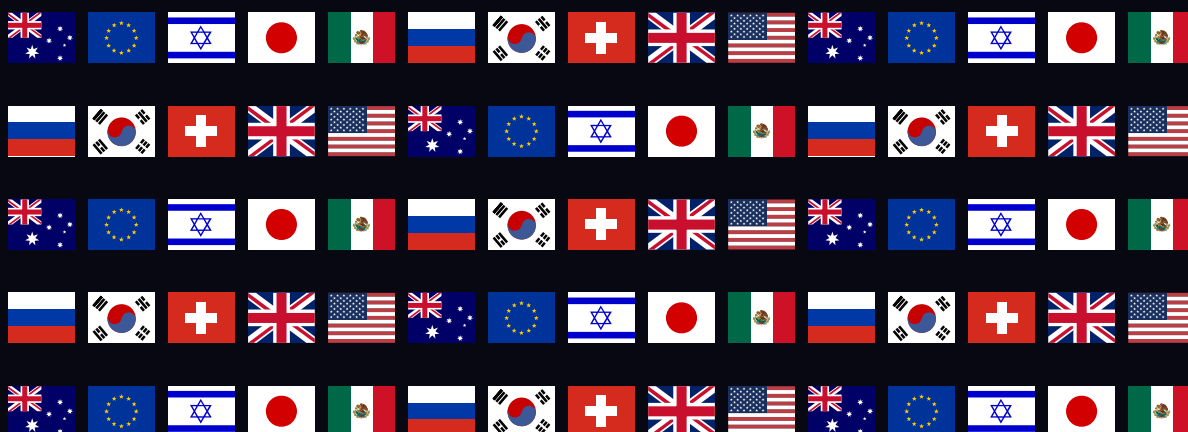


SANCTIONS

USA



Sanctions

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into economic, financial and trade sanctions including national and international regimes; types of sanction imposed; targeted countries, entities and individuals; scope of application and competent authorities; business compliance and reporting requirements; asset freezes; exemptions; reporting of violations; investigations, penalties and recent enforcement actions; and other emerging trends.

Generated 13 April 2022

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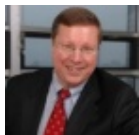
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UPDATE AND TRENDS

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GENERAL FRAMEWORK

Legislation

What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

The United States has numerous statutes that authorise economic and trade sanctions, including the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA). Under IEEPA, which was enacted in 1977, the president has the authority to declare a national emergency in response to any 'unusual and extraordinary' threats to the 'national security, foreign policy, or economy of the United States'. Under the authority of 50 USC § 1701, the president can issue executive orders, as well as implement regulations, which include prohibitions on certain activities and asset blocking or freezing requirements.

The TWEA was enacted in 1917 and provides the president with authority to restrict trade between the US and foreign nations, governments, and persons during wartime (50 USC § 4301 et seq). The TWEA is currently the underlying statute for the US-Cuba sanctions programme.

The US has enacted additional legislation permitting the implementation and enforcement of economic sanctions, including the United Nations Participation Act of 1945 (UNPA), Hong Kong Autonomy Act (HKAA), North Korean Sanctions and Policy Enhancement Act of 2016 (NKSPEA), Countering America's Adversaries Through Sanctions Act (CAATSA), and the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA).

Law stated - 16 February 2022

Autonomous versus international regimes

Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

US sanctions legislation generally permits the implementation of unilateral sanctions. However, through the UNPA, the US is permitted to implement and enforce sanctions adopted by the United Nations Security Council. Various administrations have taken different approaches to economic sanctions, some preferring a more multilateral approach (the Biden administration) compared to others that have taken a more unilateral approach (the Trump administration). In short, US law permits both approaches, and the use of economic sanctions often has bipartisan support in Congress.

Law stated - 16 February 2022

Types of sanction imposed

What types of sanction are imposed in your jurisdiction?

There are numerous forms of sanctions that can be imposed under US law, including blocking sanctions, export or import restrictions, visa restrictions, foreign exchange prohibitions and prohibitions relating to the activities of financial institutions, among others.

Law stated - 16 February 2022

Countries subject to sanctions

Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

The US has imposed sanctions, to some degree, against numerous countries and territories, a list of which can be found on the US Department of the Treasury's Office of Foreign Assets Control (OFAC) website [here](#). The extent of the sanctions imposed largely depends on US foreign policy and can vary with administrations and congressional priorities. For example, as of February 2022, the US has imposed comprehensive sanctions against the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria, representing almost total transaction bans.

Law stated - 16 February 2022

Non-country specific regimes

What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

The US has enacted additional sanctions programmes that are not country-specific, including those targeting human rights abuses and cybersecurity. With respect to human rights sanctions, the Global Magnitsky Human Rights Accountability Act (GMA) and Executive Order 13818 were enacted following the torture and killing of lawyer Sergei Magnitsky by Russian officials. Executive Order 13818, which implements the GMA, has recently been used to sanction Chinese officials and entities allegedly responsible for serious human rights abuses in the Xinjiang Region of China and Saudi Arabia nationals deemed responsible for the killing of journalist Jamal Khashoggi. Additionally, the Uyghur Human Rights Policy Act of 2020 was enacted in June 2020 and focuses on human rights abuses targeted at the Uyghur people, including in the Xinjiang Region of China.

With respect to cybersecurity, Executive Orders 13694 and 13757 address cybersecurity threats to the US, including those targeting critical infrastructure, misappropriation of funds, and election processes. Both executive orders have been implemented into the Cyber-Related Sanctions Regulations. In addition, during 2021, the US imposed additional sanctions against Russia relating to its malicious cyber activities. See E.O. 14024.

Law stated - 16 February 2022

Counter-terrorism sanctions

What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

The US has enacted and implemented several sanctions programmes targeting terrorist activities, including the Counter Terrorism Sanctions (CTS). The CTS include Executive Order 13224, as amended by Executive Orders 13372 and 13886.

Executive Order 13224 was issued in September 2001 following the September 11 attacks. Executive Order 13224 imposed economic sanctions on persons who have been determined to have committed an act of terrorism, or who pose a significant risk of committing acts of terrorism, as well as persons determined to be owned or controlled by such person or to provide support to such persons, among other prohibitions.

President Trump issued Executive Order 13886 in September 2019, which was an attempt to modernise and consolidate certain counter-terrorism sanctions authorities. Executive Order 13886 generally prohibits US persons from transacting with or otherwise dealing in the property of persons determined to have committed, attempted to commit, or otherwise pose a threat of committing acts of terrorism that threaten the security of the US, among other

restrictions (Global Terrorism Sanctions Regulations (31 CFR Part 594)).

Additionally, the State Department can designate foreign terrorist organisations under section 219 of the Immigration and Nationality Act, a list of which can be found [here](#).

Law stated - 16 February 2022

Anti-boycott laws

Are any blocking or anti-boycott laws in place in your jurisdiction?

The US has enacted anti-boycott laws, including two main laws at the federal level. The Commerce Department's Bureau of Industry and Security (BIS) administers and enforces the anti-boycott provisions contained in the Export Administration Regulations (EAR), while the Treasury Department is responsible for administering and enforcing the anti-boycott provisions laid out in the Tax Reform Act of 1976, which are contained in section 999 of the Internal Revenue Code.

The EAR's anti-boycott restrictions apply to the activities of US persons that do business in the interstate or foreign commerce of the US, such that US persons cannot 'refuse, knowingly agree to refuse, require any other person to refuse, or knowingly agree to require any other person to refuse, to do business with or in a boycotted country, with any business concern organised under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other person, when such refusal is pursuant to an agreement with the boycotting country, or a requirement of the boycotting country, or a request from or on behalf of the boycotting country' (15 CFR § 760.2(a)(1)).

Under the US tax laws, US persons must annually report the receipt of any request to participate in or cooperate with a boycott, regardless of whether they plan to assent to such request. Section 999's reach is broad, such that if the taxpayer 'knows or has reason to know that participation in or cooperation with an international boycott is required as a condition of doing business' within a boycotting country or with a boycotting entity, the taxpayer must report regardless of whether it has direct contact with such country or entity.

Law stated - 16 February 2022

Scope of application

Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

US sanctions generally apply to US persons, that are typically defined as US citizens, permanent resident aliens, entities organised under the laws of the US or any jurisdiction within the US (including foreign branches), or any person in the US.

Under certain US sanctions programmes, foreign subsidiaries owned or controlled by US persons are subject to certain restrictions. For example, under the Iranian Transactions and Sanctions Regulations (ITSR), an entity that is owned or controlled by a US person, and established or maintained outside the US, is prohibited from knowingly engaging in any transaction (directly or indirectly) with the government of Iran or any person subject to the jurisdiction of the government of Iran that 'would be prohibited . . . if engaged in by a United States person or in the United States'.

Under the Cuban Assets Control Regulations (CACR) persons 'subject to US jurisdiction' are prohibited from engaging in certain transactions, including those that directly or indirectly involve the interests of the Cuban government or a Cuban person. The CACR defines persons subject to US jurisdiction to include entities owned or controlled by US citizens, residents or entities organised under the laws of the US.

Additionally, non-US persons could face US regulatory scrutiny if they engage in transactions that transit the US,

including the US financial system, or otherwise subject themselves to US enforcement jurisdiction. For example, non-US persons have been penalised for engaging in activities that cause US persons to violate their sanctions obligations. See, for example, *CSE Global Limited and CSE TransTel Pte Ltd Enforcement Action* (27 July 2017), available [here](#).

Finally, the US has enacted secondary sanctions that have an extraterritorial effect, under which non-US persons could be subject to various penalties for facilitating significant transactions with certain individuals and entities (see generally, CAATSA, HKAA, CISADA).

Law stated - 16 February 2022

Competent sanctions authorities

Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

US sanctions are primarily administered and enforced by OFAC. The US Department of Justice (DOJ) has authority to enforce criminal violations of certain US sanctions programmes, while the US Department of State's Directorate of Defense Trade Controls (DDTC) in the Bureau of Political-Military Affairs implements the International Traffic in Arms Regulations (ITAR) pursuant to the Arms Export Control Act, among other things.

Additionally, the BIS administers and enforces the EAR, which are the primary export control regulations in the US.

Law stated - 16 February 2022

Business compliance

Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

Under the US Bank Secrecy Act, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001, certain financial institutions are required to adopt and implement anti-money laundering (AML) compliance programmes (see the PATRIOT Act, section 352). Establishing an effective AML compliance programme also involves sanctions and terrorist financing compliance controls and screening.

OFAC published its Framework for OFAC Compliance Commitments in May 2019, which set forth OFAC's compliance expectations and best practices for those subject to US jurisdiction, as well as foreign entities that conduct business in the US, with US persons, or using US-origin goods or services. The Framework recommends a risk-based sanctions compliance programme, which should be predicated on and include the following five essential elements: (1) management commitment; (2) risk assessment; (3) internal controls; (4) testing and auditing; and (5) training. A copy of the framework can be found [here](#). In October 2021, OFAC also published its Sanctions Compliance for the Virtual Currency Industry, which sets forth OFAC's compliance expectations for those in the cryptocurrency and blockchain industries, building upon the Framework for OFAC Compliance Commitments. A copy of the publication can be found [here](#).

Additionally, OFAC's Economic Sanctions Enforcement Guidelines provide for numerous aggravating and mitigating factors that OFAC will consider in response to an apparent violation of US sanctions and when determining the amount of a civil monetary penalty (if appropriate), including whether the violation was wilful, awareness of the conduct at issue, and the remedial response.

Law stated - 16 February 2022

Guidance

Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

The US periodically publishes formal written guidance, typically in the form of Frequently Asked Questions (FAQs). OFAC, for example, has long maintained a list of FAQs for many of the sanctions programmes that it administers. The consolidated list of OFAC FAQs is available [here](#).

OFAC also regularly publishes industry guidance, often in the form of public advisories. A consolidated page of OFAC advisories can be found [here](#). OFAC also publishes guidance focused on particular industry practices. For example, in October 2020, OFAC published the 'Advisory and Guidance on Potential Sanctions Risks Arising from Dealings in High-Value Artwork', which addressed the sanctions risk that art galleries, museums, private collectors, auction companies, agents, brokers and other participants in the art market face when transacting with sanctioned or otherwise blocked persons. In February 2022, the Treasury Department published a study on the facilitation of money laundering and the financing of terrorism through the trade in works of high-value art, following up from its advisory. A copy of the Treasury's study can be found [here](#). Additionally, OFAC has issued numerous advisories to the maritime industry, including most recently in May 2020 in coordination with the Department of State and Coast Guard. The Maritime Advisory addressed compliance best practices in the maritime and transportation industry, with a focus on preventing sanctions evasion, smuggling, the facilitation of terrorist activities, and the proliferation of weapons of mass destruction.

OFAC also recently updated its advisory regarding ransomware-related payments titled 'Updated Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments'. The Ransomware Advisory focused on the sanctions risks associated with ransomware payments related to malicious cyber-enabled activities.

OFAC also published numerous business advisories in 2021 and 2022, including advisories warning of the high-risk in doing business in Cambodia, Hong Kong and Burma.

Law stated - 16 February 2022

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

US persons are generally required to 'block' (eg, freeze) any property or interests in property of a sanctioned or blocked person that the US person possesses or controls (see, for example, 31 CFR § 560.211). The US blocking requirements apply to US persons wherever they are located. Additionally, any property or interests in property of sanctioned or blocked persons that is located within the US could be subject to blocking requirements.

OFAC's blocking requirements also apply to entities that are owned 50 per cent or more by a sanctioned person. Under OFAC's 50 per cent rule, the property and interests in property of entities directly or indirectly owned 50 per cent or more, in the aggregate, by one or more blocked persons, are themselves deemed blocked (see Revised Guidance on Entities Owned By Persons Whose Property And Interests in Property Are Blocked, Office of Foreign Assets Control (OFAC), 13 August 2014; OFAC FAQ 401). Thus, if one or more sanctioned individuals owns an entity, and their collective ownership stake is over 50 per cent, then that entity and the entity's property will themselves be the subject of sanctions and subject to OFAC blocking requirements.

General carve-outs and exemptions

Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

With respect to humanitarian-related matters, US sanctions often permit US persons to engage in humanitarian-related transactions with countries or territories that are the subject of comprehensive sanctions. For example, under the ITSR, US persons can engage in certain transactions with Iran relating to agricultural commodities, medicine, medical devices and certain related software and services (see 31 CFR §§ 560.530, 560.532, 560.533). Additionally, under the US-Venezuela sanctions, US persons can engage in certain transactions related to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates with certain persons otherwise sanctioned (see generally OFAC General License 4C).

The US has also enacted statutory exceptions for humanitarian matters. The International Emergency Economic Powers Act (IEEPA), for example, contains several of such exemptions (see 50 USC § 1702(b)(2)) (providing that IEEPA generally does not grant the president the authority to regulate or prohibit, directly or indirectly, donations of articles such as food, clothing, and medicine intended to be used to relieve human suffering). OFAC has also issued general licences and extensive guidance under its Counter-Terrorism Sanctions relating to humanitarian aid, particularly in the context of Afghanistan (see General Licenses 14, 15, 16, 18 and 19).

There are additional exemptions relating to personal communications and information materials. Under the personal communications exception to IEEPA, the president's IEEPA authority does not include the authority to directly or indirectly regulate or prohibit any 'postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value' (50 USC § 1702(b)(1)).

The information material exception to IEEPA provides that the president cannot directly or indirectly regulate the import or export of any 'information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds' (50 USC. § 1702(b)(3)).

Law stated - 16 February 2022

List of targeted individuals and entities

Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

OFAC maintains numerous sanctions lists, which are incorporated into the Consolidated Sanctions List. The lists that are incorporated into the Consolidated Sanctions List include the Specially Designated Nationals and Blocked Persons List (the SDN List), the Sectoral Sanctions Identification List, Foreign Sanctions Evaders List, and Non-SDN Menu-Based Sanctions List, among others. The full category of lists can be found [here](#). OFAC also maintains the Non-SDN Chinese Military-Industrial Complex Companies List (NS-CMIC List), which reflects entities and securities that are the subject of sanctions imposed by EO 13959, as amended by EO 14032.

BIS maintains the Entity List, which reflects the names of certain foreign persons that are subject to specific license requirements for the export, re-export, or transfer of specific US-origin items. The Entity List is found in Supplement No. 4 to Part 744 of the EAR and is located [here](#).

The US State Department maintains numerous lists as well, including a list of Foreign Terrorist Organisations, State Sponsors of Terrorism, Cuba Restricted List and Cuba Prohibited Accommodations List.

Other restrictions

What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

The US has implemented certain restrictions that are not full transaction bans. For example, the Ukraine–Russia-related sanctions programme administers a sectoral sanctions programme, targeting specific sectors of the Russian economy (see OFAC Directives 1–4 Under EO 13662).

Additionally, the US has recently implemented the Chinese Military Company Sanctions programme, which prohibits US persons from transacting in any publicly traded securities (or securities that are derivative of or designed to provide investment exposure to such securities) of entities that the Secretary of the Treasury determines to either: (1) 'operate or have operated' in the defence and related material sector, or the surveillance technology sector, of the People's Republic of China (PRC) economy; or (2) to 'own or control, or to be owned or controlled by', directly or indirectly, a person who operates or has operated in any sector described in (1), among other reasons. See E.O. 13959, as amended by E.O. 14032.

Law stated - 16 February 2022

Exemption licensing – scope

Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

OFAC generally has authority to issue general and specific licences permitting activities and transactions that would otherwise be impermissible under applicable law.

A general licence is a public document that authorises the performance of certain categories of transactions, which otherwise would be prohibited, for a particular class of persons. Unlike a specific licence, there is no need to apply for a general licence. Further, a general licence may be posted on OFAC's website (see Venezuela-related general licences [here](#), for example) or may be implemented via regulation (certain Cuba-related licenses [here](#), for example).

A specific licence, on the other hand, is a written document that is issued by OFAC to a particular person or entity, which authorises a particular transaction in response to a written licence application (see generally OFAC FAQ 74). There are several different kinds of specific licences that OFAC might grant, including transactional, release of blocked funds, travel to Cuba, and licences authorising exports of agricultural commodities, medicine, and medical devices to Iran and Sudan pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000.

Law stated - 16 February 2022

Exemption licensing – application process

What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

Procedures for submitting an application to OFAC for a specific licence can be found on OFAC's website [here](#) . Generally speaking, the application can be completed electronically via OFAC's application portal or via US mail (including via forms located on OFAC's website). An OFAC licensing officer will then be assigned, and additional

information may be requested as part of the application review process.

OFAC advises via FAQ 77 that applicants are encouraged to wait at least two weeks before telephoning OFAC's Licensing Division to inquire about the status of their application. Depending on the subject-matter of the application (including the parties, contemplated transaction and circumstances), licences can often take considerable time before they are approved. For additional licensing-related information, see [here](#) for OFAC FAQs.

Law stated - 16 February 2022

Approaching the authorities

To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

US regulatory authorities are generally user-friendly when it comes to discussing licence applications and economic sanctions compliance. For example, OFAC maintains a compliance hotline, via which guidance can be requested. Contact information for the OFAC hotline can be found [here](#). OFAC also permits parties to submit requests for formal interpretive guidance, which are submitted through OFAC's licensing process.

For licence applications, a licensing officer will typically be assigned, which permits communications regarding the status of the licence application.

Law stated - 16 February 2022

Reporting requirements

What reporting requirements apply to businesses who hold assets frozen under sanctions?

US persons (and those subject to US jurisdiction) that possess or control any blocked property must file reports within OFAC. Specifically, initial blocked property reports must be filed within 10 business days of the date that the property becomes blocked. Information that must be reported includes the contact information of the person holding the property; a description of the transaction associated with the blocking; the associated sanctions target whose property is blocked; the date of the blocking; description of the property; the actual or estimated value of the property in US dollars; and the legal authority under which the property was blocked, among other information (see generally 31 CFR § 501.603(a),(b)).

Additionally, persons holding blocked property must also file annual reports with OFAC by 30 September reflecting all blocked property held as of 30 June of the current year (see 31 CFR § 501.603(b)(2)).

Finally, US persons (and persons subject to US jurisdiction) must submit reports to OFAC following the rejection of a transaction that was not blocked, but where processing or engaging in the transaction would nonetheless violate applicable US sanctions (31 CFR § 501.604(a)). Rejected transaction reports must be filed within 10 business days of the rejected transaction.

Blocked property and rejected transaction reports can be submitted electronically through the OFAC website [here](#).

Law stated - 16 February 2022

TRADE SANCTIONS

General restrictions

What restrictions apply in relation to the trade of goods, technology and services?

US export control and trade restrictions are contained in numerous regulatory regimes, including the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) and certain sanctions programmes administered by the Office of Foreign Assets Control (OFAC).

BIS administers and enforces the export control provisions of the EAR (see 15 CFR §§ 730–774). The EAR implements the EAA and ‘are intended to serve the national security, foreign policy, non-proliferation of weapons of mass destruction, and other interests of the United States, which in many cases are reflected in international obligations or arrangements’ (see 15 CFR §§ 730.2, 730.6).

The EAR generally restricts the export, re-export, or transfer of certain US-origin items, governing whether US persons (or non-US persons in some instances) may export, re-export or transfer these sensitive items to foreign countries.

The Commerce Control List, which is administered by BIS, is contained in the EAR and provides a list of goods, software, and technology that are subject to different degrees of restrictions (15 CFR Part 744, Supplement Nos. 1 and 2). BIS also maintains the Entity List, which is comprised of a list of certain foreign persons that are subject to licence requirements for the export, re-export, or transfer of items ‘subject to the EAR’, which includes many goods, software, or technology located in or originating from the US. Items located outside the US may also be subject to the EAR if those items incorporate greater than the de minimis controlled US-origin content or are produced as the direct product of certain controlled US-origin technology.

Finally, the DDTC administers the ITAR, which controls military-related items and services, while OFAC sanctions restrict (in some instances) the exportation of certain items to sanctioned countries or territories.

Law stated - 16 February 2022

General exemptions

Do any exemptions apply to the general trade restrictions?

The EAR contains provisions that exempt certain items from its export control restrictions, including those relating to certain information-type materials such as newspapers, printed books, children’s picturebooks and maps, among others (15 CFR § 734.3(b)(2),(3)). The EAR’s exemptions also apply to software that results from fundamental research, released by instruction in a catalogue course or associated teaching laboratory of an academic institution, appears in patents or published patent applications, are non-proprietary system descriptions or are certain types of telemetry data (§ 734.3(b)(3)).

Additionally, as discussed above, OFAC sanctions have several export-related exemptions, including those relating to information materials and humanitarian-related items.

Law stated - 16 February 2022

Targeted restrictions

Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

The US maintains trade-related restrictions, as well as sanctions, concerning dealings with certain individuals and entities, including those under the BIS Entity List. The US has recently focused on China, which has resulted in the addition of Huawei and other China-based companies to the Entity List. BIS also maintains the Military End User List,

which identifies foreign parties that are prohibited from receiving certain items without a licence. Those on the Military End User List have been determined to be 'military end users' under the EAR, 15 CFR § 744.21.

Law stated - 16 February 2022

Exemption licensing – scope

In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

The export or re-export of certain goods subject to the EAR may require a licence from BIS, and there are some circumstances in which there is a presumption of denial for such a licence. The Export Control Classification Number (ECCN) is an alpha-numeric code that consists of the item category, its product group and the primary reason for control. The Commerce Control List (CCL) generally contains a list of sensitive products, technologies and software, and the Commerce Country Chart (CCC) contains the reason for control and destination countries. The CCC generally allows you to determine the export and re-export licence requirements for most items listed on the CCL, which are based on the reasons for control listed in the ECCN that applies to the item (see 15 CFR § 738.3(a)).

If an item falls within the jurisdiction of the EAR, but is not on the CCL, then it will be designated as EAR99. Exporting EAR99 items may not require a licence; however, a licence may be required if the item is exported to certain countries, to an end user of concern, or in support of a prohibited end use.

Law stated - 16 February 2022

Exemption licensing – application process

What is the application process for a licence? What is the typical timeline for a licence to be granted?

BIS uses a programme called SNAP-R for its licence applications, which allows users to submit export licence applications online. Applicants must have a Company Identification Number (CIN) and an active user account to access SNAP R. The procedures and requirements for obtaining a CIN and user account are set forth [here](#).

The EAR provides that all licence applications will be resolved or referred to the president no later than 90 calendar days from the date of BIS's registration of the licence application (15 CFR § 750.4(a)(1)). Registration is defined as the point at which the application is entered into BIS's electronic licence processing system. There are a variety of reasons that may lead to a delay, which are outlined at 15 CFR § 750.4(b). If a licence is denied, there is an appeal process (15 CFR § 750.6).

Law stated - 16 February 2022

Approaching the authorities

To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

Much like OFAC, BIS can be fairly user-friendly and willing to discuss licence applications or queries on export control compliance. BIS maintains numerous compliance hotlines ([see here](#)), as well as a confidential enforcement lead or tip form for submitting leads or tips on possible export control, boycott, or other related violations.

Law stated - 16 February 2022

ENFORCEMENT AND PENALTIES

Reporting violations

Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

There is generally no regulatory obligation to affirmatively self-report violations of law to the Office of Foreign Assets Control (OFAC); however, certain state and other regulators may require the reporting of legal violations (see, for example, 3 NYCRR § 300.1). OFAC and the Department of Justice (DOJ) encourage voluntarily self-disclosure of apparent violations and have a framework in place to provide leniency to those who self-disclose and cooperate with investigations.

Under OFAC's Enforcement Guidelines, persons that voluntarily self-disclose apparent violations of law to OFAC can receive substantial credit, including a 50 per cent reduction in a civil monetary penalty. Cooperation with OFAC will also serve as a mitigating factor in determining an appropriate enforcement response. OFAC operates under a 'first in' standard, such that voluntarily self-disclosing an apparent violation after a subpoena or after OFAC uncovers the conduct from another third party will not permit the subject person to receive the civil monetary penalty reduction and it could hinder the subject person's efforts to obtain cooperation credit.

The DOJ maintains an 'Export Controls and Sanctions Enforcement Policy,' which is located [here](#) and encourages companies and individuals to voluntarily self-disclose to DOJ all potentially wilful violations of the statutes implementing the US's primary export control and sanctions programmes. Under the policy, there is a presumption of a non-prosecution agreement and no fine if a wilful violation is voluntarily self-disclosed, the party fully cooperates, and there is timely and appropriate remediation.

Law stated - 16 February 2022

Investigations

Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

OFAC primarily administers and enforces civil violations of US economic sanctions, while the DOJ has authority to enforce criminal violations (for example, wilful violations). There are other US governmental agencies that have previously been involved in sanctions enforcement matters, including the New York State Department of Financial Services, the Federal Reserve Bank of New York, and the District Attorney's Office of New York County.

Law stated - 16 February 2022

Penalties

What are the potential penalties for violation of sanctions?

There are varying degrees of outcomes that can arise from OFAC investigations, including no action, cautionary letter, finding of violation, civil monetary penalty and a criminal referral. A no action will arise if OFAC determines that there is insufficient evidence to conclude that a violation has occurred. If OFAC determines that there is insufficient evidence to conclude that a violation has occurred, it may issue a cautionary letter conveying OFAC's concerns about the underlying conduct, among other areas. If OFAC determines that a violation has occurred, and considers it important to document such a violation, then it may issue a finding of violation. A civil monetary penalty may be imposed if OFAC determines

that a violation has occurred and, based on an analysis of the various mitigating and aggravating factors, OFAC concludes that the conduct warrants the imposition of a monetary penalty.

Finally, for instances involving willful violations of law, OFAC has the authority to refer those violations to criminal authorities, including the DOJ.

Law stated - 16 February 2022

Recent enforcement actions

Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

There have been significant sanctions enforcement actions recently.

For example, OFAC brought its first ever enforcement actions against the cryptocurrency industry in December 2020 and again in February 2021 (see BitGo, Inc Enforcement Action (30 December 2020) (BitGo was fined for 183 apparent violations of multiple sanctions programmes after permitting users located in sanctioned jurisdictions to access its wallet services, processing 183 digital currency transactions totalling US\$9,127.70), available [here](#)); BitPay, Inc Enforcement Action (18 February 2021) (BitPay fined for 2,102 apparent violations of numerous sanctions violations after permitting those located in sanctioned jurisdictions to transact with merchants on the BitPay platform), available [here](#)).

OFAC also recently brought enforcement actions against companies for processing payments involving sanctioned jurisdictions and actors, as well as deficient compliance programmes. For example, Payoneer Inc was fined US \$1,385,901.40 after OFAC found that it had processed over 2,241 payments involving sanctioned jurisdictions over a five-year period. OFAC commented in its enforcement release regarding several deficiencies in Payoneer's sanctions compliance programme. For example, while Payoneer had a sanctions compliance policy that prohibited processing payments in or with sanctioned jurisdictions, Payoneer had not adopted procedures to implement that policy, and failed to properly test or audit those processes. Additionally, OFAC commented on Payoneer's screening deficiencies, observing that Payoneer had insufficient algorithms for SDN List close matches and failed to focus on location screening (such as IP addresses). See Payoneer Enforcement Action (23 July 2021) . Additionally, OFAC fined Bank of China US\$2.3 million for processing transactions that exported, directly or indirectly, to Sudan goods, technology or services from the US, including the export of financial services, after Bank of China had processed 111 commercial transactions totalling US\$40,599,184 on behalf of parties in Sudan via US correspondent banks. Of note, Bank of China's internal customer database did not include references to Sudan, reflecting 'know your customer' deficiencies. See Bank of China Enforcement Action (26 August 2021) .

Finally, OFAC brought enforcement actions against non-US companies under the causing theory of liability and for transiting the US financial system. For example, see Alfa Laval Middle East Ltd. Enforcement Action (19 July 2021) (a Dubai entity was fined for causing its US affiliate to violate sanctions by exporting US\$18,000 worth of US-origin goods to Iran and conspiring to violate the ITSR); PT Bukit Muria Jaya Enforcement Action (14 January 2021) (an Indonesian paper manufacturer was fined for causing US banks to clear wire transfers in relation to cigarette paper exports to North Korea); Essentra FZE Company Limited Enforcement Action (16 July 2020) (a UAE cigarette filter manufacturer was fined for violating North Korea sanctions when it caused US persons to export financial services to North Korea after receiving wire transfers for payments in accounts at the foreign branch of a US financial institution relating to the export of cigarette filters to North Korea).

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UPDATE AND TRENDS











Emerging trends and hot topics

Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

There are several trends that have impacted US sanctions law over the past year. First, US regulators have focused on risk-based sanctions compliance programmes, particularly in industries that have historically had poor compliance with economic sanctions. The Office of Foreign Assets Control (OFAC)'s Framework for Compliance Commitments was an effort to clarify OFAC's compliance expectations and best practices for the industry. Second, US regulators have increasingly focused on the maritime industry, particularly as it relates to deceptive shipping practices, such as Automatic Identification System manipulation. Third, there has been an increased focus on the cryptocurrency and blockchain industry, which is evidenced by both the BitPay and BitGo enforcement actions, and OFAC's Sanctions Compliance Guidance for the Virtual Currency Industry, as well as advisories and public statements from many other US regulators. Fourth, the US has expanded the extraterritorial reach of US sanctions, including by the increased use of secondary sanctions and authority over the US dollar. Fifth, the US has prioritised the facilitation of humanitarian aid to sanctioned jurisdictions, and has issued extensive guidance on the issue, most recently as it relates to Afghanistan. Finally, as of the date of this publication, the US and several other allies have issued new and expanded sanctions against Russia in response to its military invasion of Ukraine, including sanctions that impact the debt and equity markets.

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Jurisdictions

	Australia	Clyde & Co LLP
	European Union	Blomstein
	Israel	Yigal Arnon & Co
	Japan	Mori Hamada & Matsumoto
	Mexico	Galicía Abogados SC
	Russia	Dechert LLP
	South Korea	Bae, Kim & Lee LLC
	Switzerland	Schellenberg Wittmer
	United Kingdom	Simmons & Simmons
	USA	Seward & Kissel LLP