OFAC: What You Need to Know / Sanctions Compliance Basics for Accounting and Procurement

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Topics for Today:

1. Introduction to Sanctions and Export Compliance
2. Basic Regulatory Overview: OFAC Compliance
3. Where do Accounting and Procurement fit within a Sanctions Compliance Program?
Export Compliance overall falls under several regulatory regimes:

1. Department of Commerce’s **Bureau of Industry & Security ("BIS")**
   - Controls export of most commercial, or dual-use products
   - Accounting and Procurement has less of a role in this screening process and so is not a focus of this presentation.

2. Department of State’s **Office of Foreign Assets Control ("OFAC")**
   - Economic and trade sanctions based on U.S. foreign policy and national security goals
     - **Comprehensive** (eg country-wide) and **Selective**: on the Specially Designated Nationals ("SDN") list
   - Accounting and Procurement can have a large role in this screening process and it is the focus of today’s presentation

3. Department of State’s Directorate of Defense Trade Controls
   - Administers defense items export controls under International Traffic in Arms Regulations (ITAR) and is beyond the scope of this overview
Sanctions

• Economic sanctions have been used throughout history as a valuable tool to destabilize a hostile nation with non-violent means.
  – OFAC is one of the oldest law enforcement agencies in the United States. OFAC is an enforcement agency, not a regulator

• BIS and OFAC compliance should be managed under an export compliance program.
  – Accounting and Procurement plays a key role in relation to OFAC screening – who is your company doing business with?
What Sets Sanctions Compliance Apart?

Compliance requires close and constant monitoring to succeed – Accounting and Procurement are uniquely positioned to manage this.

To comply, you must know who you are doing business with... and screen them!!

Export Controls and Sanctions

• Strict or absolute liability!
• Screening must be done real-time: lists are constantly changing
• Responsibility for real-time compliance must be operationalized
• No minimum dollar threshold – any transaction is a violation
Who Must Comply?

- U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute.
- **All “U.S. persons” must comply with OFAC regulations**
  - U.S. citizens and permanent resident aliens regardless of where they are located or employed
  - All persons and entities within the United States
  - All U.S. incorporated entities and their foreign branches
  - US entity facilitation of transactions by non-US Persons
  - Some cases (Cuba, North Korea) all foreign subsidiaries owned or controlled by U.S. companies and foreign branches
- Certain programs also require foreign persons in possession of U.S. origin goods to comply.
Regulatory Compliance: OFAC Overview

• OFAC sanctions regimes prohibit transactions with listed entities and sanctioned countries
  – **Selective Sanctions** are targeted to certain industries, entities, or individuals
    • Examples: Ukraine-Russia related sanctions target oil & gas industry, Counter-terrorism related sanctions lists certain individuals and entities found to be supporting or committing terrorism.
  – **Comprehensive Sanctions** are applied to whole countries
    • Comprehensive sanctions can be loosened (Cuba and secondary sanctions, affecting non-US entities, for Iran) or lifted completely (Burma and possibly soon Sudan)
    • Recent changes for Cuba and Iran...
OFAC Lists and Sanctions: Country/Regime Prohibitions

- Comprehensive sanctions programs: Cuba, Iran, Sudan, and Syria.
  - Recent changes to Cuba and Iran discussed below
- Significant Programs: North Korea, Syria, Russia
  - Russia’s sanctions are result of Crimea action and sectoral: targeted to the oil and gas industry
- Limited Programs: Western Balkans, Belarus, Cote d'Ivoire, Democratic Republic of the Congo, Iraq, Liberia (Former Regime of Charles Taylor), Libya, Somalia, Ukraine and Zimbabwe
Comprehensive Sanctions Program

Focus: Iran

- **Implementation Day** on January 16, 2016
  - Sanctions relief as set forth in JCPOA
  - Executive orders terminated: 13574, 13590, 13622, 13645 and sections 5-7 of Executive Order 13628
- Approximately 400 entities and individuals removed from SDN List
- Secondary sanctions removed against non-U.S. Entities and Individuals
- Domestic trade embargo applicable to US persons remains in place except for certain specific items
- Bulk of sanctions relief directed toward lifting secondary sanctions directed at non-US persons and lifting of specific restrictions in certain industries
- **Non-US Persons must still comply with SDN List**
- **US persons still cannot engage in transactions with Iran**
  - US companies *can* set up a completely separate foreign-controlled subsidiary but will require rigorous controls to ensure no shared services
Comprehensive Sanctions Program
Focus: Cuba

• December, 2014, a more liberal *regulatory* policy announced
  – Since then, many areas opened up (with limits): travel, telecommunications, financing, import of Cuban goods, physical presence for certain businesses, etc.

• US persons cannot engage in business or investment with Cuba, except for exemptions mentioned earlier
  – Legislative embargos remain in place
  – Expect continued easing of restrictions to limit allowed by law

• But... getting rid of embargo will require Congressional action
  – Has not been identified as legislative priority
OFAC Lists and Sanctions: Purpose

Prohibitions

• Foreign narcotics traffickers
• Foreign terrorists
• Transnational criminal organizations
• Restricted end-uses:
  – Proliferation-related end-uses
    • Nuclear
    • Chemical/biological weapons
    • Missile technology
OFAC Lists and Sanctions: SDNs

• Specially Designated Nationals ("SDNs"): blocked persons and entities

• Watch list of over 6000 People
  – Terrorist Groups, Narco-Traffickers, other criminals
  – Individuals and companies owned/controlled by or acting for/on behalf of targeted countries
  – Diplomatic aims – such as recent addition of those involved with Syria’s chemical weapons program

• Foreign Evader Sanctions
  – Foreign individuals and entities determined to have:
    • (1) violated U.S. sanctions on Syria or Iran; or
    • (2) facilitated deceptive transactions for or on behalf of persons subject to U.S. sanctions.

• Assets are blocked
• No US persons or entities can do business with prohibited persons
• How to screen: available in the “Consolidated Screening List” as a downloadable database
Compliance Reminder: 
Reinterpretation of 50 Percent Rule

- OFAC has also broadened the application of its “50% rule” (February 2008)
  - Originally, entity falls under OFAC’s jurisdiction if any single prohibited entity owned 50 percent or more of a related entity
  - Expanded now to include entity if any combination of prohibited entities collectively own at least 50% of that entity.

- For example, if Blocked Person X owns 25% of Entity A and Blocked Person Y owns 25% of Entity A, then Entity A is now blocked, because Entity A is owned 50% or more in the aggregate by blocked persons.

- Previously, the 50% rule did not require an aggregation of interests, with the rule being that a single sanctioned entity must own 50% or more of another entity to bring that entity within the scope of sanctions.
OFAC Compliance: How to...

- Companies that have overseas suppliers, customers, clients, or partners must have OFAC compliance procedures in place
  - OFAC authorizations take the form of:
    1. Exemptions (specific and outlined in regulations)
    2. General Licenses (e.g., for humanitarian reasons such as medical equipment)
    3. Special Licenses (must be applied for)

- **OFAC Compliance screening must be done real time**
  - Sanctions programs are constantly changing
  - If an entity or individual is on the SDN list virtually all transactions are prohibited!
What is really required for sanctions compliance?

• Any entity conducting activities abroad should have a sanctions compliance program!
  – Targeted to the unique risks your entity faces
  – Appropriate for the size and scope of your entity

• Sanctions and licensing compliance is a strict liability offense – you can face penalties even if you didn’t “know” about a violation!

• Yes – your export compliance program can address both BIS and OFAC compliance
  – Accounting and Procurement best positioned to verify OFAC compliance
OFAC Screening Process Summary

1. Collect information from the potential supplier/third party/customer via standardized form or questionnaire.

2. Screen the potential supplier/third party/customer against OFAC SDN lists and targeted countries. Screen beneficial owners.

3. Are there any hits? Compare the complete SDN entry information with all information you have on the matching customer.

4. Approve, Deny, Escalate, or Collect More Information.
Integrating Sanctions Compliance within Operations

A Sanctions Compliance Program should be built around operational structure

- It doesn’t work the other way around
- Clearly define:
  • Who should be responsible?
  • Where should checks occur?
  • How can oversight best be managed?
Examples of Operational Check Points

• Where does it make sense to have export compliance checks for your company?
Starting Point: Risk Assessment

- Identify your risk sources
  - Are you exporting overseas?
  - Do you have suppliers overseas?
  - Who owns your suppliers?
  - Are you a bank that faces unique compliance challenges and must have robust internal controls in place for every financial transaction?
  - Are you an educational institution who may have relationships with those overseas?
  - Does your business use or purchase complex or technologically advanced products from overseas?

- Accounting and Procurement are uniquely positioned to spot these risks!
What can you do?

1. Assist with a Risk Assessment to determine which regulatory compliance obligations will impact your business – BIS? OFAC?
   - Where do you do business? Who are your suppliers? Who owns your suppliers?

2. Identify when Accounting and Procurement collect information on suppliers?
   - What information is already collected? What information should be collected?
What can you do?

3. Screen suppliers (and all third parties).
   - Screening tools (many third party providers, happy to provide suggestions) make the process easy!
   - Document the results!

4. Regularly assess the process, audit to make sure screening is being conducted and results are being saved.
Questions?
The Volkov Law Group

- Anti-corruption due diligence, compliance, enforcement defense and internal investigations
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