

# Listening when sanctions regulators speak

Maintaining a robust sanctions compliance program requires vigilance and responsiveness to updated standards set by regulators. Compliance expectations may be discerned from enforcement action notices, and regulator statements can be a particularly rich source for understanding the areas of importance to regulators.

On 2 May 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued "A Framework for OFAC Compliance Commitments" (the "Framework"). On 1 February 2019, the UK Foreign & Commonwealth Office issued sanctions guidance in the event of a no deal Brexit. For entities subject to the jurisdictions of these regulators, the information contained in these pronouncements should inform sanctions compliance efforts.

OFAC's Framework describes five "essential components" of an effective sanctions compliance program (SCP):

1. Management commitment;
2. Risk assessment;
3. Internal controls;
4. Testing and auditing; and
5. Training.

U.S. government expectations regarding effective SCPs should serve as a starting point for organizations looking to reassess or enhance their SCP. Having been identified by OFAC as "essential", the failure to fully animate any of these components would be a serious omission that could have significant consequences in the event of a sanctions violation.

The Framework also highlights "root causes" of sanctions violations which include issues frequently encountered by non-U.S. companies that find themselves subject to U.S. sanctions laws. For example, many non-U.S. entities have violated U.S. sanctions laws by processing transactions that involve a sanctioned country or person through U.S. financial institutions (almost all of which have been denominated in U.S. dollars), even if there is no other U.S. nexus to the transaction. These "root causes" form a list of potential compliance pitfalls against which a compliance plan should protect.

A number of OFAC enforcement settlements, starting in December 2018, incorporate the elements of the OFAC Framework and therefore should serve as an additional resource. Accordingly, organizations should review their sanctions compliance policies and procedures in light of the OFAC guidance and these enforcement actions for a "roadmap" to sanctions compliance.

Regulator statements are particularly valuable when companies are operating in an uncertain regulatory environment. Brexit presents unique sanctions compliance challenges in part due to the question as to how it will be achieved. The UK Government has provided some guidance on UK sanctions policy in the event of a no-deal Brexit (the "Guidance").

Currently the UK implements and enforces sanctions regimes agreed by the UN Security Council and the EU through EU regulations and associated domestic legislation. The Guidance states that, in the event of a no-deal Brexit, the UK Government will look to carry over all EU sanctions at the time of departure. New sanctions regimes are implemented through regulations made under the Sanctions and Anti-Money Laundering Act 2018 (the "Sanctions Act"). The UK Government intends to put as many of the proposed new regulations as possible before Parliament prior to the UK's potential departure. In the past few months, new sanctions regulations were passed under the Sanctions Act in respect of Iran, Russia and Venezuela amongst several others. Parliament has also approved regulations transposing the EU Blocking Regulation into UK domestic law. Any sanction regimes contained in EU regulations not addressed through new UK regulation at the time of departure will continue as retained EU law under the EU (Withdrawal) Act 2018.

While the Guidance suggests seamless sanctions continuation, it also explicitly cautions against

assuming that all aspects of existing EU sanctions will be replicated. Although the new UK regulations are intended to have substantially the same effect as EU Regulations, there may be differences in technical implementation. This is apparent in certain aspects of the new Iran, Russia and Venezuela regulations. For example, the test for “ownership and control” for asset freezes is not exactly the same and includes more detail than in EU regulations. Furthermore, whilst the EU regime does not provide for general licenses allowing multiple parties to carry out activity otherwise prohibited by sanctions, the new UK regulations provide for the issuing of general licenses.

Sanctions compliance planning for different Brexit scenarios should incorporate ongoing assessments of UK legislation and regulations to carefully determine the scope of restrictions. Further attention must be applied to determine whether there may be an applicable exemption to cover the activity in question.

Regulator statements related to sanctions compliance should serve as a starting point for benchmarking sanctions compliance efforts. The challenge for companies is to accept such guidance and then to craft sanctions compliance programs that both anticipate and respond to regulator concerns and are tailored to their sanctions risk assessment.



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The publication of guidance effectively establishes a baseline standard for compliance programs

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