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Proven Guidance for C-Suite Action

As Sanctions Go Global, Compliance Gets Complicated

by Dian Zhang

Even for businesses that have significant experience with international trade and transactions, the economic sanctions aimed at Russia and Belarus for the invasion of Ukraine came as a jolt.¹ Complying with these new rules is complicated by the sheer number of participating governments (from the U.S. to Australia to Japan) and the variety of regulations that apply.^{2,3}

“Sanctions, despite being very coordinated, are implemented under each jurisdiction’s laws and can each be carried out in a different way.”

— Rachel Alpert



Rachel Alpert

Co-Chair, National Security, Sanctions and Export Controls Practice, Jenner & Block

Photo courtesy of Jenner & Block



Judith Alison Lee

Co-Chair, International Trade Practice Group, Gibson Dunn

Photo courtesy of Gibson Dunn

Repeated lightning rounds of restrictive measures — plus retaliation from Russia^{4,5} — make it even harder to keep up.

Not that it was ever easy; challenges such as misinterpretation of regulations to insufficient due diligence have tripped up global enterprises, big and small. In 2014, for instance, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) issued 22 enforcement actions with over \$1.2 billion of civil penalties in total.⁶ Allegedly willful violations can also lead to criminal charges.⁷

Navigating through the chaos — probably not for the last time — requires quick analysis now while avoiding the pitfalls of the past. Here are three tips, extracted from interviews with four sanctions lawyers based in the U.S. and EU.

How to Keep Up With New Sanctions

“Not being completely aware of all of the different changes on a day-to-day basis is a major mistake,” said Judith Alison Lee, co-chair of Gibson Dunn’s international trade practice group.

Repeatedly hitting “refresh” on government websites is not your best option. Try this instead: Subscribe to government alerts for all jurisdictions relevant to your organization (see Figure 1).

Past compliance guidance bulletins from OFAC and the U.K.’s Office of Financial Sanctions Implementation (OFSI) are also good resources (see Figure 2).

1 Watch Out for Differences Among Jurisdictions

For instance:

- U.S. sanctions apply to any transactions involving U.S. persons, the U.S. financial system and other U.S. touchpoints (such as processing software or data servers located in the country), even if the company itself has no operations in the U.S.

- In the EU, if business is done even in part within the Union, restrictions apply even if no EU nationals or entities are involved — Eva Monard, a Brussels-based partner focusing on EU trade and customs law at Steptoe & Johnson, told us.



Eva Monard

Partner, Steptoe & Johnson

Photo courtesy of Steptoe & Johnson

2 Conduct Rapid Risk Assessments

How can you decide which activities of your company can continue — and which cannot?

Evaluate your operations in and with Russia and Belarus in collaboration with other executives such as risk, supply chain and HR. Kara Bombach, a shareholder at Greenberg Traurig specializing in export controls and economic sanctions, suggests this checklist:

- What kind of business are we conducting there?
- Who are our business partners, customers and vendors?
- Do we have an office there? Do we have staff?
- Are we supplying goods, services or equipment?
- What do our commercial documents include? And what kind of protections do we have to terminate or pause agreements?

Figure 1. Examples of Where to Receive Official News Updates

Government Website	News Alerts Subscription
Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury	Sign up for email alerts
Bureau of Industry and Security of the U.S. Department of Commerce	Subscribe on the Federal Register
Office of Financial Sanctions Implementation (OFSI) of the U.K. HM Treasury	Sign up for email updates
European Commission’s EU solidarity with Ukraine webpage	<ul style="list-style-type: none"> • View EU sanctions against Russia following the invasion of Ukraine • Get RSS updates

Source: Gartner

Figure 2. Examples of Compliance Guidance Bulletins Issued by Governments

Agency	Documents
Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury	A Framework for OFAC Compliance Commitments
Office of Financial Sanctions Implementation (OFSI) of the U.K. HM Treasury	U.K. Financial Sanctions: General Guidance for Financial Sanctions Under the Sanctions and Anti-Money Laundering Act 2018

Source: Gartner

Compare your answers to these questions to sanctions imposed by jurisdictions that apply to you. Work with legal counsel on issues such as payroll, supply chain and cyber vulnerabilities, Bombach said.



Kara Bombach
Shareholder,
Greenberg Traurig

Photo courtesy of Greenberg Traurig

In 2018, Russia considered retaliating against those who comply with Western sanctions.⁸ In case this kind of measure surfaces again, companies with local operations need to carefully review contracts and procedures in the country, Alpert added.

Getting clarity on new requirements and your risk exposure can take days even when fast-tracked, but there’s no room for error. Out of an abundance of caution or concern about their public reputation, some companies in the U.S. and EU have suspended all trade — including what may turn out to be legitimate trade — with Russia until they get a better handle on who is covered, lawyers we interviewed told us.

Of course, not every company can afford to take this method, either for business reasons or because of the importance of their products to ordinary people in sanctioned countries.⁹

Ramp Up Screening to Look Beyond the Obvious

People and entities who are not on the designated list can be subject to blocking because of their relationships with sanctioned individuals:

- In the U.S., entities half (or more) owned — directly or indirectly — by one or more sanctioned people are considered automatically blocked, according to OFAC's 50 Percent Rule.¹⁰
- In the EU and U.K., any persons or entities that are owned or controlled by a designated person will also face restrictions.^{11,12} Control can look like:
 - Appointing or removing a majority of the members of an entity's administrative, management or supervisory bodies
 - Dictating a majority of shareholders' or members' voting rights
 - Having a dominant influence without being the holder of the right

Here are three tips for robust screening of customers, vendors and distributors, sourced from sanctions lawyers.

1 Engage the Business to Know Your Counterparties Better

Colleagues working closely with external partners or customers may have information that's not immediately available to legal and compliance. Make sure you source these insights from the business, and incorporate them into your screening tool.

Internal coordination is helpful even when violations occur. Regulators will factor in your company's effort to search for covered people and entities when considering enforcement actions. "It's very different if the information was impossible to obtain than if the information was just there in your company, [but] you didn't ask around to get it," said Monard.

To that end, creating awareness within the business teams is crucial so they recognize and bring red flags to the legal and compliance team's attention. Some companies also require the account manager to complete client-specific trade compliance questionnaires, Monard told us.

2 Tinker With Your Algorithm to Avoid Blind Spots

A great automated screening tool still requires "a lot of human intelligence," Lee said. "It's important to review the results periodically, conduct audits and adjust the system so you don't miss anything or end up with too many false positives."

To account for typos and other errors, check for transactions involving slight variations in spelling of names on the sanctions list.

3 Augment the Screening Tool With Additional Due Diligence

Getting clarity on ownership and control is no easy task, especially in an opaque system like Russia. No matter how advanced a screening tool you use, it probably still can't identify a full corporate structure and beneficial ownership.

"Understand what it doesn't provide so you can conduct separate, independent diligence into the corporate structure through additional open-source research," Alpert said. If necessary, she added, engage an outside diligence service.

Increase Third-Party Due Diligence

1 Add Contractual Provisions to Protect Your Business

As the global sanctions list keeps growing, companies may find some of their contracts untenable.

Renegotiating in the moment is hard, so start preparing now. "Take stock of your existing contracts and identify any potential force majeure clauses or other avenues that allow for extricating yourself in the event of sanctions," said Alpert.

Importantly: "Going forward, include those clauses in new contracts," Alpert said. "Although be mindful of local requirements that might make negotiation of or reliance on such clauses illegal."

You may also want to have contractual guarantees in place to "preserve the right to get information and support from your third parties in case you are getting questions from authorities," Monard told us. In Belgium and some other EU member states, customs authorities have begun stopping and checking all goods sent to Russia or Belarus, whether they are sanctioned or not, she said.

2 Educate Third Parties to Encourage Compliance

Proactively help your third-party distributors learn about sanctions compliance. For instance, if your organization is a U.S. company selling sensitive defense technology products, explicitly tell distributors all the products and technology that you've given to them — even after leaving the U.S. — are still subject to U.S. export controls, said Lee.

After all, whether you are doing your very best to comply will be a factor in the regulators' considerations for enforcement, sanctions lawyers in the EU and U.S. told us.

- ¹ [Russia Sanctions Forcing Banks to Quickly Adapt](#), The Wall Street Journal.
- ² [Tracking Sanctions Against Russia](#), Reuters.
- ³ [House Passes Bill to End Normal Trade Relations With Russia, Belarus](#), The Hill.
- ⁴ [Russia to Retaliate Against Sanctions on Aviation Industry, Kremlin Says](#), Reuters.
- ⁵ [Russian Prosecutors Warn Western Companies of Arrests, Asset Seizures](#), The Wall Street Journal.
- ⁶ [2014 Enforcement Information](#), U.S. Department of the Treasury.
- ⁷ [U.S. Sanctions Enforcement by OFAC and the DOJ](#), Global Investigations Review.
- ⁸ [Putin Signs Russian 'Counter-Sanctions' Into Law](#), Reuters.
- ⁹ [Yale Professor Is Keeping Tabs on Companies Still Operating in Russia Despite Ukraine Invasion — and Many Have Now Pulled Out](#), MarketWatch.
- ¹⁰ [Entities Owned by Blocked Persons \(50% Rule\)](#), U.S. Department of the Treasury.
- ¹¹ [Sanctions Guidelines — Update \(4 May 2018\)](#), Council of the European Union.
- ¹² [U.K. Financial Sanctions: General Guidance for Financial Sanctions Under the Sanctions and Anti-Money Laundering Act 2018](#), HM Treasury.

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