

**US Economic Sanctions  
Administered by  
the U.S. Treasury's Office of Foreign Assets Control  
(OFAC)**

**A Brief Overview for  
the American Institute of Marine Underwriters**

**Presented by Hal Eren**

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# OFAC - Office of Foreign Assets Control

An office within the US Department of the Treasury charged with administering and enforcing US economic (and financial) **sanctions** and trade embargoes

[www.treas.gov/ofac](http://www.treas.gov/ofac)

## OFAC's Mission

- Formulate and conduct economic warfare, fight crime;
- Counteract and seek to change policies and behavior contrary to those of the United States;
- Administer and enforce US economic sanctions based on US foreign policy, national security, and law enforcement goals against **sanctions targets**;
- Act under Presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose **controls on certain transactions and freeze certain assets** under US jurisdiction.

## Economic Sanctions Defined

### What are Economic Sanctions Generally?

Economic sanctions are generally **punitive measures** taken by one or more states (imposing state(s)) against another state (or other sanctions target, *e.g.*, certain governments, certain commercial entities, terrorists, narcotics traffickers) that have violated international law or which poses a threat to national or international security. Some sanctions may be protective.

## Implementation of Sanctions/OFAC's Legal Authority

### Implementation of Sanctions

Economic sanctions are imposed and implemented through laws and regulations of imposing states which **prohibit** persons subject to their jurisdiction from trade and transactions with or involving sanctions targets and/or **require** the freezing of sanctions target assets

### OFAC authority/laws

US Statutes (e.g., IEEPA, TWEA, AEDPA)

US Presidential Executive Orders

President's Constitutional Powers

UN Resolutions, International Law

OFAC Regulations – 31 CFR Chapter V

## Types of Economic Sanctions

### Punitive or Protective, Unilateral or Multilateral

**Unilateral:** Current OFAC sanctions against Cuba, most of those against Iran

**Multilateral:** Past OFAC sanctions against South Africa, Iraq, Yugoslavia, current: Burma, Iran (UN or coalition of the willing)

**Multiplicity of Lists:** OFAC SDN List, UN List, EU List, etc.

**Protective:** e.g., WW II, Kuwait, Bosnia-Herzegovina

## The Purpose of/Policy Reasons Underlying Sanctions

- Sanctions measures are designed to punish or to deter certain behavior. This is done by denying them the use of their economic resources and by excluding them from the of the benefits of trade and other economic interactions with sanctions imposing states such as the United States
- Rationale: The denial of economic interaction and economic assets will bring pressure on the sanctions target to change its behavior or policies – *e.g.*, stop war, give up weapons of mass destruction, regime change (delegitimize governments or regimes)

## The Purpose of/Policy Reasons Underlying Sanctions *(cont.)*

- Punish, prevent and deter illegal or offending activity/policies; oppressive governments; nuclear proliferation; terrorism
- Freezing assets and interdicting transactions will prevent/deter crime, prevent terrorism or terrorist acts; and serve as an incentive for change of behavior or policies

## Sanctions Prohibitions and Requirements

# General Features of OFAC Sanctions Programs

**Freezing** (or blocking) of property (assets) and all interests in property, and/or

**Prohibition on trade** and transactions involving sanctions targets or sanctions subject matter (imports, exports of goods, services)

Requirements and prohibitions are usually sweeping but allow for some **exceptions/exemptions**, especially for unintended consequences

**All sanctions programs do not have the same scope/coverage** – some are limited or very targeted and others are comprehensive

## OFAC Prohibitions in a Nutshell

In summary, with a few narrow exceptions, OFAC sanctions prohibit all transactions and activities with or involving sanctions targets

Manifested in blocking of property requirements, and trade, facilitation, and evasion prohibitions

## OFAC's Current Sanctions Programs – the Universe of Sanctions Targets

### 1. Targeted countries/territories, governments of, and entities in

Iran

Sudan

Burma (Myanmar)

Cuba

North Korea (residual sanctions, vessels)

Syria (authority for sanctions, limited list based – SDNs, prohibition on exports)

-- as well as entities owned or controlled by or acting for or on behalf of the foregoing

## OFAC's Current Sanctions Programs – the Universe of Sanctions Targets

### 2. Targeted/Regulated Commodities/Subject Matter

Rough diamonds  
Iraqi cultural property  
Round logs - Liberia

## OFAC's Current Sanctions Programs – the Universe of Sanctions Targets

### 3. Targeted individuals, groups and entities (list-based programs) and their agents or proxies

- Designated Terrorists
- Certain Persons - Balkans, Belarus, Zimbabwe, Syria, Liberia, Cote d'Ivoire (Ivory Coast), D.R. of the Congo,
- Iraq – remaining regime elements
- Designated Narcotics Traffickers
- Designated Nuclear Proliferators, e.g., IRISL
- Persons Undermining Lebanon

## General Comments on Sanctions Programs – Common Elements and Differences

### General Comments

**Each OFAC sanctions program is different.**

What holds true in one context may not necessarily apply in another. Differing underlying foreign policies affect how prohibitions are construed and applied. Varying prohibitions.

**OFAC is driven by US foreign policy – dynamic and always changing.**

**Exceptions and exemptions are available.**

General licenses, specific licenses. Specific licenses serve to refine and calibrate sanctions/send political signals.

**OFAC has what is close to unbridled discretion in most cases – exercising foreign affairs power of President, war time powers**

**OFAC's determinations and positions are granted deference by the courts**

## Differences, Case in Point: OFAC's Cuba Sanctions (Cold War Heritage/Relic) – political disagreement/communism

Unilateral

Comprehensive asset/property freeze

Targets include Cuban citizens on the basis of citizenship alone

Comprehensive prohibition on trade and transactions (with food and medicine exceptions); certain activities authorized by general license

Prohibition on travel transactions, unless authorized

Certain remittances authorized

## OFAC's Jurisdiction

# Who Must Comply with OFAC Prohibitions and Requirements?

“US Persons”

“Persons Subject to the Jurisdiction of the United States” - (Cuba, North Korea)

Importers into and exporters from the United States

Others – transactional nexus to the United States or to US persons, cause and effect (any person who causes a violation), all persons who possess certain US origin items, e.g., software

## OFAC's Jurisdiction: Who Must Comply with OFAC Prohibitions and Requirements? (cont.)

### US Persons

any US citizen (wherever located), any US permanent resident alien, any entity organized under the laws of the United States (including foreign branches), or any person (entities and individuals) in the United States

extra-territoriality: foreign branches, US citizens and permanent residents living and working outside the United States;

## OFAC's Jurisdiction: Who Must Comply with OFAC's Prohibitions and Requirements? *(cont.)*

### *Persons Subject to the Jurisdiction of the United States (Cuba and N. Korea)*

US persons (except permanent resident aliens) plus residents of the United States plus any entity wherever organized or doing business that is owned or controlled by the foregoing persons – reaches foreign subsidiaries of US companies

own = 100%, control = presumed at 50% ownership, otherwise facts and circumstances test (control in fact)

## Jurisdiction: Who Must Comply with OFAC's Prohibitions and Requirements? *(cont.)*

Persons (entities and individuals) importing into and exporting from the United States -- such persons are construed to be in the United States and thus to be US persons for those limited or specific purposes

Non-U.S. citizens outside of the United States can be prosecuted for conspiring with a U.S. person to violate OFAC laws and regulations

**Any person wherever located causing a violation of US sanctions**

## OFAC's Jurisdiction: Voluntary Compliance with OFAC's Prohibitions and Requirements – applicable to non US-companies

### Others

universally recognized bad acts

the right thing to do – politically and business-wise  
(but not legally mandated)

US has the highest standard/adherence to global best practices

public perception in/relations with the United States

Foreign issuers of securities have special concerns (SEC)

fear of offending the US Government (Airbus/Boeing)

US political leverage

fear/possibility of becoming an OFAC sanctions target

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## Impact of OFAC Sanctions on the Insurance and Reinsurance Sector

- **Application:** The extension of coverage or the writing of any policy that includes risks in or involving OFAC sanctions targets – *i.e.*, the mere writing of **global insurance policies** without an OFAC exclusion is prohibited according to OFAC
- The ability to rely on coverage and the promise to pay, in advance, implicates prohibitions
  - Example: coverage for a non-sanctions target that is not a U.S. person where the non-U.S. person **intentionally** trades with, among many other countries, Iran, Sudan, Cuba or Burma
    - e.g., claims for cargo shortage in the sanctions target country
    - e.g., surveys or repairs to be conducted in the sanctions target country

## Impact of OFAC Sanctions on the Insurance and Reinsurance Sector

- Example: coverage for a U.S. person or a non-U.S. person for accidents, emergencies, and perils that may inadvertently involve OFAC sanctions targets
  - An insured vessel collides with a vessel owned or controlled by an OFAC sanctions target
  - An insured vessel spills oil washing up on US as well as Cuban shores
  - Emergency arises and nearest port is a port of a country that is an OFAC sanctions target

## Impact of OFAC Sanctions on the Insurance and Reinsurance Sector

- OFAC guidance/position:
- An insurer can participate in worldwide insurance markets through global insurance policies by inserting in global insurance policies an explicit exclusion for risks that would violate U.S. sanctions law. For example, according to OFAC, the following standard exclusion clause should be used in open marine cargo policies to avoid OFAC compliance problems:  
“whenever coverage provided by this policy would be in violation of any U.S. economic or trade sanctions, such coverage shall be null and void.”
- The legal effect of the above exclusion is to prevent the extension of a prohibited service (insurance or risk assumption) to sanctions targets and to prevent facilitation of trade with sanctions targets -- essentially shifting the risk of loss for the underlying transaction back to the insured

## Impact of OFAC Sanctions on the Insurance and Reinsurance Sector

What if the commercial setting and/or market circumstances of a global insurance policy does not permit the use of an OFAC exclusion such as the one noted above?

- The “all or nothing” choice faced by U.S. global insurers:
  - Non-U.S. person customers/insured parties who have choices between US insurance companies and their competitors who are not subject to OFAC laws
  - Non-U.S. person insured parties may be able to freely trade with sanctions targets under laws applicable to them. If they reject the OFAC exclusion, the U.S. insurer cannot insure -- even if the proportion of global policies involving or which may involve sanctions targets is extremely small or de minimis
  - Consequently, absent an OFAC license, U.S. insurers and reinsurers must forego writing global policies and from engaging in transactions under such policies – the overwhelming majority of which does not and will not involve sanctions targets

## Impact of OFAC Sanctions on the Insurance and Reinsurance Sector

OFAC recognizes that U.S. insurers often compete in international markets where non-U.S. insurers are willing and able to issue global insurance policies without a U.S. sanctions exclusion.

In cases where an OFAC exclusion is not commercially feasible, the insurer should apply for a specific OFAC license for the global insurance policy. In making a licensing determination, OFAC will review the facts and circumstances of each global insurance policy, including both risk frequency and risk severity. A separate license would be required for the insurer to pay claims and to engage in other transactions arising under any authorized global insurance policy.

## Impact of OFAC Sanctions on the Insurance and Reinsurance Sector

Transactions arising under global policies:

- Claims and damage mitigation/prevention (pre-claims)
- Issuance of security/bonds – release of arrested vessels
- Evaluation and adjustment of claims
- Defense of insured
- Payment of claims or reimbursement of insured party
- All other transactions ordinarily incident to the coverage in the policy

## Impact of OFAC Sanctions on the Insurance and Reinsurance Sector

### Examples of Other Transactions:

- Pool contributions
- Reinsurance of insurers that insure a target or a target risk
- Claims of and payments to sanctions targets
- Services from and payments to service providers in sanctions targets

## Impact of OFAC Sanctions on the Insurance and Reinsurance Sector

**OFAC position:** Apply to OFAC for license to write global insurance policies w/o an OFAC exclusion, and for transactions involving sanctions targets arising under or incident to authorized global and other policies.

## Impact of OFAC Sanctions on the Insurance and Reinsurance Sector

### Some other issues:

- US parent/subsidiary relationships, global nature of business
- Local law may prohibit compliance with OFAC prohibitions
- Multiple enforcement
- Beneficial ownership
- Economic sanctions of other countries
- Conflict of laws (e.g., EU, Canada anti-US blocking statutes)
- Internationalization of sanctions

## Negative Consequences of OFAC Violations

Civil penalties involving the payment of substantial monetary fines

Criminal penalties involving payment of substantial fines, or imprisonment, or both

Revocation of an OFAC license or other privileges

Publication and adverse publicity and all the adverse consequences flowing from the same

Disciplinary action for employees, officers and directors up to and including termination

## OFAC Civil Monetary Penalties

OFAC has authority to impose civil penalties for violations of TWEA (Cuba) (up to \$65,000 per count),

IEEPA (up to a maximum of \$250,000 or twice the amount of the violative transaction, whichever is greater),

the Iraqi Sanctions Act (up to \$325,000), and FNKDA (\$1,075,000), as well as \$55,000 for banking transactions under AEDPA.

Fines may be imposed and be aggregated or increased under one or more applicable statutes.

## OFAC Civil Penalties (cont.)

OFAC regulations also provide for the public availability of certain information relating to civil penalty proceedings. It is published monthly and may be accessed on OFAC's website.

In the case of companies, the published information includes the name of the company, the type of transaction involved, the sanctions program violated, and the amount of penalty assessed or agreed in settlement.

## OFAC Civil Penalties (cont.)

The undesirable publicity for the company whose name is so published was one of the calculated consequences, which led OFAC to institute this practice of publication.

It is important that companies be aware of this particular “name and shame” consequence of any OFAC enforcement proceeding in which a formal pre-penalty notice is issued for an alleged violation.

Such publication might be averted where an agreed settlement can be reached prior to the issuance by OFAC of a prepenalty notice.

## Criminal Penalties for OFAC Violations

- TWEA, (e.g., North Korea, Cuba), provides for ten years imprisonment, and/or a \$1,000,000 fine for corporations, and a \$100,000 fine for individuals, as well as forfeiture of funds or other property involved in violations.
- IEEPA (e.g., Sudan, Iran, Terrorism, Narcotics, Nonproliferation, Zimbabwe, the Balkans, Syria, and Burma), provides for up to twenty years imprisonment, and/or a \$1 million fine for corporations and individuals.

## Criminal Penalties for OFAC Violations *(cont.)*

The Antiterrorism and Effective Death Penalty Act (Cuba, North Korea, Iran, Iraq, Syria, and Sudan), provides for criminal penalties of \$500,000 per count against corporations, and ten years imprisonment and/or \$250,000 per count for individuals.

The Foreign Narcotics Kingpin Designation Act, provides for criminal penalties of \$10,000,000 per count against corporations, and thirty years imprisonment and/or \$5,000,000 per count for individuals.

## OFAC Compliance

Awareness: Know or have a brief idea of the law or “red flags”

Lack or absence of an OFAC compliance program is not in and of itself an OFAC violation. OFAC does not require an OFAC compliance program, but if you do not have one, you act at your own peril.

Having and following an OFAC effective compliance program, will prevent violations and also mitigate penalties. Absence of one will permit violations and aggravate penalties. Recommendation: Establish and maintain an effective OFAC compliance program.

## OFAC Compliance (*cont.*)

### Due Diligence: Screening Insured Parties and Transactions

- Screen data and information related to all insured parties to ensure none are sanctions targets – screen new insured parties as well as existing insured parties
- Screen data and information related to all transactions for indication of sanctions target involvement

## OFAC Compliance *(cont.)*

The standard of due diligence for OFAC compliance is a function of the risk environment in which the transactions occur/risk profile of organization/entity

Generally, due diligence for international transactions (financial and trade) are more than for purely domestic transactions

## OFAC Compliance (cont.)

### **OFAC Compliance Program – Basic Elements:**

- Policy statement disseminated throughout organization
- Centralized clearinghouse/authority for OFAC issues and decisions, recordkeeping, reporting, license applications
- Training and education/awareness
- Screening of customers/insured parties, transactions, transaction counterparties, vendors, authorized traders, beneficiaries, payments (Treasury), and transactions -- to prevent violations
- Internal auditing and testing

## Questions and Answers



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## The Eren Law Firm

The Eren Law Firm is a leading economic sanctions and anti-money laundering boutique law firm based in Washington, DC. Prior to entering private law practice, Mr. Eren and Mr. Pinter of the firm served at the US Department of the Treasury's Office of Foreign Assets Control (OFAC), the agency that administers US economic sanctions, for a combined 25 years.

Mr. Pinter and Mr. Eren advise and provide answers to banks, broker-dealers, investment banks and other financial institutions, financial services companies, insurance companies, and other businesses as well as foreign governments on matters implicating OFAC-administered economic sanctions, the US Bank Secrecy Act, the anti-money laundering (AML) provisions of the USA Patriot Act, and their implementing regulations. Mr. Eren and Mr. Pinter also design OFAC and AML compliance programs for US as well as non-US clients and represent clients in, among other matters, applications for OFAC licenses (such as for the unblocking of funds and accounts), SDN list removal petitions, other sanctions relief; and in sanctions, anti-money laundering, and export control enforcement actions.

## The Eren Law Firm

A substantial portion of Mr. Eren's practice in the last 3 years has been devoted to advising and representing US as well as non-US insurance and reinsurance companies with respect to economic sanctions administered by OFAC and other authorities.

Between 1992 and 2000, Mr. Eren served at OFAC, where he participated in the formulation of OFAC-administered laws and regulations, and dealt with OFAC adjudications and decisions involving the application of sanctions laws and regulations to complex and sensitive trade and financial transactions, including insurance policies. Prior to The Eren Law Firm, between 2000 and 2002, Mr. Eren was a lawyer at the Washington DC office of Clifford Chance, where he advised the firm's clients and the firm itself on US economic sanctions and anti-money laundering matters.

During his 17-year tenure at OFAC, Mr. Pinter participated in the shaping of economic sanctions programs administered by OFAC, and in the formulation, implementation, modification and termination of sanctions. Mr. Pinter was the prime arbiter of all major OFAC decisions and he served as OFAC's Chief of Licensing between 1987 and 2002, during a part of which time he also oversaw OFAC's Civil Penalties program.

For more information, please visit: [www.erenlaw.com](http://www.erenlaw.com)