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Office of Foreign Assets Control (OFAC) Compliance

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When conducting international business, you can avoid unexpected and potentially severe legal problems by being aware of the general requirements of U.S. export control laws.

Common export control laws include:

the International Traffic in Arms Regulations (ITAR) administered by the U.S. Department of State Directorate of Defense Trade Controls (DDTC);

the Export Administration Regulations (EAR) administered by the U.S. Department of Commerce Bureau of Industry and Security (BIS); and

the Office of Foreign Assets Control Regulations administered by the U.S. Department of Treasury Office of Foreign Assets Control (OFAC).

This article provides an introduction to the role of OFAC under US export control laws.

OFAC "administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments." (http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx)

OFAC's sanction programs involve:

- Specially Designated Nationals List (SDN List);
- Counter Terrorism Sanctions;
- Counter Narcotics Trafficking Sanctions;
- Non-proliferation Sanctions;
- Cuba Sanctions;
- Iran Sanctions; and
- certain other OFAC sanctions programs involving select countries and activities.

OFAC administers comprehensive sanctions programs for:

- Burma (Myanmar);
- Cuba;

- Iran; and
- Sudan

OFAC administers limited sanctions programs for:

- Western Balkans
- Belarus
- Cote d'Ivoire
- Democratic Republic of the Congo
- Iraq
- Liberia (Former Regime of Charles Taylor)
- Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions;
- North Korea;
- Sierra Leone;
- Syria; and
- Zimbabwe

OFAC also administers other programs targeting individuals or entities that could be located anywhere. These programs involve:

- foreign narcotics traffickers;
- foreign terrorists; and
- Weapons of Mass Destruction (WMD) proliferators.

To keep track of these individuals or entities, OFAC maintains a list of Specially Designated Nationals and Blocked Persons (SDN list).

General and specific licenses are available for persons seeking to engage in transactions that would otherwise be prohibited by OFAC. These licenses are governed by regulations found at 31 CFR Section 501.801. General licenses automatically permit certain types of transactions. A person relying upon a general license to conduct business may, however, be required to file reports and statements according to the terms and conditions of the general license. Specific licenses can be obtained from OFAC to undertake prohibited transactions that are not covered by a general license. Applications for specific license are submitted to OFAC in Washington, DC.

Substantial criminal and civil penalties result from an OFAC violation. Criminal penalties can include fines ranging from $50,000 to $10,000,000 and imprisonment ranging from 10 to 30 years for willful violations. Depending on the program, civil penalties range from $250,000 or twice the amount of each underlying transaction to $1,075,000 for each violation.

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Here are some suggestions to help your business avoid an OFAC violation:

1. When conducting international business, check the SDN list and consider any other sanction programs administered by OFAC or other governments that could apply. Avoid conducting business with a prohibited person or entity, which could lead to the blocking of funds, and other civil and criminal penalties. Many financial institutions use compliance software to avoid doing business with people or entities on the SDN list. If the software is unavailable, anyone can access the SDN list sorted in different ways on the OFAC website. (http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx)
2. If your transaction appears to be prohibited, check and see whether a general license applies. If not, consider applying for specific license.
3. If you regularly conduct business internationally, consider developing expertise in-house in cooperation with a compliance professional to ensure that you do not run afoul of OFAC or any export control or other trade restrictions.
4. If you plan on developing expertise in-house, OFAC offers training events throughout the year in different parts of the country.