The ABC’s of Sanctions
Charity & Security Network Webinar
May 28, 2020

Presented by:
Erich C. Ferrari, Ferrari & Associates, P.C.
ABC’s of Sanctions — May 28, 2020

**Topic Areas**

- General Background
- Categories and Types of Sanctions
- Sanctions Consequences
- Humanitarian Exemptions and OFAC Guidance
- Practical Compliance Challenges
General Background on Sanctions

- **What are sanctions?**
  - Laws that seek to protect U.S. national security and promote U.S. foreign policy by coercive means that are intended to shield the U.S. financial system from malign actors and activity and compel those targeted by sanctions to change their behavior
  - Long history of embargoes extends to the time of the Greek city states; U.S. sanctions have been used as far back as the War of 1812
  - Today, sanctions have gone from a tool to a strategy and dominate the news cycle

- **Who administers sanctions?**
  - United States Department of the Treasury’s Office of Foreign Assets Control
  - **Interagency coordination:** State, NSC/White House, IC, Law Enforcement
  - **Multi-lateral coordination:** United Nations, EU, Individual countries
General Background on Sanctions

Why are sanctions important?

- For U.S. persons there are compliance obligations; for non-U.S. persons there could be consequences.
- With increased use, sanctions have gone from a tool of diplomacy, to a strategy in and of itself.
- You can understand the U.S.’s relationship to other countries based on the sanctions and export controls targeting those countries.
Categories and Types of Sanctions

- **Categories of Sanctions**
  - Primary Sanctions and Country-based Embargoes
  - Targeted and Derivative Sanctions
  - Secondary and Sectoral Sanctions

- **Blocking Sanctions**
  - Jurisdictional requirements
  - Asset freeze/not seizure
  - Blocking requirements

- **Miscellaneous Sanctions**
  - “Trade” Restrictions
  - CAPTA Sanctions
  - Micro-sanctions/Directive-based sanctions
Sanctions Consequences

• **OFAC Enforcement Process**
  - How it works procedurally
  - OFAC’s Enforcement Guidelines
  - Penalty Amounts

• **OFAC Designation Process**
  - Targeting of Parties—SDN List
  - Impact of designations
  - Delisting from the OFAC SDN List

• **Practical Consequences**
  - Reputational
  - Consequences abroad
  - Overcompliance
Humanitarian Exemptions and OFAC Guidance

- **IEEPA-based Exemptions**
  - Contained within the statute
  - Incorporation into the regulations
  - Limits (?)

- **Statutory Exemptions**
  - TSRA
  - Other statutory exemptions
  - Exemptions vs. Authorizations

- **Regulatory Authorizations**
  - General Licenses
  - Statements of Licensing Policy
  - Specific Licenses
Humanitarian Exemptions and OFAC Guidance

• **Recent Covid-19 Guidance**
  • OFAC’s Comprehensive Fact Sheet
  • Expressly addresses country-related programs, but has broader applicability
  • Sets out certain licensing policies

• **Prior Humanitarian Guidance**
  • October 2014 guidance to non-governmental organizations
  • 2013 guidance related to Iran
  • Swiss Humanitarian Trade Arrangement

• **OFAC’s FAQs**
  • FAQ #637
  • FAQ #665
  • FAQ #708
ABC’s Sanctions—Practical Compliance Challenges

Practical Compliance Challenges

- **Figuring Sanctions Out**
  - OFAC’s Compliance Framework
  - Identifying a U.S. nexus
  - Conducting due diligence

- **Obtaining Specific Guidance from OFAC**
  - Requests for Interpretative Guidance
  - Seeking guidance through industry associations/trade groups
  - Be cautious using the OFAC hotline and email address

- **Overcompliance by Banks**
  - The biggest hurdle
  - How to mitigate over-compliance
  - When all else fails ask OFAC to help
Conclusion

If you have questions after the webinar please contact me:

• Phone: 202-280-6370
• Email: ferrari@falawpc.com
• www.sanctionlaw.com

THANK YOU!