

OFAC Sanctions, Are You in Compliance?

We've been hearing a lot about 'new' sanctions in the news lately. Some of the sanctions are truly new while others are expansions of the existing ones. Regardless of new or old, how do you know if your company is fully complying? Using a restricted party screening service is NOT enough. This article will give you tips on how to make sure you have an effective and comprehensive 'OFAC' sanctions screening program in place.

The U.S. Treasury's Office of Foreign Assets Control (OFAC) administers many different sanctions programs. The sanctions vary but essentially, they block assets and impose trade restrictions on Specially Designated Nationals (SDNs). SDNs are individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries such as Russia, Venezuela, Iran, North Korea, etc. SDNs can also be individuals, groups or entities, such as terrorists and narcotics traffickers that are not country specific. U.S. persons are generally prohibited from dealing with them.

The tricky part comes in with OFAC's 50% rule. You've probably heard of it but if you haven't, listen up! SDNs are found on restricted party lists that your Global Trade Management (GTM) screening provider checks against. However, OFAC considers an entity to be a 'blocked entity' if it's owned, whether individually or in the aggregate, directly or indirectly, by a 50% or greater interest by an SDN.

Let's look at some examples of how this works. Venezuelan sanctions have been in the news lately. One of the recent additions to the SDN list was the government of Venezuela. Yep, the whole thing including "any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and Petróleos de Venezuela, S.A. (PdVSA), and any person owned or controlled by, or acting for or on behalf of, the Government of Venezuela." This means that any government controlled or owned entity is considered a blocked entity including public universities, utilities, government agencies, etc. That example was probably too easy.

Take the Russian entity Gazprom. It is enormous and it's an SDN. It has a myriad number of subsidiaries with varying percentages of ownership. Some are on the OFAC SDN list and some aren't. How would you know if you are dealing with an entity owned 50% or more by Gazprom? Well in this case, Gazprom actually publishes their subsidiaries with percentage ownership on their website. A simple internet search of "Gazprom subsidiaries" will get you there. And remember, just because Gazprom only owns say 25% of a company, it doesn't mean you are off the hook. There could be other SDN shareholders that own enough of the company to sum up to 50% or more SDN ownership.

If you are dealing with a lesser known company, you might need to do some additional research to determine ownership and even hire a firm to conduct "integrity due diligence" services. Essentially these firms (just search on "integrity due diligence" to identify these companies) will run a report for you on the entity you are considering doing business with and will provide ownership details. You might still need to run these shareholders through your restricted party screening engine to determine if they are on the SDN list if the service doesn't already do so.

Now that you've identified an SDN, you are probably wondering if your company can do business with an SDN. The answer is "it depends"... Once you know for sure that you are dealing with a blocked party or SDN, you'll need to investigate the restrictions on transacting activities according to the related Executive Order, OFAC directives, General Licenses, etc.

For example, Executive Orders such as 13662 for Russian Sectorial Sanctions and recent Executive Order 13692 for Venezuela sanctions have specific directives over financing debt with certain SDNs. For instance, it's prohibited to engage in any dealings with new debt with a maturity of greater than 90 days



with PdVSA and new debt with a maturity greater than 30 days (or equity) with the Venezuelan government.

Debt includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper. Equity includes stocks, share issuances, depository receipts, or any other evidence of title or ownership.

What does this mean in practical terms? It means you can't extend any credit terms longer than Net 30 to the government of Venezuela or longer than Net 90 terms to PdVSA. If you have experience doing business with PdVSA or any Venezuela government agency, you'll need to consider your current payment terms how likely it would be that they abide by these new terms.

In many cases, there are General Licenses issued along with the Executive Order. Once again, these are specific to the country being sanctioned. In the case of Venezuela, there are four general licenses. Each one authorizes certain activities such as General License No. 2 which authorizes transactions otherwise prohibited by the "new debt" and "new equity" provisions where the only Government of Venezuela entities involved are CITGO Holding, Inc., and any of its subsidiaries. Not all sanctions programs have General Licenses but there are probably more than you'd think. For instance, OFAC has issued eleven General Licenses for the Ukraine and nine for North Korea. Their authorizations vary from humanitarian relief to legal services and financing.

If you are planning to do business in or with any country listed on the OFAC Sanctions Programs list, you and your general counsel will want to review all applicable OFAC directives, general licenses, fact sheets and guidance to ensure compliance with the sanctions. Then be sure to screen entities in those countries against the SDN list and any shareholders or owners with a 50% stake or higher. You'll also want to stay abreast of any changes to sanctions programs by subscribing to the US Treasury Sanctions email notification service¹.

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¹ https://service.govdelivery.com/accounts/USTREAS/subscriber/new?topic_id=USTREAS_123