidelines (the “Guidelines”) set forth the ways in which OFAC may resolve a sanctions investigation, ranging from non-public “no action” letters or cautionary letters to public civil monetary penalties or findings of violation (in which OFAC determines a violation has occurred but that imposition of a monetary penalty is not appropriate). In particularly important cases, OFAC also publicly releases the settlement agreement. The vast majority of OFAC investigations are resolved with cautionary letters, which serve as “warnings” but refrain from determining that a sanctions violation has occurred. The Guidelines describe the “General Factors” OFAC uses in determining the appropriate enforcement action and any appropriate civil penalty.

The Guidelines also describe the process by which OFAC calculates penalty amounts. The process generally consists of three steps: first, a determination of whether the violations were “egregious” and whether they were “voluntarily self-disclosed”; second, a determination of the “base penalty” amount; and third, an upward or downward adjustment of the base penalty amount based on applicable General Factors. The General Factors include the person’s willfulness or recklessness, the

person’s awareness of the conduct at issue, the harm to sanctions programme objectives, and the existence and adequacy of the person’s OFAC compliance programme. Other factors include the person’s remedial response, the person’s cooperation with OFAC, the timing of the violations in relation to the imposition of sanctions, other related enforcement actions taken by other agencies for the same or similar conduct, the impact OFAC’s enforcement response may have on promoting future compliance with U.S. sanctions by the person or similarly situated persons, and other relevant factors on a case-by-case basis, including the proportionality of OFAC’s enforcement response to the nature of the underlying conduct.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

Final OFAC actions (civil penalties and findings of violation) may be challenged in federal court. These challenges proceed in the same manner and with the same standard of review as other challenges to a final agency action under relevant U.S. laws, including the Administrative Procedure Act (5 U.S.C. §§ 551–559).

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Enforcement of economic sanctions is primarily handled at the federal level; however, there are some state regulatory agencies (particularly financial services regulators such as the New York Department of Financial Services) and local prosecutors that can investigate and impose fines for violations of state laws and regulations that relate to federal sanctions violations (e.g., failing to have an effective sanctions compliance programme as required by state banking laws and regulations).

4.14 What is the statute of limitations for economic sanctions violations?

The applicable federal statute of limitations is generally five years from the date of the violation.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

In general, there is no advance notice of the imposition of new U.S. sanctions by the President or OFAC. There are various pieces of proposed legislation involving sanctions pending in Congress.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

These materials are publicly available in English on OFAC’s website (<https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>).



Roberto J. Gonzalez is a litigation partner and the co-chair of the firm's Economic Sanctions and Anti-Money Laundering Practice Group. He represents global financial institutions, crypto companies, and other clients in civil and criminal investigations and enforcement matters relating to U.S. economic sanctions, export controls, and anti-money laundering. He also provides regulatory advice, compliance counselling, and transactional due diligence to U.S. and non-U.S. companies across a range of sectors. He writes and speaks frequently on these topics. Roberto joined Paul, Weiss after serving several years in senior legal positions at the U.S. Treasury Department, the Consumer Financial Protection Bureau, and the White House Counsel's Office. As Deputy General Counsel of the Treasury Department, Roberto supervised over a hundred lawyers – including the legal offices of OFAC and FinCEN – in the areas of sanctions, anti-money laundering, and financial regulation. He uses his multi-faceted experience in the federal government to help clients navigate the constantly evolving U.S. regulatory and enforcement landscape.

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