The Changing Sanctions Landscape and Law Enforcement’s Perspective

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Sanctions Basics

• The Treasury Department’s Office of Foreign Assets Control (“OFAC”) administers sanctions
• There are more than 20 active programs, from three basic types
  • “Country-based” or “Comprehensive”
  • List-based
  • Sectoral
Sanctions Basics

- **List-Based Sanctions.** These require U.S. persons to freeze assets of and prohibit direct or indirect dealings in goods or services with specified individuals or entities called “Specially Designated Nationals”-- SDNs
- Examples: Chapo Guzman, Bank Rossiya, IRGC
What Are Sanctions?

**Country-Based Sanctions.** These prohibit direct or indirect dealings in goods or services with specific countries or regions, including their companies and persons normally resident there.

- Examples: Iran, Cuba, North Korea, Crimea
What Are Sanctions?

- **Sectoral Sanctions.** These prohibit specific categories of goods or services. These currently exist for Russia/Ukraine and Venezuela.
- Example: Transactions in debt of more than 14 days or new equity for designated persons identified as being part of Russia’s financial sector.
Sanctions Risks

Sanctions prohibitions apply to **U.S. persons**, which include:

- United States citizens, wherever located
- U.S. permanent resident aliens, wherever located
- Any person physically present in the United States
- Entities organized under the laws of the United States (including their foreign branches)
- Foreign entities operating in the United States

(remember that U.S. banks are U.S. persons)
Sanctions Risks

- How can U.S. companies usually get in trouble with sanctions?
  - They fail to **block property** or **reject transactions** with sanctioned persons
  - They provide goods or services to, or receive them from, sanctioned persons or jurisdictions, **directly or indirectly**
  - They do one of the above with a person that is **owned (50%+)** by a sanctioned person or jurisdiction (i.e. the “50% rule”)
- Civil and criminal penalties (for willful violations) are possible
- Non-U.S. companies subject to criminal liability if they willfully cause a U.S. person to violate sanctions
- No requirement to have an OFAC compliance program, but doing so makes violations less likely, and there is cooperation credit on any penalties.
Current Sanctions Issues

Russia

• Biggest development is CAATSA (Aug. 2, 2017)
• Further restricts sectoral sanctions w/r/t Russia’s
  • Financial sector (Directive 1) – restricts dealings in new debt to 14 days
  • Energy sector (Directive 2) – restricts dealings in new debt to 60 days
  • Oil and Gas Sector (Directive 4) – now prohibits provision of goods and services to deepwater, arctic offshore, or shale projects anywhere that have potential to produce oil, if controlled 33% or more by Directive 4 designee
• Directive 1 applies to consumer payment terms
Current Sanctions Issues

Russia (Con’t)

- **Section 228** – Secondary sanctions for foreign persons that knowingly facilitate a “significant transaction” with targets of U.S. sanctions against Russia
- **Section 231** – Menu-based sanctions for “persons” (U.S. or foreign) that engage in a “significant transaction” with Russia’s defense or intelligence sectors (as defined in State Department list).
Current Sanctions Issues

Russia (Con’t) – Other Issues

• **Designation of UC Rusal, EN+ Group, and GAZ Group** (Apr. 6, 2018) – based on their ultimate ownership by SDN Oleg Deripaska.
  • GL 13D allows divestment of holdings of these companies through Nov. 12, 2018 (UC Rusal and EN+) or Oct. 23 (GAZ Group)
  • GL 14A allows transactions incident to the “maintenance” or “wind down” of “operations, contracts, or other agreements” with UC Rusal
  • GL 15A allows same for GAZ Group through Dec. 12, 2018
  • GL 16A allows same for EN+ through Nov. 12, 2018
Current Sanctions Issues

Venezuela

• **EO 13835** (May 21, 2018) – prohibits “transactions related to”
  • Purchase of debt owed to GOV
  • Any debt owed to GOV pledged as collateral after May 21, 2018
  • Sale, transfer, or pledge as collateral by GOV of any equity interest that GOV owns 50% or more of
  • GOV includes persons owned or controlled by or acting on behalf of GOV
Current Sanctions Issues

Venezuela
- **EO 13808** (Aug. 24, 2018) – prohibits “transactions related to”
  - New debt > 90 days of PDVSA
  - New debt > 30 days, or new equity, of GOV
  - Bonds issued by GOV before Aug. 24, 2018
  - Dividend payments to the GOV from entities owned or controlled by it
  - Purchase of securities, directly or indirectly, from GOV except for allowable debt
Current Sanctions Issues

Iran “Snap Back”

• US persons already prohibited from nearly all interactions with Iran, so effects on them are limited.

August 7

• Sanctions on the purchase or acquisition of USD bank notes by the GOI
• Sanctions on Iran’s trade in gold or precious metals
• Sanctions on direct or indirect sale, supply or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes
• Sanctions on significant transactions related to the purchase or sale of Iranian rials, or maintaining significant funds or accounts denominated in rials outside of Iran
• Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt
• Sanctions on Iran’s automotive sector
Current Sanctions Issues

Iran “Snap Back” (Cont.)

Nov. 5, 2018 – Sanctions targeting

• Sanctions on Iran’s port operators, and shipping and shipbuilding sectors
• Sanctions on petroleum-related transactions with, among others, NIOC, NICO, NITC, including the purchase of petroleum, petroleum products, or petrochemical products from Iran
• Sanctions on transactions by foreign financial institutions with the CBI and designated Iranian financial institutions under NDAA (2012) §1245
• Sanctions on the provision of specialized financial messaging services (e.g., SWIFT) to CBI and certain Iranian FIs
• Sanctions on provision of underwriting services, insurance, or reinsurance
• Sanctions on Iran’s energy sector
• Revocation of GL H wind-down authorization.
Current Sanctions Issues

Enforcement

• JPMC (Oct. 5, 2018) -- $5,263,171 attributable to Iran and Cuba, with finding of violation for FKND

• Epsilon electronics (Sep. 13, 2018) -- $1,500,000 for exporting goods knowing they were likely to go to Iran

• Ericsson (June 6, 2018) -- $145,893 for Sudanese sanctions violations.
Current Sanctions Issues

Enforcement -- Trends

- Only 3 penalties in 2018, but this seems temporary
- Large penalties expected for banks SocGen, UniCredit
- Treasury has said it will start issuing more formal guidance on its expectations for sanctions compliance (see February speech by U/S)
- Russia penalties expected soon
Sanctions Risks

Take-Aways

• *Always Check the SDN and Related Lists* – for all counterparties, intermediaries, vendors, employers
• *Consider Direct and Indirect Transactions* – sanctions are strict liability; OFAC prioritizes foreseeable violations
• *Include Representations and Exclusionary Clauses* – the latter to excuse performance where you reasonably conclude doing so might cause sanctions violations
Questions?

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