

# International **Comparative** Legal Guides



## Sanctions **2020**

A practical cross-border insight into sanctions law

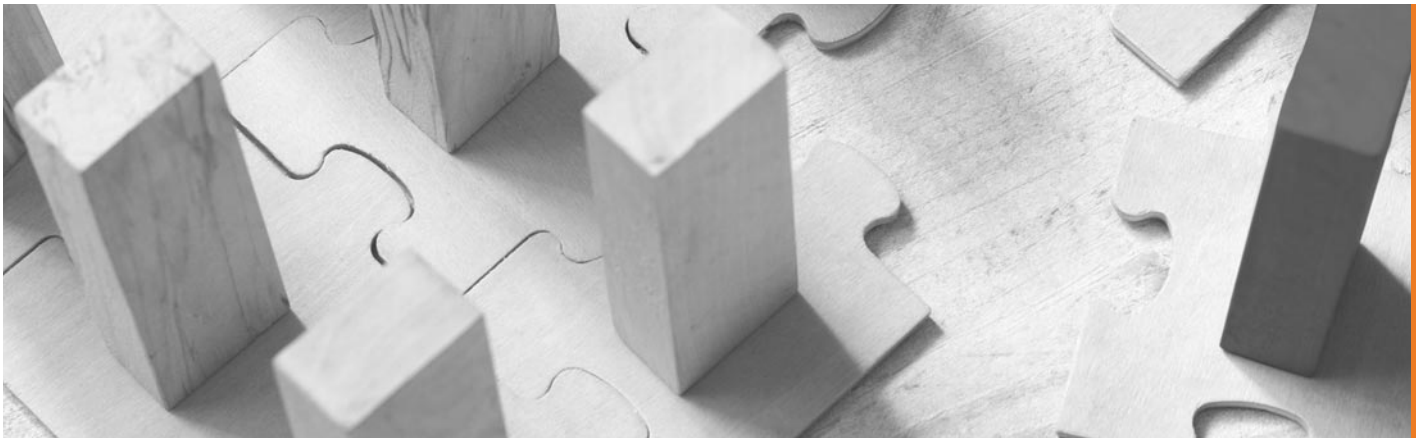
**First Edition**

### Featuring contributions from:

Allen & Gledhill LLP  
BonelliErede  
Bonifassi Avocats  
BSA Ahmad Bin Hezeem & Associates  
LLP  
De Brauw Blackstone Westbroek N.V.  
DELTA legal  
Dentons US LLP  
Djingov, Gouginski, Kyutchukov &  
Velichkov

DORDA Rechtsanwälte GmbH  
Esenyel & Partners  
Eversheds Sutherland  
Hill Dickinson LLP  
Homburger  
JSA  
JunHe Law Offices  
Kluge  
Lee & Ko  
Linklaters LLP

Miller & Chevalier  
MinterEllison  
Navigant Consulting, Inc.  
Nishimura & Asahi  
Noerr LLP  
Paul, Weiss, Rifkind, Wharton &  
Garrison LLP  
Plesner  
Proskauer Rose LLP  
Stikeman Elliott LLP



ISBN 978-1-83918-003-3  
ISSN 2633-1365

Published by

**glg** global legal group

59 Tanner Street  
London SE1 3PL  
United Kingdom  
+44 207 367 0720  
www.iclg.com

**Group Publisher**

Rory Smith

**Publisher**

Jon Martin

**Senior Editors**

Caroline Oakley  
Rachel Williams

**Sub-Editor**

Amy Norton

**Creative Director**

Fraser Allan

**Printed by**

Stephens & George  
Print Group

**Cover Image**

www.istockphoto.com

# Sanctions 2020

**First Edition**

**Contributing Editors:**

**Roberto J. Gonzalez & Rachel M. Fiorill**

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

**Strategic Partners**



©2019 Global Legal Group Limited.

**All rights reserved. Unauthorised reproduction by any means, digital or analogue, in whole or in part, is strictly forbidden.**

**Disclaimer**

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication.

This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

## Expert Chapters

- 1** **Recent Developments in U.S. Sanctions: OFAC Compliance Guidance and Enforcement Trends**  
Roberto J. Gonzalez & Rachel M. Fiorill, Paul, Weiss, Rifkind, Wharton & Garrison LLP
- 7** **The Current Iran Sanctions Landscape and Potential Issues in 2020**  
Peter G. Feldman, Jason M. Silverman, Michael E. Zolanz & Shahrzad Noorbaloochi, Dentons US LLP
- 12** **The Difficulties in Assessing Sanctions Risks (With an Emphasis on Venezuela)**  
Siiri Duddington & Charlie Fraser, Hill Dickinson LLP
- 17** **The Implementation of UN Sanctions at the EU Level**  
Guillaume Croisant & Stefaan Loosveld, Linklaters LLP
- 21** **Sanctions and Export Controls Enforcement Trends**  
Timothy P. O'Toole & Aiysha S. Hussain, Miller & Chevalier
- 26** **Technology Innovation in AML, Sanctions, and KYC/Due Diligence: Reality vs. Aspirations**  
Patrick J. McArdle, Adam Klauder & Louis DeStefano, Navigant Consulting, Inc.
- 32** **Navigating the Complex Relationship Between Voluntary Self-Disclosure and Enforcement**  
Seetha Ramachandran & Lucas Kowalczyk, Proskauer Rose LLP

## Country Q&A Chapters

- 38** **Australia**  
MinterEllison: David Moore & Mellissa Lai
- 42** **Austria**  
DORDA Rechtsanwälte GmbH: Bernhard Müller & Dominik Widl
- 47** **Bulgaria**  
Djingov, Gouginski, Kyutchukov & Velichkov: Kamen Gogov, Lora Aleksandrova & Viktoriya Marincheva
- 55** **Canada**  
Stikeman Elliott LLP: Shawn C.D. Neylan
- 59** **China**  
JunHe Law Offices: Weiyang (David) Tang, Runyu (Roy) Liu & Siyu (Rain) Wang
- 65** **Czech Republic**  
DELTA legal: Michal Zahradník & Lukáš Koukal
- 69** **Denmark**  
Plesner: Jacob Ørskov Rasmussen & Morten Vibe
- 74** **France**  
Bonifassi Avocats: Stéphane Bonifassi & Sinem Paksüt
- 79** **Germany**  
Noerr LLP: Dr. Anke Meier & Dr. Bärbel Sachs
- 85** **India**  
JSA: Shivpriya Nanda & Adhiraj Gupta
- 91** **Italy**  
BonelliErede: Angelino Alfano, Alessandro Musella & Vincenzo Dell'Osso
- 97** **Japan**  
Nishimura & Asahi: Kazuho Nakajima, Masahiro Heike & Marie Wako
- 103** **Korea**  
Lee & Ko: Kyunghoon Lee & Jungmin Pak
- 109** **Netherlands**  
De Brauw Blackstone Westbroek N.V.: Marlies Heemskerk-de Waard & Marnix Somsen
- 113** **Norway**  
Kluge: Ronny Rosenvold & Siri Fosse Sandve
- 119** **Russia**  
Eversheds Sutherland: Anu Mattila & Elizaveta Belotserkovskaya
- 125** **Singapore**  
Allen & Gledhill LLP: Evangeline Oh & Tan Zhi Feng
- 130** **Switzerland**  
Homburger: Claudio Bazzani & Reto Ferrari-Visca
- 135** **Turkey**  
Esenyel & Partners: Selcuk Esenyel
- 140** **United Arab Emirates**  
BSA Ahmad Bin Hezeem & Associates LLP: Rima Mrad & Tala Azar
- 146** **United Kingdom**  
Hill Dickinson LLP: Paul Taylor & Trudie Protopapas
- 151** **USA**  
Paul, Weiss, Rifkind, Wharton & Garrison LLP: Roberto J. Gonzalez & Rachel M. Fiorill

# USA

Paul, Weiss, Rifkind, Wharton & Garrison LLP



Roberto J. Gonzalez



Rachel M. Fiorill

## 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, 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. In the Russia/Ukraine sanctions programme, so-called "sectoral sanctions" prohibit certain categories of activity with persons designated on the Sectoral Sanctions Identification ("SSI") List from four sectors of the Russian economy (financial, energy, defence, and oil exploration/production). (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 five jurisdictions subject to comprehensive U.S. sanctions: Iran; Syria; Cuba; North Korea; and the Crimea region of Ukraine.

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, various Russian companies and individuals have been designated SDNs or SSIs, and specified activities in Russia are subject to the threat of secondary sanctions.

### 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.

DOJ criminally investigates and prosecutes "willful" 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.

## 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 Russia, North Korea, and Iran.

**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 country a member of a regional body that issues sanctions? If so: (a) does your country implement those sanctions? Describe that process; and (b) are there any significant ways in which your country 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 ("FSE") 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, but, 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.
- **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 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 Iran, Syria, Cuba, North Korea and the Crimea region of 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, under the category of “primary sanctions”, OFAC 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 “Directives”), with each directive targeting a different sector of the Russian economy: financial; energy; defence; and oil exploration/production. Generally, the 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 recent 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. Non-U.S. companies with activities involving these countries or entities 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 United States 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. Examples include transactions involving U.S. person

employees or U.S. business partners, U.S. dollar transactions that are processed through the U.S. financial system, 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.

## 4 Enforcement

### Criminal Enforcement

#### 4.1 Are there criminal penalties for violating economics 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?

DOJ has responsibility for the prosecution of criminal sanctions offences. 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 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?

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.

### Civil Enforcement

#### 4.6 Are there civil penalties for violating economics 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 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 \$302,584 per violation. For TWEA violations (involving Cuba sanctions), the current maximum civil fine is \$89,170 per violation. Violations of the Kingpin Act are currently subject to a maximum civil fine of \$1,503,470 per violation. These amounts are subject to periodic inflation adjustments.

#### 4.10 Are there other potential consequences?

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 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>).

## Acknowledgment

Associate Joshua R. Thompson contributed to this chapter.





**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 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 100 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.

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

2001 K Street, NW  
Washington, D.C., 20006-1047  
USA

Tel: +1 202 223 7316

Email: [rgonzalez@paulweiss.com](mailto:rgonzalez@paulweiss.com)

URL: [www.paulweiss.com](http://www.paulweiss.com)



**Rachel M. Fiorill**, counsel in the Litigation Department, formerly served as an Enforcement Section Chief at the U.S. Treasury Department's Office of Foreign Assets Control (OFAC).

At OFAC, Rachel led the investigation and resolution of hundreds of enforcement actions, including several groundbreaking civil monetary penalties. She served the Enforcement Division's lead for Ukraine/Russia and Syria-related investigations and developed particular expertise with OFAC's Iran sanctions while representing the Enforcement Division in agency-wide Joint Comprehensive Plan of Action (JCPOA) implementation matters. She liaised with other law enforcement and intelligence agencies regarding joint investigations, enforcement priorities and strategies and provided guidance on OFAC's Economic Sanctions Enforcement Guidelines and sanctions programmes to counterparts at other agencies and the public. She advises clients on government inquiries and investigations, sanctions compliance and risk management, and transactional due diligence. She counsels on a variety of financial crime and international trade issues, including economic sanctions, anti-money laundering, anti-corruption, and export controls.

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

2001 K Street, NW  
Washington, D.C., 20006-1047  
USA

Tel: +1 202 223 7346

Email: [rfiorill@paulweiss.com](mailto:rfiorill@paulweiss.com)

URL: [www.paulweiss.com](http://www.paulweiss.com)

Paul, Weiss is a firm of more than 1,000 lawyers with diverse backgrounds, personalities, ideas and interests who provide innovative and effective solutions. We take great pride in representing our clients in their most critical legal matters and most significant transactions, as well as individuals and organisations in need of *pro bono* assistance.

Our team advises U.S. and non-U.S. clients across industries on their most sensitive U.S. economic sanctions, export control, and Bank Secrecy Act/anti-money laundering (BSA/AML) issues. We provide regulatory advice and compliance counselling, apply for licences and interpretive guidance on behalf of clients, and perform transactional due diligence. With our preeminent regulatory defence and white collar experience, we are also uniquely

positioned to assist clients in responding to regulator inquiries, examinations, and subpoenas; conducting internal investigations; and handling matters that develop into multi-agency civil and criminal investigations.

[www.paulweiss.com](http://www.paulweiss.com)

**Paul | Weiss**

# ICLG.com

## Current titles in the ICLG series

Alternative Investment Funds  
Anti-Money Laundering  
Aviation Law  
Business Crime  
Cartels & Leniency  
Class & Group Actions  
Competition Litigation  
Construction & Engineering Law  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Investigations  
Corporate Recovery & Insolvency  
Corporate Tax  
Cybersecurity  
Data Protection  
Employment & Labour Law  
Enforcement of Foreign Judgments

Environment & Climate Change Law  
Family Law  
Financial Services Disputes  
Fintech  
Foreign Direct Investments  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law  
Oil & Gas Regulation  
Outsourcing  
Patents

Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Sanctions  
Securitisation  
Shipping Law  
Telecoms, Media & Internet Laws  
Trade Marks  
Vertical Agreements and Dominant Firms