

Understanding Sanctions and Trade Restrictions and Their Impact on Your Nonprofit

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Today's Roadmap

- Understand the Current Landscape of U.S. Economic Sanctions and Export Controls
- Assess the Potential Impact on Your Organization
- Recent Case Studies
- Q&A

Determining Which Rules Apply to Your Organization

■ Key U.S. Government Agencies



- The **U.S. Department of Treasury's Office of Foreign Assets Control (OFAC)** administers the implementation of economic embargos and sanctions governing certain restricted transactions;



- Regulations for the export and re-export of “dual use” items and technology are administered by the **U.S. Department of Commerce's Bureau of Industry and Security (BIS)**; and,



- Regulations governing the export and re-export of defense items and technical data are administered by the **U.S. Department of State's Directorate of Defense Trade Controls (DDTC)**

- **For operations overseas, other laws may apply (UK, EU, UN, etc.)**

“Persons” Subject to U.S. Sanctions and Export Controls

- Organizations, including non-profits, formed in U.S. (incl. foreign branches)
- U.S. citizens, permanent residents, approved asylees, and all U.S. persons, covered wherever located
- Non-U.S. persons to the extent they deal in items subject to U.S. jurisdiction
- All persons in the United States (even foreign nationals)
- Even broader for certain sanctions regimes:
 - Cuba: Non-U.S. companies owned or controlled by U.S. persons; or non-U.S. companies that “traffic” in U.S.-owned property expropriated by Cuban gov’t

OFAC Sanctions Overview

- Consider Russia sanctions program – most imposed pursuant to EO 14024 (Apr. 15, 2021)
- OFAC economic and trade sanctions include:
 - Region/country-based embargoes (e.g., Crimea, Donetsk, Luhansk Regions)
 - Sanctions targeting Specially Designated Nationals (SDNs) (e.g., listed Russian oligarchs, politicians, Russian financial institutions, and military/defense firms)
 - Persons and entities on other designated lists (e.g., Directive 3 restrictions on dealings in new debt of >14 days' maturity or new equity)
- “U.S. persons” and covered affiliates prohibited from dealing, directly or indirectly, with SDNs or engaging in otherwise prohibited transactions; restriction also on “facilitation” by U.S. persons
- General and specific licenses may be available for international organizations

OFAC Economic Sanctions: Country-based Restrictions

Comprehensive embargoes

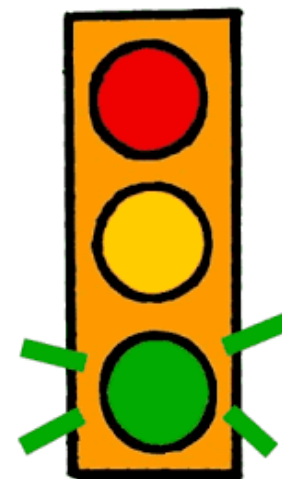
- Cuba
- Iran
- North Korea
- Crimea, Donetsk, Luhansk
- Syria

Lesser Restrictions on *persons* and *entities*

- Balkans
- Belarus
- Sudan
- Iraq
- Lebanon
- Liberia
- Libya
- Somalia
- Ukraine/Russia
- Venezuela
- Yemen
- Zimbabwe

OFAC Compliance Pointers

- Sanctions regimes are unique and NOT static – they change every day!
- Sanctions violations are strict liability offenses
- Historic focus on commercial entities and operations, now expanded to individuals, foundations, and associations
- Need for enhanced diligence in compliance for everyday dealings internationally
 - Understanding the 50% ownership rule
 - Screening of international parties is key (red, yellow, green)
- Close reading of OFAC FAQ & General Licenses
- Remember non-U.S. sanctions regimes too (e.g., UN sanctions)



Potential Violations: **Red Flags**

Examples of **Red Flags**:

- Local partner, applicant, member, organizer, attendee, etc. name or address is similar to one of the parties found on the “Lists to Check”
 - Cease activity and investigate
- Individual or entity is reluctant to provide additional details as to ownership information, affiliations, DOB or address
 - Perform enhanced due diligence; get certification; check other public resources
- Individual or entity is reluctant to provide additional details regarding how funds from U.S. entity will be spent or disbursed
 - Align with the AML “Know your Customer” requirements
- When questioned, entity is evasive and especially unclear about affiliations
 - Remember the 50% owned or controlled rule
- Individual or entity insists on cash payment or unusual payment terms, e.g., in name of a third party or routed in a non-routine way
 - Inconsistent with transparent and verifiable transactions

What about Export Controls?

- Controls on “exports” or releases of U.S.-origin goods, technology, and services to certain destinations, entities, and end users
- BIS (Commerce Dept) administers the **Export Administration Regulations (EAR)**
 - Regulates the export, re-export, or transfer of “dual-use” commodities, software, and technology
 - Deemed exports are the release of controlled technology to a foreign national within the United States (and are also controlled)
 - Review license requirements and exceptions
 - EAR end-user controls vary by country (e.g., military end users in China, Russia)

Navigating Restrictions for Your Nonprofit

1. Consider your **LEGAL & REGULATORY** obligations
 - “Known or Should Have Known” Strict Liability Standard
 - Screening Against Consolidated Screening List – all parties to transaction, service providers and intermediaries (banks, insurance companies, contractors)
 - Examine your internal compliance policies and controls
2. Consider your **CONTRACTUAL** obligations
 - Force majeure provisions
 - Frustration of purpose or illegality due to sanctions
3. Consider your organization’s **POLICY**
 - Reputational, PR risks

Recent Issues: Russia/Ukraine

Arts Nonprofit Considering Payment to Russian Artist

- Feb./Mar. 2022: Organization cancelled event with Russian artist due to Kremlin ties, sought guidance on fulfilling payment obligations to artist in light of new Russia sanctions
- Recommendations
 - Review relevant contractual provisions
 - Screen to ensure all parties (including Russian bank specified in agreement) are not subject to SDN list or applicable sanctions
 - Payment must also comply with other evolving sectoral prohibitions, including ban on cash payments
 - Consider PR implications of payment, even if legally permissible

Recent Issues: Russia/Ukraine

U.S. Nonprofit Winding Down Russian Study Abroad Program

- U.S. nonprofit runs study abroad program in Russia, with close links to newly sanctioned Russian entity and individuals
- Recommendations
 - Screening of Russian partners & funders revealed “red flags,” although ownership information & exact impact on program are murky
 - Reviewed contract and ultimately recommended termination of Russian partnership
 - Also advised on communications strategy with Russian partners; implications of counter-sanctions; need for EU/UK guidance on certain issues

Recent Issues: Iran

Iranian Employee Attending Conference Hosted by U.S. Tech Nonprofit

- U.S. nonprofit is organizing a technology conference in the United States. Iranian employee of EU company wants to register and attend.
- Considerations
 - Screen to ensure payment of conference/registration fees does not involve restricted party
 - Review travel arrangements & visa/immigration requirements, including letter of sponsorship by U.S. entity
 - Deemed export concerns if sensitive technology is being shared or discussed with attendees

Questions?



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May Luncheon: Save the Date!

Navigating Internal Investigations at Nonprofit Organizations

May 17, 2022, 12p.m. – 1:30 p.m ET | Washington, DC (Webcast Option Available)



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