Sanctions

Delivered by:
Bruce Viney
21 July 2022

Disclaimer

This presentation, supporting materials and the contents of this session is provided for information purposes only and does not purport to constitute legal or consulting advice. Professional legal or consulting advice should be obtained before taking or refraining from any action as a result of the contents of this document.

Introduction - Why Does Sanctions Compliance Matter?

- Breaches of compliance programs can be very expensive
  BNP Paribas fined $8.9Bn
- Wilful breaches are the most expensive, but accidental unreported breaches are also expensive
- A fine for a sanctions breach has significant reputational issues – partners and customers lose confidence
- Reasons why a fine may be significantly reduced:
  - Early self-reporting of breaches
  - Having in place an effective compliance program (but lack of one is an aggravating factor)

Introduction - What Sanctions Are

- Penalties which are applied, usually by more than one country, against a particular target
- The target might be a state, a group, or an individual. They may include trade barriers and they may include various restrictions on financial transactions
- An embargo is similar to sanctions but is usually more severe

Introduction - What Sanctions Are

- Trade barriers other than tariffs:
  - Import and export licences
  - Import quotas
  - Subsidies
  - Embargo
  - Trade restriction

Key Sanctions Regimes

- All firms must check every new relationship and party thereto against official lists to ensure that they do not undertake business for a prohibited person or party. The obligation is ongoing.

US Sanctions – Who They Apply To

- To violate U.S. primary sanctions, a transaction must generally involve both a:
  - U.S. nexus, and
  - a sanctioned person or jurisdiction
- A U.S. nexus can arise in a variety of ways, including:
  - The involvement of U.S. persons
  - The involvement of U.S.-origin products, software, or technology, or
  - By causing or involving activity within U.S. territory (such as the use of U.S. dollar transactions that transit the U.S. financial system)

US Sanctions – Who They Apply To

Transtel

SITA

US Sanctions – Who They Apply To

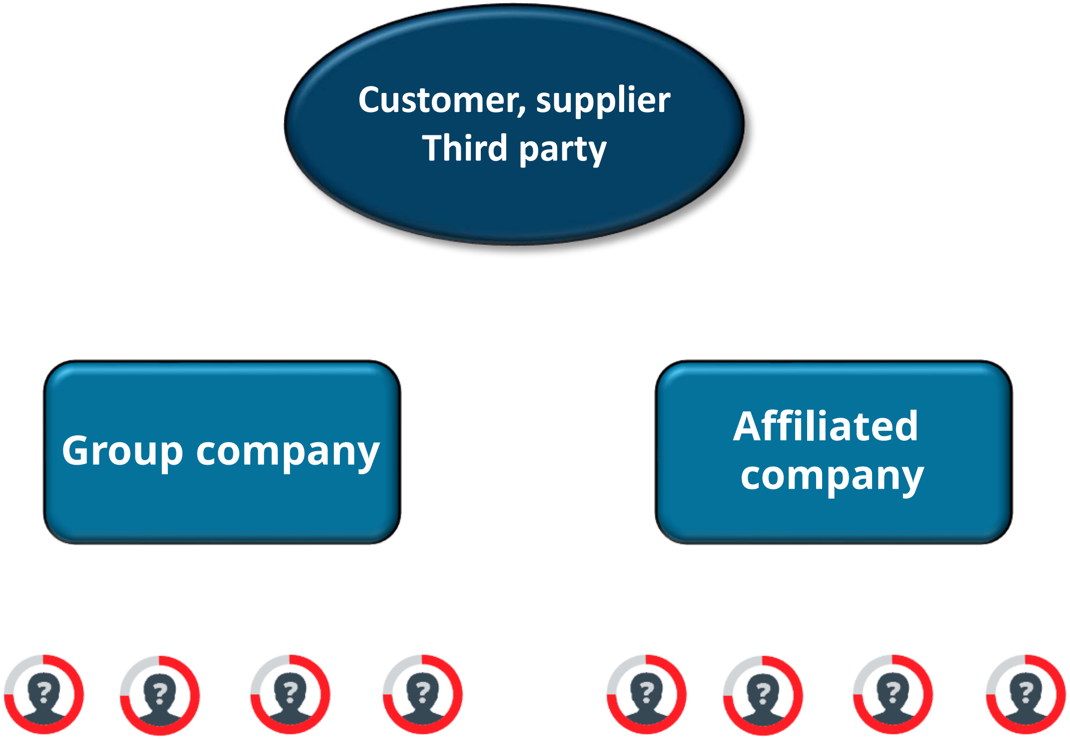
US sanctions are enforceable:

- Outside the US
- Without the US needing to prove any criminal intent. Simply failure to comply is enough
- Through ‘narrative’ sanctions
- Through secondary sanctions
- Regardless as to whether the company knew it was subject to US sanctions

$27 million

US Sanctions – Who They Apply To

- 50% or more – Looking through for beneficial owners
- The importance of beneficial ownership
- You can't do indirectly what you are prohibited from doing directly
- General and specific licences



UK Sanctions

- The UK imposes a full range of sanctions
- Financial sanctions are implemented through a combination of statutory instruments (UK regulations) and primary legislation:
- Sanctions and Anti-Money Laundering Act 2018 (Sanctions Act)
- Counter Terrorism Act 2008 (CTA 2008)
- Anti-Terrorism, Crime and Security Act 2001 (ATCSA 2001)

UK government departments and agencies involved in sanctions

Department	Role
Foreign, Commonwealth and Development Office (FCDO)	Responsible for the UK's international sanctions policy, including all international sanctions regimes and designations Negotiates all international sanctions
HM Treasury (Office of Financial Sanctions Implementation - OFSI)	OFSI is the authority responsible for implementing the UK's financial sanctions on behalf of HM Treasury
Department for International Trade (Export Control Joint Unit)	Implements trade sanctions and embargoes
Department for Transport	Implements transport sanctions, including controlling movement of ships and aircraft in UK waters and airspace
Home Office	Implements travel bans
HM Revenue & Customs (HMRC)	Enforces breaches of trade sanctions
National Crime Agency (NCA)	Investigates and enforces breaches of financial sanctions

UK Sanctions - Scope

- The obligations under the UK financial sanctions regime apply as follows:
  - UK financial sanctions apply within the territory of the UK, its territorial waters, and to all UK persons, wherever they are in the world
  - All individuals and legal entities who are within or undertake activities within the UK's territory must comply with UK financial sanctions that are in force
  - All UK nationals and legal entities established under UK law, including their branches, must also comply with UK financial sanctions that are in force, irrespective of where their activities take place

UK Sanctions - Reporting

- There is a requirement for relevant firms to inform OFSI as soon as practicable
- When reporting to OFSI you must include:
  - the information or other matter on which the knowledge or suspicion is based, and
  - any information you hold about the person or designated person by which they can be identified
- If the suspected designated person is a customer of your firm, you must also state the nature and amount or quantity of any funds or economic resources held by you for that customer

EU Sanctions

- Enforcement of European Union Sanctions
  - Individual member states are responsible for the enforcement of sanctions against individuals and entities based in their countries. There have been few if any published reports of enforcement actions
- Sanctions Regimes
  - In addition to UN Sanctions the EU has established sanctions on Comoros, Belarus, Burma, Cuba, Israel, Syria and Zimbabwe, Russia
- Scope
  - All EU nationals and legal entities established under EU law must comply with the EU financial sanctions that are in force, irrespective of where their activities take place

The Risk-Based Sanctions Compliance Programme

- OFAC strongly encourages organizations to employ a risk-based approach to sanctions compliance by developing, implementing, and routinely updating a sanctions compliance program
- Each program should be predicated on and incorporate at least five essential components of compliance
    1) management commitment
    2) risk assessment
    3) internal controls
    4) testing and auditing
    5) training
- Note that ‘risk assessment’ means identifying the areas of our business to the extent that they are more or less at risk of sanctions breaches. Compliance with sanctions however is an absolute requirement

The Risk-Based SCP – Management Commitment

- Senior management must:
  - Demonstrate a visible commitment to sanctions compliance
  - Implement, support and develop an effective and proportionate sanctions compliance program (SCP)
  - Review and approve the program
  - Provide adequate resources for the effective implementation and running of the program
  - Ensure that staff are aware of the need to report sanctions breaches or potential breaches
  - Continue to have active oversight of the sanctions compliance program

The Risk-Based SCP – Management Commitment

- OFAC proposes the following criteria to measure these factors:
  - Appointment of a dedicated sanctions compliance officer
  - Staff working on the SCP:
    - ✓ Have sufficient technical knowledge and expertise
    - ✓ Understand complex financial and commercial activities
    - ✓ Can apply that knowledge effectively to sanctions issues
    - ✓ Have sufficient experience and are an integral component to the organisations success.
- There should be sufficient control functions to support the SCP

The Risk-Based SCP – Management Commitment

- Senior management promotes a culture of compliance throughout the organisation, measured by:
  - The ability of staff to report sanctions related misconduct and prohibited activities without fear of reprisal
  - Senior management messages and takes action to discourage misconduct and prohibited activities
  - Senior management highlight the potential repercussions of non compliance with (OFAC) sanctions
  - The ability of the SCP to have oversight over the actions of the entire organisation
  - Senior management demonstrates recognition of the seriousness of apparent breaches and violations.

The Risk-Based SCP – Corporate Risk Assessment

- A sanctions risk assessment needs to be carried out for the whole company:
  - In a manner and as often as the overall risks to the company make appropriate
  - There should be a consistent methodology to analyse and assess sanctions risks
  - Risks to assess may include:
    - ✓ Customers and partners
    - ✓ Products and services
    - ✓ Supply chain
    - ✓ Intermediaries and other third parties
- The corporate risk assessment needs to be updated regularly, both within a regular time frame and when it is necessary to respond to material changes to the business or to external sanctions programs

Other considerations

- Methodology for identifying and assessing risk
- A consistent and appropriate risk rating methodology
- How to manage higher risks
- Scope: business; sanctions regimes
- Ownership risks

Risks to consider

- Customers, products and activity profiles
- Supply chain, third parties and intermediaries
- ✓ Geographic locations
- ✓ Distribution channels
- ✓ Complexity and volume of client transactions
- ✓ Processes and systems
- ✓ Operating environment

The Risk-Based SCP – Internal Controls

- Written Internal controls must reflect and be consistent with the corporate risk assessment
- Compliance staff must understand the purpose and overall intent of the controls
- The application of the controls must be monitored and enforced, including through the use of audits and other assurance actions
- Where weaknesses are identified these need to be reported and rectified
- All staff need to receive appropriate training in these controls. Training should include:
- An overview of sanctions risk to the company
- How these apply in the areas in which members of staff work
- The detail of the controls and
- How to identify and escalate breaches and potential breaches

Monitoring and screening

- Monitoring of clients doesn’t stop at on-boarding
- Essential tool in spotting suspicious activities and sanctions breaches
- A risk-based approach is essential
- Monitoring is everyone’s responsibility

Monitoring and screening

- Sanctions risk assessment
- Screening programme designed to match the risk assessment
  - Jurisdiction risk
    - Cross border
    - Currency risk
    - Transaction routing
  - Customer risk
  - Transactions
  - Distribution channels
  - Products and services
- Applying the risk based approach

Monitoring and Screening – Managing Screening

- Controls that are designed to prevent, detect and generally manage sanctions related risks.
  - Customer screening
  - Transaction screening
- A part of the wider management of sanctions risk
- The first line of defence is a key defence against sanctions breaches

Monitoring and Screening – Managing Lists

- List-based sanctions screening is the comparison of data held by a firm against data on an external sanctions list
- It compares customer and transactional data against lists of names and other indicators of sanctioned parties or locations.
- List management must be carried out to ensure the right lists are screened at the right time against the right data.
- Approaches to screening may include
  - Third party software
  - Manual screening
  - A formal screening methodology is essential.

- Good data is vital
- Case management must be effective, consistent, accurate and repeatable.

How it Goes Wrong

- Lack of adequate risk management and legal policies and procedures to comply with laws and regulations
- Misinterpreting, or failing to understand the applicability of, sanctions regulations
- Lack of effective systems of governance, audit, and internal control to oversee activities of branches
- Failure to follow-up on internal audit issues
- Failure to report issues in a timely manner to US regulators
- Sanctions screening software or filter faults
- Improper due diligence on customers/clients
- Accepting Non-standard payment or commercial practices

Thank you for attending

Any questions:
bviney@cclacademy.com