



Well-Defined & Risk-Aligned:

Building an Effective Sanctions Compliance Program

Sanctions, sanktionen, sancties, sanções, sanciones—regardless of language, location, or livelihood, organizations face an evolving sanctions landscape. Staying alert to new developments and compliance requirements can pose a challenge, especially as the pace of change accelerates.

- Additional or revised sanction regimes, specially designated nationals (SDNs), and block entities or persons introduced with growing frequency
- New regulations to address emerging gaps that could be exploited by bad actors, such as cryptocurrencies being used to obscure sanctions avoidance
- Vigorous enforcement, often resulting in substantial fines and forfeiture of profits for involved organizations
- Prosecution of individuals found complicit in violations or remiss in maintaining adequate controls for sanctions compliance

Is your existing sanctions compliance program up to the test?



What constitutes an adequate compliance program depends in large part on who your customers are and what kinds of business you do.”

– US Department of Treasury, Office of Foreign Asset Controls (OFAC)

5 Facts about Sanctions Risk

1. Sanctions can be established by numerous authorities.

Some of the most common include:

- UN Security Council sets sanctions for implementation by individual member states.
- The EU sets sanctions autonomously according to broad foreign policy objectives. EU member states can also implement sanctions individually through national legislation.
- The UK typically implements sanctions in accordance with UN and EU sanctions, but the UK Parliament may implement its own sanctions as well.
- US sanctions are set by multiple legal authorities—from executive orders from the President to sanctions rules and regulations set by the Secretary of the Treasury (Office of Foreign Assets Control).

14

ongoing UN
sanctions regimes

UN Security Council Process



Discuss and debate concerning issues:

conflicts, nuclear proliferation, terrorism, human rights violations.



Determine types of sanctions to be imposed:

travel bans, asset freezes, arms embargoes, bans on export of luxury goods, commodity bans, etc.



Adopt resolutions:

these can establish new sanctions regimes or modify existing ones.



Designate target(s):

individuals, entities, whole governments subject to comprehensive or selective sanctions.

5 Facts about Sanctions Risk (continued)

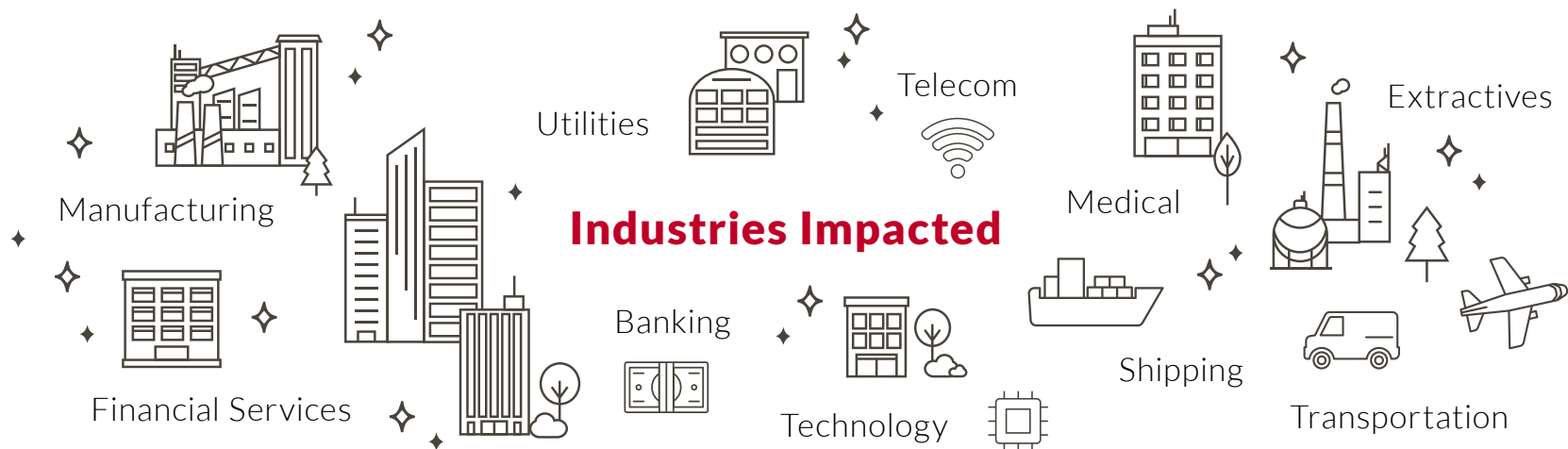
2. Specific activities can be targeted by sanctions to address humanitarian, national security or foreign policy concerns.

- ✓ Counter Narcotics Trafficking
- ✓ Counter Terrorism
- ✓ Cyber Crime
- ✓ Foreign Interference in Elections
- ✓ Human Rights Abuses
- ✓ Non-Proliferation of WMDs
- ✓ Rough Diamond Trade Controls
- ✓ Transnational Criminal Organizations

3. No organization is immune to sanctions compliance risk.

Financial institutions are a traditional focal point for regulatory authorities, however complex, global supply chains and business expansion into new markets increase sanctions compliance risk exposure.

One 2020 OFAC enforcement action, for example, involved a cosmetics company. Authorities indicated that the alleged violations occurred, in part, because the organization's sanction compliance program failed to initiate adequate supply chain due diligence when sourcing products from a region recognized as high risk for sanctions exposure.¹



5 Facts about Sanctions Risk (continued)

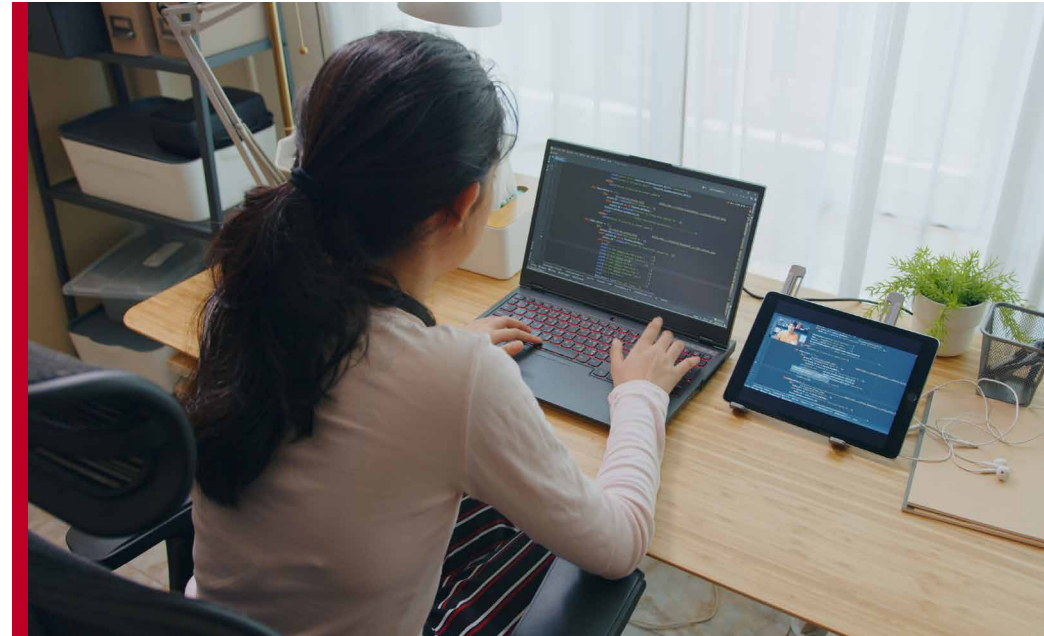
4. Virtual currencies face vigorous scrutiny moving forward.

While not quite mainstream, use of cryptocurrencies is quickly gaining traction—and the attention of regulators. Why? The anonymity afforded by many cryptocurrencies makes it a prime candidate for criminal uses, including sanctions avoidance.

5. Understanding beneficial ownership is crucial for sanctions compliance.

OFAC's guidance specifies that even if an entity isn't listed as SDNs, it will be considered a sanctioned party if one or more listed SDNs own a 50% or greater share in the entity.

This means organizations should undertake additional due diligence to identify beneficial owners of the companies they do business with, particularly if they are in countries with heightened sanctions risk.



With a clear trend of enforcement actions against organizations outside the traditional banking and financial services focus, any company conducting business across borders—whether through a subsidiary or via an extensive supply chain or third-party network—needs to have a rigorous sanctions risk mitigation strategy and process in place.

OFAC Prioritizes Preventing Sanctions Evasion Via Cryptocurrency

Early in 2021, OFAC entered into a settlement agreement with a digital currency processor for failing to mitigate sanctions compliance risk for more than 2,100 transactions between US merchants and individuals in sanctioned jurisdictions.

Seven months later, OFAC announced a first-of-its-kind sanction on a virtual currency exchange that facilitated payments in ransomware cyber-attacks, adding the exchange to the OFAC SDN list. Shortly thereafter, OFAC published updated guidance “to help members of the virtual currency industry navigate and comply with OFAC sanctions.”²

US regulators aren’t the only ones taking a hard look at cryptocurrencies. The UK includes cryptocurrency in its definition of “funds” and “economic resources,” making them applicable to financial sanctions restrictions. Likewise, the EU has targeted cryptocurrencies, recommending a new law to ensure that crypto transactions are traceable.

As new digital asset classes are developed—think non-fungible tokens or NFTs—regulators will certainly be watching to ensure they cannot be used to circumvent sanctions regimes.



Ten Steps to Support Sanctions Compliance

1. Take a top-down approach to compliance. Enforcement agencies worldwide emphasize the importance of corporate leadership when it comes to creating a culture of compliance.

2. Maintain up-to-date policies and procedures, including disclosure requirements, based on guidance provided by:

- United Nations Security Council
- European Union Common Foreign and Security Policy
- UK HM Treasury
- UK Office of Financial Sanctions Implementation
- US Office of Foreign Assets Control
- Individual Countries

3. Clearly communicate policies and procedures.

- Internally—Management and staff
- Externally—Third parties such as suppliers, sales agents, partners

4. Actively train employees and third-party agents.

Tailor training to employee groups or third parties based on their level of involvement with sanctions issues.

5. Implement a risk-based sanction screening process.

There is no one-size-fits-all approach to sanction screening. Screen, monitor and protect based on the level of risk faced.

- Organization size
- Industry type
- Customer profiles
- Complex, multinational supply chains
- Products and services offered
- Delivery channels
- Countries of operation

6. Align sanction screening to third-party due diligence procedures.

Including sanction, watch list and PEP checks in the due diligence procedures helps organizations mitigate risk more effectively—right from the start.

7. Ensure procedures include escalation contacts, both for sanction enquiries and violation reporting.

8. Audit and regularly review sanction screening policies, procedures and training.

Sanctions regimes evolve over time—sometimes, more rapidly than you might expect—so organizations need to keep pace with change.

9. Reinforce policies and procedures with independent audits and testing.

Conduct reviews every 12 to 18 months with results reported directly to the board.

10. Don't wait for enforcement as a trigger to implement above actions.

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- 1 Contini, Kerry B. and Shin, Eunkyung Kim. "Recent OFAC Enforcement Cases Underscore Importance of Sanctions Compliance in Supply Chain Risk Management," Global Supply Chain Compliance Blog. August 6, 2020. Accessed at: <https://supplychaincompliance.bakermckenzie.com/2020/08/06/recent-ofac-enforcement-cases-underscore-importance-of-sanctions-compliance-in-supply-chain-risk-management/>
 - 2 "Publication of Sanctions Compliance Guidance for the Virtual Currency Industry and Updated Frequently Asked Questions," US Department of the Treasury. October 15, 2021. Accessed at: <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20211015>
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