

# New OFAC Sanctions Law – What Compliance Practitioners Need to Know

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## Overview

- Brief Introduction to OFAC as well as recent new sanctions law enactment in Aug 2017 impacting Russia, Iran and North Korea, and implemented Jan 29, 2018.
- New Foreign Intervention in U.S. Elections Sanctions - September 12, 2018.
- New Nerve Agent Russia Sanctions - August 27, 2018.
- Impact of U.S. Withdrawal from the Iran Nuclear Deal.
- Review of recent enforcement actions for lessons learned involving PNB Paribas, Schlumberger and ZTE.
- Discussion on key steps to take to prevent violations including best practices for policies/procedures, screening, due diligence and training.



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## Polling Questions (answer electronically):

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- 1) Who has no prior experience with the Office of Foreign Asset Controls ("OFAC") and the screening requirement?
- 2) Who has screening software in place already that provides real-time screening and proper escalation of potential matches?
- 3) Who has policies and procedures in place that cover OFAC requirements and proper escalation for red flags?
- 4) Who is working in the financial services industry?
- 5) Who is working with the oil and gas industry?

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# Introduction to OFAC

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## AND TO KEY RECENT OFAC SANCTIONS LAW ENACTMENT

THE CONTENT OF THIS PRESENTATION IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY. IT DOES NOT CONSTITUTE THE PROVISION OF LEGAL ADVICE OR SERVICES BY THE SPEAKER.

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## OFAC = Office of Foreign Assets Control

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- OFAC is part of the U.S. Treasury Department, where use of economic sanctions against foreign states dates to the War of 1812.
- Back then, the Secretary of the Treasury administered sanctions against Great Britain in retaliation for the harassment of American sailors.
- The Office currently resides with the Under Secretary of the Treasury for Terrorism and Financial Intelligence, and it administers sanctions based on foreign policy and national security goals.
- OFAC has gained a great deal of steam in its enforcement efforts and as a U.S. foreign policy tool since 9/11/2001.
- URL: <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

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## How a Sanctions Program Begins

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- Most sanctions, though rooted in statutes, begin through Executive Orders (EOs).
- The President *declares* a national emergency to address an unusual and extraordinary threat.
- Such threats have their source in whole or in substantial part outside the U.S.
- The *threat* is to the national security, foreign policy, or economy of the U.S. and can include:
  - Nuclear, biological, or chemical missile proliferation,
  - Human rights abuses, and
  - Interference with democratic processes.
- The President's declaration is a requirement for invoking the International Emergency Economic Powers Act (IEEPA) authority.
- For long-term sanctions programs, regulations and interpretive guidance follow EO issuance.

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# The Content of Executive Orders

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- Declare the conditions are met for the imposition of sanctions
- Establish the sanctions program
- Provide guideposts for agency action
- May include designation of persons or entities to a prohibited blacklist (more below)
- “Blocks” property and interests in property in the U.S. that enter the U.S. (tangibly and intangibly), or that are or come within the possession or control of a U.S. person
- Effect of blocking an asset – it may not be “transferred, paid, exported, withdrawn, or otherwise dealt in”
- URL: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

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## OFAC Penalties\*

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Criminal Penalties for a Willful Violation ->	Fines Up to \$20 million and up to 30 years in prison.
Civil Penalty Violation of the IEEPA->	\$295,141 or twice the amount of the underlying transaction.
Civil Penalty Violation of the Trading With the Enemy Act ->	Up to \$86,976 for each violation.
Civil Penalty Violation of the Foreign Narcotics Kingpin Designation Act ->	Up to \$1,466,485 for each violation.

\*<https://www.federalregister.gov/documents/2018/03/19/2018-05550/inflation-adjustment-of-civil-monetary-penalties>

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# OFAC's Jurisdiction

## U.S. Persons

*United States person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any person in the United States.

The law applies no matter where such U.S. person is located.

## Dealing in Property Interests

Sanctions prohibit U.S. persons from “dealing in property interests: of a sanctioned country or blacklisted individual or entity.”

Property includes anything tangible or intangible, including money, trade, checks, contracts, goods, real property, contingent rights or obligations.

## Extraterritorial Applications

Entity organized under the laws of the United States includes *foreign branches*. U.S. controlled foreign subsidiaries are also captured under some sanctions programs.

Under the Iran Threat Reduction and Syria Human Rights Act (ITRA), similar to the law already in effect regarding Cuba, a US person “owns or controls” a foreign entity if it: (1) *holds more than 50 percent* of the equity interest by vote or value in the entity; (2) holds a majority of seats on the board of directors of the entity; or (3) otherwise controls the actions, policies, or personnel decisions of the entity.

New SSI entity 33% Rule applies in the O&G sector per the Countering America's Adversaries Through Sanctions Act (CAATSA) respecting Russia

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# Types of OFAC Sanctions-Programs

- Country Based – prohibits a broad spectrum of activities based on the country
  - Cuba, Iran, North Korea, Syria, *Crimea*
- Targeted Sanctions – imposed on specific individuals, entities or activities within a country:
  - Ukraine related, Belarus, Venezuela, Lebanon, Somalia
- Activity Based – sanctions people or based on certain activities:
  - Cyber-related, Rough Diamond, Magnitsky, Crypto-currencies

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# List of OFAC Sanctions Programs

## Active Sanctions Programs:

[Balkans-Related Sanctions](#)  
[Belarus Sanctions](#)  
[Burundi Sanctions](#)  
[Countering America's Adversaries Through Sanctions Act of 2017 \(CAATSA\)](#)  
[Central African Republic Sanctions](#)  
[Counter Narcotics Trafficking Sanctions](#)  
[Counter Terrorism Sanctions](#)  
[Cuba Sanctions](#)  
[Cyber-related Sanctions](#)  
[Democratic Republic of the Congo-Related Sanctions](#)  
[Foreign Interference in a United States Election Sanctions](#)  
[Global Magnitsky Sanctions](#)  
[Iran Sanctions](#)  
[Iraq-Related Sanctions](#)  
[Lebanon-Related Sanctions](#)  
[Libya Sanctions](#)  
[Magnitsky Sanctions](#)  
[Nicaragua-related Sanctions](#)  
[Non-Proliferation Sanctions](#)  
[North Korea Sanctions](#)  
[Rough Diamond Trade Controls](#)  
[Somalia Sanctions](#)  
[Sudan and Darfur Sanctions](#)  
[South Sudan-related Sanctions](#)  
[Syria Sanctions](#)  
[Transnational Criminal Organizations](#)  
[Ukraine-/Russia-Related Sanctions](#)  
[Venezuela-Related Sanctions](#)

## Program Last Updated:

[02/03/2017](#)  
[10/24/2018](#)  
[06/02/2016](#)  
[12/19/2018](#)  
[12/13/2017](#)  
[10/18/2018](#)  
[11/20/2018](#)  
[02/09/2018](#)  
[12/19/2018](#)  
[11/14/2018](#)  
[09/12/2018](#)  
[11/15/2018](#)  
[11/08/2018](#)  
[12/27/2017](#)  
[07/30/2010](#)  
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[08/03/2018](#)  
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[06/18/2018](#)  
[07/19/2018](#)  
[06/28/2018](#)  
[12/14/2018](#)  
[11/20/2018](#)  
[10/02/2018](#)  
[01/16/2019](#)  
[01/08/2019](#)  
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## Specially Designated Nationals (SDNs)

- Prohibitions against specific named individuals and entities (the "black list").
- The names are incorporated into OFAC's list of Specially Designated Nationals and Blocked Persons ("SDN list") which includes thousands of names of companies and individuals who are connected with the sanctions targets.
- For Global Companies, it is critical to set up a system for pre-screening transactions to ensure no business is conducted with such blocked persons.
- OFAC does not maintain the only blacklist; in fact, there are numerous other lists that should be screened for any company contemplating going global (see next slide).
- If screening for SDNs is new for you, please see my article in the SCCE May 2015 Compliance & Ethics Professional Magazine: "OFAC's global sanctions: A greater headache than the FCPA?"

## Lists Against which to Conduct Screening

- For global companies, at a minimum, the followings lists should be checked:

Source	Description	Updated On	# Records
<u>OFAC</u>	(SDN) Specially Designated Nationals List	01/08/19	32,154
	(OFCL) Consolidated List	11/20/17	2,546
<u>BIS</u>	BIS Denied Persons/Unverified List/Entity List	04/12/17	3,415
<u>Canada</u>	(OSFI)	01/15/19	5,539
<u>Europe</u>	HM Treasury Sanction List	01/15/19	8,102
	European Union Sanction List	05/30/17	10,735
<u>UN</u>	United Nations 1267 List	12/18/18	6,569

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## Why the Attention now on OFAC?

As the U.S. appetite for foreign intervention wanes, OFAC is becoming a tool of choice.

- OFAC has most notably made the news recently through three very high-profile actions.
- Paribas received the highest civil OFAC penalty in the Summer of 2014 approaching \$1 Billion (out of a total of \$9 Billion in fines stemming from the same case when state and local fines are factored in – compare with the largest FCPA case against Siemens in 2008 at \$800 million).
- Meanwhile in the Spring 2015 at the end of March, Schlumberger received the highest criminal OFAC penalty amounting to \$232.7 million, including a \$77.6 million forfeiture and a \$155.1 million criminal fine.
- ZTE Corp (China) blacklisted in the Spring of 2016 for supplying Iran, Sudan, North Korea, Syria and Cuba with products incorporating U.S. Content. ZTE was ultimately fined \$1.19 billion in 2017, subject to mitigation for good behavior under an appointed monitor. ZTE was blacklisted yet again in April 2018 for failing to discipline management involved in the initial violation!

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# OFAC Prohibitions Against Evasion & Facilitation

## EVASION/AVOIDANCE

A US person transaction that evades or avoids any sanction/prohibition or attempts to do so is itself a violation.

For example, changing processes and procedures that formerly required U.S. person approval so they can occur without U.S. participation would be an unlawful evasion.

## FACILITATION

A U.S. person's facilitation of an exportation or re-exportation of goods, technology or services to or from a sanctioned target is prohibited.

For example, brokering deals or sales or providing freight forwarding services.

## **Know Your Customer!**

Facilitation is a broad concept that captures anything reasonably determined to aid or abet a violation. For example, in the *Sea Tel, Inc.* case, an export occurred to S. Korea with knowledge or reason to know the products would be re-exported to Iran. Proper Due Diligence is Now Critical!

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# Export Prohibition 10

- Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur).
- You may not sell, transfer, export, re-export, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the Export Administration Regulations (EAR) and exported or to be exported with knowledge that a violation of the EAR, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item.
- Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

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## Key Recent Program Developments

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- Any single target country of sanctions could merit an hour discussion on its own.
- Our focus today will be the topic receiving the greatest attention the past couple of months, namely:
  - The New Sanctions Law [Russia, N. Korea & Iran] -> Countering America's Adversaries Through Sanctions Act [CAATSA] (August 2017)
  - May 8<sup>th</sup>, 2018 Trump administration withdrawal from the Joint Comprehensive Plan of Action respecting Iran. Two wind-down periods: 1) August 6<sup>th</sup>, 2018; and 2) November 4<sup>th</sup>, 2018.
  - On January 29, 2018, the US Treasury Department ("Treasury") delivered 5 reports to Congress, as required under the CAATSA. Among these reports was a list identifying Russian senior political figures, oligarchs, and parastatal entities (SDN designations already made on the same).
  - Amended Directive 4 under CAATSA (impacting the O&G industry) took effect on January 29, 2018.

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## Other Program Developments

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- Please also note these other developments (not our key focus today):
  - Russia (March 2014 annexation of Crimea followed by Russian led unrest in east and south Ukraine as well as discovery of Russian meddling in the November 2016 presidential election);
  - North Korea (Kim Jung Un's relentless pursuit of intercontinental ballistic missiles with nuclear warhead delivery capability – just on 11/20/2017, the Trump Administration designated N. Korea as a Sponsor of Terrorism to permit additional sanctions; OFAC, on 03/1/2018 reissues N. Korea Sanctions regulations and publishes new FAQs) – on June 12, 2018, President Trump met in person with North Korea's Kim Jung Un in Singapore – dubious outcome;
  - Iran (July 1, 2015 Joint Comprehensive Plan of Action ["JCPOA"] on Iran's nuclear program - On January 12, 2018, the White House announces continuation of JCPOA Waivers for US Sanctions targeting Iran but threatens that this is the "Last Chance" unless both the US Congress and US allies in Europe take action within 120 days); on May 8, 2018, President Trump withdraws the U.S. from the JCPOA;
  - Cuba (President Trump's decision to scale back President Obama's Détente - OFAC announced final rules effective November 9, 2017, implementing the National Security Presidential Memorandum "Strengthening the Policy of the United States Toward Cuba," signed by President Trump on June 16, 2017. );
  - Venezuela (early March 2015 imposition of sanctions and continuing further imposition of additional sanctions this past summer in the wake of the election of a new legislative body to redraft the country's constitution in a vote described by Washington as a "sham of President Maduro to secure dictatorial powers." On March 19, 2018, the President issued a new EO that specifically targets the use of cryptocurrency, due to concern the same is being used to circumvent US sanctions ); and
  - On March 19, 2018, OFAC updated its [FAQs](#) to include a virtual currency discussion. OFAC describes the various money laundering and terrorist financing risks associated with virtual currencies. Specifically, OFAC announced that it will use sanctions to "fight against criminal and other malicious actors abusing digital currencies and emerging payment systems." To do so, OFAC is considering the addition of digital currency addresses associated with blocked persons to OFAC's SDN List.

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## Countering America's Adversaries Through Sanctions Act

Passed and signed into law in August 2017 respecting Russia, North Korea and Iran

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Quote from U.S. Senator Bob Corker (R-Tenn.),  
chairman of the Senate Foreign Relations  
Committee (July 27, 2017).

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“With near unanimous support in both chambers of Congress, this legislation sends a strong signal to Iran, Russia and North Korea that our country will stand firm and united in the face of their destabilizing behavior.”

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## Key Dates

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- July 25, 2017: Passed the House of Representatives 419 to 3
- July 27, 2017: Passed the Senate 98 to 2
- August 2, 2017: Signed by President Trump (a presidential veto would have been easily overridden otherwise)

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## Quote from President Trump (August 3, 2017).

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"The bill remains seriously flawed -- particularly because it encroaches on the executive branch's authority to negotiate."

"Congress could not even negotiate a health care bill after seven years of talking. By limiting the executive's flexibility, this bill makes it harder for the United States to strike good deals for the American people, and will drive China, Russia, and North Korea much closer together."

"I built a truly great company worth many billions of dollars. That is a big part of the reason I was elected. As President, I can make far better deals with foreign countries than Congress."

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## Key Objectives

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- Codifies and expands sanctions for Russia's annexation of Crimea, continuing destabilization in Eastern Ukraine and interference in the U.S. presidential election
- Limits the president's authority to terminate or modify the Russia sanctions (Efforts by the President to relax, suspend, or terminate the Russia-related sanctions currently in effect will be subject to mandatory review by Congress).
- Expands sanctions against Iran and North Korea

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## Immediate Impact

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- New additions to various blacklists. – e.g., OFAC Specially Designated Nationals (SDN) list - OFAC Sectoral Sanctions Identifications (SSI) list – Commerce's BIS Entity List ->

### INCREASED IMPORTANCE OF REAL-TIME SCREENING

- New or modified black-listed party end-use and financing restrictions ->

### INCREASED DUE DILIGENCE REQUIRED

- New sanctions on foreign persons who provide support to Russia SDNs or prohibited end-uses or activities ->

### INCREASED OWNERSHIP ANALYSIS REQUIREMENTS [50% AND NEW 33% O&G INDUSTRY OWNERSHIP RULES]

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## Traps for the Unwary on Ownership

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- OFAC does not list these subsidiary entities -> the compliance community shoulders the due diligence burden!
- “[A]ny entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked [or restricted] persons is itself considered to be a blocked [or restricted] person.” --OFAC Revised Guidance, August 13, 2014.
- FAQ Example: If Blocked Company A and Blocked Company B own 30% and 25%, respectively, of Company C, OFAC considers Company C to be blocked [restricted] as well.

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## Origin of the 33% rule (effective 01/29/18)

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- FAQ: References to “33 percent or greater ownership” and “ownership of a majority of the voting interests” in subsection 2 of Directive 4 refer to a Directive 4 SSI entity’s ownership interest in a deepwater, Arctic offshore, or shale project (where the project is initiated 01/29/18 or later).
- The result is the O&G industry has an additionally tough due diligence burden respecting ownership.
- FAQ Example: Instead of holding a direct interest in Project X, Entity A now owns 50 percent of Entity B, and Entity B holds a 33 percent interest in Project X. As a result of OFAC’s 50 percent rule, Entity B is subject to Directive 4. Because Entity B is subject to Directive 4 and owns a 33 percent or greater interest in Project X, the prohibition of subsection 2 of Directive 4 applies to Project X. Consequently, U.S. persons are prohibited from providing goods, services (except for certain financial services), or technology in support of exploration or production for Project X.

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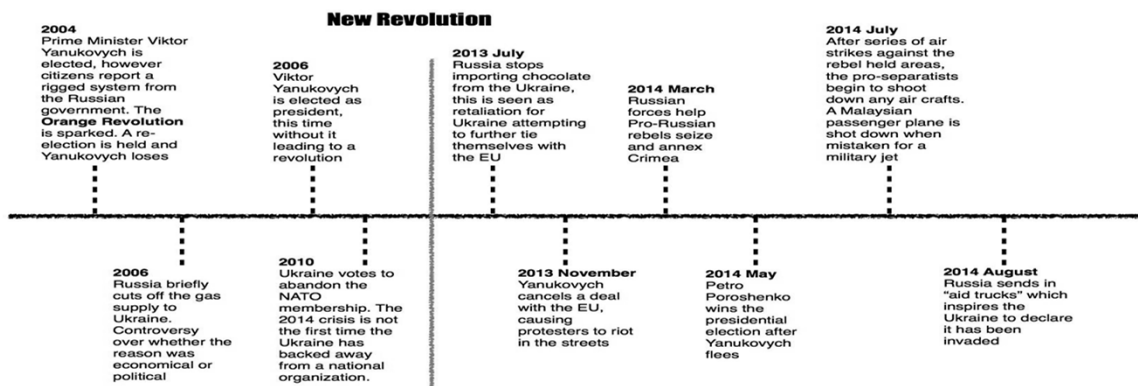
## Russia Specific Sanctions under the New Law

Preserving EO Directives Impacting Russia

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## Ukraine-Related Sanctions Origin

### The Ukraine Timeline



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## Map of Ukraine



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## Russia had been an OFAC target before

### PUTIN AND THE OLIGARCHS

Vladimir Putin has been President of Russia since May 2012 and won reelection on 03/18/2018.

He first won in the 2000 elections and was reelected in 2004.

However, he sat out in 2008 due to constitutional term limits (Medvedev won, but Putin was appointed Prime Minister permitting him to maintain his political dominance).

Oligarchs and Corruption in Russia – Twenty plus men described in Bill Browder's book "Red Notice"; they reportedly stole 39 percent of the country's companies, often "robbing them blind".

Putin listed Bill Browder as one of the target persons for questioning during his Helsinki meeting with Trump on 07/16/2018.

### MAGNITSKY SANCTIONS

Sergei Magnitsky Rule of Law Accountability Act of 2012 PL 112-208 (Dec. 14, 2012)

Sergei Leonidovich Magnitsky was the tax lawyer for Hermitage Capital Management (a former hedge fund Bill Browder, a noted Putin critic, ran in Moscow)

Magnitsky uncovered evidence proving a Government conspiracy to pin tax fraud charges implicating Bill Browder (sanctions target these conspirators)

Magnitsky died November 16, 2009, at the age of 37, in Matrosskaya Tishina Prison in Moscow

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## The Initial Ukraine-related Sanctions

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The initial Ukraine-related sanctions involve a multifaceted approach that includes the following:

- I. Blocking Sanctions
- II. “Sectorial” Sanctions – via “Directives”
- III. Export Restrictions
- IV. Crimea Focused Sanctions
- V. Ukraine Freedom Support Act

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## II. Initial Sectorial Sanctions – via “Directives”

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- Directive 1 under EO 13662 (July 16, 2014)
  - Targets financial sector (amended September 12, 2014)
- Directive 2 under EO 13662 (July 16, 2014)
  - Targets energy sector (amended September 12, 2014)
- Directive 3 under EO 13662 (September 12, 2014)
  - Targets defense sector (Rostec)
- Directive 4 under EO 13662 (September 12, 2014)
  - Targets energy sector, specifically deep water, Arctic offshore and shale projects in Russia

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# Financial and Energy Sector Directives

## **FINANCIAL SECTOR (DIRECTIVE 1)**

Prohibits U.S. persons from dealing in new debt >30 days maturity or in new equity of persons subject to the Directive

“Debt” means bonds, loans, credit extensions, etc.

“Equity” means stocks, shares, any evidence of ownership

Directive 1 covers the following persons:

- Bank of Moscow, Gazprombank, Russian Agricultural Bank, Sberbank, Vnesheconombank a.k.a. VEB, Vneshtorgbank, a.k.a. VTB
- Entities owned 50% or more by the above parties

## **ENERGY SECTOR (DIRECTIVE 2)**

Prohibits U.S. persons from dealing in new debt > 90 days maturity of persons subject to the Directive

“Debt” means bonds, loans, credit extensions, etc.

There is no prohibition respecting equity dealings

Directive 2 covers the following persons:

- Gazprom Neft, Novatek, Rosneft, Transneft
- Entities owned 50% or more by the above parties.

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# Defense and Amended Energy Sector

## **DEFENSE SECTOR (DIRECTIVE 3)**

Prohibits U.S. persons from dealings in new debt >30 days maturity of persons subject to the Directive

“Debt” means bonds, loans, credit extensions, etc.

There is no prohibition respecting equity dealings

Directive 3 covers the following persons:

- Rostec
- Entities owned 50% or more by Rostec

## **AMENDED ENERGY SECTOR (DIRECTIVE 4)**

Prohibits U.S. persons from providing, exporting or re-exporting, directly or indirectly goods, services (except financial) or technology in support of exploration or production for specific projects involving specific persons subject to the Directive

Projects subject to the Directive: Deepwater, Artic Offshore, or Shale Projects within Russia or in the maritime waters of Russia

Directive 4 covers the following persons:

- Gazprom Neft, Gazprom, Lukoil, Rosneft, Surgutneftegaz
- Entities owned 50% or more by the above parties

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## New Law and the Sectoral Sanctions

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**Codification of Existing Russia Sanctions.** CAATSA will codify the Russia-related sanctions currently in effect under Obama Executive Orders 13660, 13661, 13662, 13685, 13694, and 13757, including sanctions against parties designated per the EOs to date (i.e., those currently designated as SDNs and SSIs).

**Tightening of Existing Sectoral Sanctions.** CAATSA will modify the Russian sectoral sanctions implemented by OFAC pursuant to Executive Order 13662.

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## Sectoral Sanctions Tightening

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**Directive 1** will be modified to prohibit dealings by US Persons in new debt of longer than **14 days maturity** (down from 30 days) of designated Russian financial institutions.

**Directive 2** will be modified to prohibit dealings by US Persons in new debt of longer than **60 days maturity** (down from 90 days) of designated Russian energy companies.

**Directive 4** will be expanded to prohibit the provision by US Persons of goods, non-financial services, or technology in support of exploration or production for “new” deepwater, Arctic offshore, or shale projects that have the potential to produce oil **anywhere in the world** (i.e., not just in Russia) and in which a Directive 4 entity has a 33 percent or greater ownership interest.

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## Quick Reference Chart – New Directive 4

Executive Order 13662	The Act	Comment
Prohibited the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for certain financial services), or technology in support of exploration or production for deepwater, Arctic offshore or shale projects that have the potential to produce oil in the Russian Federation or its territorial waters.	... Prohibits the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for certain financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects – (1) that have the potential to produce oil ... (i.e., meaning potential to produce anywhere)	This is likely a recognition that the tech advantage of the US in the areas of deepwater, Arctic offshore and shale projects can only be preserved by protecting the use of the same anywhere in the world. It will no longer be enough to certify that a given company is not involved in projects within the Russian Federation. Moreover, this coordinates well with EAR concepts of “deemed (re)exports” when a Russian national may be involved in O&G R&D.
... and involving any person determined to be subject to this directive, its property, or its interests in property. ...	... that involve any person determined to be subject to the directive or the property or interests in property of such a person who has a controlling interest or a substantial non-controlling interest in such a project defined as not less than a 33 percent interest. ...	The Act goes beyond targeting its prohibitions against any designated persons to include even persons with a controlling interest (>50%) or even a substantial non-controlling ownership interest (defined as ≥ 33%). This will require vetting of JVs and partnerships to vet for designated persons.

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## Mandatory Sanctions on Non-US Persons

Mandatory sanctions on non-US persons that knowingly make significant investments in “**special Russian crude oil projects**” (projects intended to extract crude oil from the exclusive economic zone of Russia in waters more than 500 feet deep, Russian Arctic offshore locations, or shale formations located in Russia).

Mandatory **correspondent banking restrictions on non-US financial institutions** that knowingly engage in significant transactions involving activities related to the sale of defense articles to Syria or “special Russian crude oil projects” or knowingly facilitate significant transactions with SDNs.

Mandatory sanctions on Russian government officials and their close associates and family members for acts of “**significant corruption**” in Russia or elsewhere.

Mandatory sanctions for non-US persons involved in **serious human rights abuses** in any territory forcibly occupied or otherwise controlled by the Russian government.

Mandatory sanctions on non-US persons that export or transfer to **Syria** significant financial, material, or technological support that contributes materially to the Syrian government’s ability to acquire weapons and other defense articles.

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## Mandatory Sanctions on US Persons

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Mandatory sanctions with respect to any person that knowingly engages in **activities that undermine cybersecurity** “against any person, including a democratic institution, or government” on behalf of the Russian government.

Mandatory sanctions on **foreign sanctions evaders**, i.e., persons facilitating significant deceptive or structured transactions (related to currency reporting) for or on behalf of any person or relatives subject to the Russia-related sanctions.

Mandatory sanctions on parties knowingly engaging in **significant transactions with the intelligence or defense sectors of the Russian government**, including persons acting for the Main Intelligence Agency of the General Staff of the Armed Forces of the Russian Federation (“GRU”) or the Federal Security Service of the Russian Federation (“FSB”).

Mandatory sanctions related to investments in, or facilitation of investments in, the **privatization of Russia’s state-owned assets** for \$10,000,000 or more (or any combination of investments of not less than \$1,000,000 each, which in the aggregate equals or exceeds \$10,000,000 in any 12-month period), if the investment contributes to Russia’s ability to privatize state-owned assets in a manner that unjustly benefits Russian government officials or their close associates or family members.

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## Discretionary Sanctions on US Persons

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Discretionary sanctions related to **Russian energy export pipelines**, targeting parties that:

(i) knowingly make an investment that directly and significantly contributes to the enhancement of the ability of Russia to construct energy export pipelines, or

(ii) sell, lease, or provide to Russia goods, services, technology, information, or support that could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy pipelines, and where the investment or transaction has a fair market value of \$1,000,000 or more, or that, during a 12-month period, has an aggregate fair market value of \$5,000,000 or more.

These sanctions are to be imposed (if at all) “in coordination with allies of the United States.”

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## New Foreign Intervention in U.S. Elections Sanctions – September 12, 2018

President Trump issued an Executive Order ("EO") on September 12th to impose certain sanctions in the event of foreign interference in an U.S. election (particularly timely given the upcoming mid-term elections). Please see: [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/election\\_eo.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/election_eo.pdf).

### National Security and Foreign Policy Emergency:

The EO states the threat has become a concern of national security and foreign policy. It points to the relatively recent proliferation of digital devices and internet-based communications as having created significant vulnerabilities and having magnified the scope and intensity of the threat of foreign interference.

### Two Post Election 45 Day Review Periods:

The EO sets up a two 45 day post election review periods. The first 45 day review period is for the Director of National Intelligence to deliver an assessment and appropriate supporting information to the President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security. Then the EO provides that, within 45 days of receiving the assessment and information, the Attorney General and the Secretary of Homeland Security shall deliver to the President, the Secretary of State, the Secretary of the Treasury, and the Secretary of Defense a report evaluating:

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## New Foreign Intervention in U.S. Elections Sanctions – September 12, 2018 (Continued)

- (i) the extent to which any foreign interference materially affected the security or integrity of the election infrastructure, the tabulation of votes, or the timely transmission of election results; and
- (ii) if any foreign interference involved activities targeting the infrastructure of, or pertaining to, a political organization, campaign, or candidate, the extent to which such activities materially affected the security or integrity of that infrastructure, including by unauthorized access to, disclosure or threatened disclosure of, or alteration or falsification of, information or data.

### SND Designation as the Key Remedy:

All property and interests in property that are in the United States of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: where any foreign person is determined:

- (i) to have directly or indirectly engaged in, sponsored, concealed, or otherwise been complicit in foreign interference in a United States election;
- (ii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity described above or any person whose property and interests in property are blocked pursuant to this order; or
- (iii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to this order.

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## New Nerve Agent Russia Sanctions 08/18

1. Foreign Assistance: Termination of assistance to Russia under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food or other agricultural commodities or products.
2. Arms Sales: Termination of
  - (a) sales to Russia under the Arms Export Control Act of any defense articles, defense services, or design and construction services, and
  - (b) licenses for the export to Russia of any item on the United States Munitions List, but waived on a case-by-case basis with respect to the issuance of licenses in support of government space cooperation and commercial space launches.
3. Arms Sales Financing: Termination of all foreign military financing for Russia under the Arms Export Control Act.
4. Denial of United States Government Credit or Other Financial Assistance: Denial to Russia of any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, including the Export-Import Bank of the United States.
5. Exports of National Security-Sensitive Goods and Technology: Prohibition on the export to Russia of any goods or technology on that part of the control list established under Section 2404(c)(1) of the Appendix to Title 50.

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## New Nerve Agent Russia Sanctions 08/18 (continued)

The Department is waiving these sanctions in the interests of national security with respect to the following on a case-by-case basis (meeting all the terms of the below noted license exception will permit one to move forward):

**LICENSE EXCEPTIONS:** Exports and reexports of goods or technology eligible under License Exceptions:

GOV, ENC, RPL, BAG, TMP, TSU, APR, CIV, and AVS.

**SAFETY OF FLIGHT:** Exports and reexports of goods or technology pursuant to new licenses necessary for the safety of flight of civil fixed-wing passenger aviation.

**DEEMED EXPORTS/REEXPORTS:** Exports and re-exports of goods or technology pursuant to new licenses for deemed exports and reexports to Russian nationals.

**WHOLLY-OWNED U.S. SUBSIDIARIES:** Exports and reexports of goods or technology pursuant to new licenses for exports and reexports to wholly-owned U.S. subsidiaries in Russia.

**SPACE FLIGHT:** Exports and reexports of goods or technology pursuant to new licenses in support of government space cooperation and commercial space launches.

**COMMERCIAL END-USERS:** Exports and reexports of goods or technology pursuant to new licenses for commercial end-users civil end-uses in Russia.

**SOEs/SFEs:** Exports and reexports of goods or technology pursuant to new licenses for Russian state-owned or state-funded enterprises though subject to a "presumption of denial" policy.

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## Iranian Specific Sanctions under the New Law

Key target: the Islamic Revolutionary Guard Corps

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## Iranian Sanctions – Already Significant

Sanctions Target	Prohibitions	Special Notes
Entire Country of Iran	No financial dealings	No U.S. person may facilitate any transaction
Government of Iran	No brokering	Travel – No restrictions
Iranian Nationals	No imports to the U.S.	Several General Licenses available
Iranian oil and gas industry	No exports/re-exports to Iran	General License D-1 permitting personal communication devices and supporting software/bandwidth provision
SDNs	No dealings in Iranian origin goods	
The Trump administration withdrew 05/08/2019 from the Joint Comprehensive Plan of Action (JCPOA) reached in 2015 (more later).		

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## Biggest New Law Impact Re: Iran

Mandatory blocking sanctions on any person that knowingly contributes to Iran's ballistic missile program, who are officials, agents or affiliates of the Islamic Revolutionary Guard Corps, or who knowingly supply or support the supply of arms, combat vehicles, etc., to Iran or provide related technical training or services to Iran.

Designation of persons responsible for human rights violations in Iran.

President Trump on 1/12/2018 specifically listed 4 critical components to be passed by the US Congress on the JCPOA:

- 1) A demand that Iran allow immediate inspections at all sites requested by international inspectors;
- 2) Measures to "ensure that Iran never comes close to possessing a nuclear weapon";
- 3) A requirement that such provisions have no expiration date [instead of the 10 year limit] and that failure to comply by Iran would lead to automatic resumption of sanctions; and
- 4) An explicit statement that "long-range missile and nuclear weapons programs are inseparable," and that "Iran's development and testing of missiles should be subject to severe sanctions."

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## Impact of the 05/08/18 JCPOA Withdrawal (1)

OFAC revoked on 06/27/2018 Iran-related General Licenses H and I, which were issued in connection with the JCPOA respecting Iran. Due to the Trump administration's withdrawal from the JCPOA on May 8, 2018, OFAC amended the Iranian Transactions and Sanctions Regulations (ITSR) at 31 C.F.R. Part 560 to set forth a timeline for winding down activities under both these General Licenses.

The timeline is as follows:

- 1) authorized *wind-down through August 6, 2018 of Former General License I* activities [Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services] and reinstatement of:
  - i. Sanctions on the purchase or acquisition of U.S. dollar banknotes by the Government of Iran;
  - ii. Sanctions on Iran's trade in gold or precious metals;
  - iii. Sanctions on the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;
  - iv. Sanctions on significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial;
  - v. Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
  - vi. Sanctions on Iran's automotive sector.

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## Impact of the 05/08/18 JCPOA Withdrawal (2)

2) authorized *wind-down through November 4, 2018* [Former General License H covering Certain Transactions relating to Foreign Entities Owned or Controlled by a United States Person] and reinstatement of:

- i. Sanctions on Iran's port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line Iran, or their affiliates;
- ii. Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- iii. Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA);
- iv. Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 (CISADA);
- v. Sanctions on the provision of underwriting services, insurance, or reinsurance; and
- vi. Sanctions on Iran's energy sector.

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## North Korean Specific Sanctions under the New Law

Congress and the President are in alignment here

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## New Law SDN Designation Requirements

Requires the President to designate to the SDN List persons that engage in certain North Korea-related activities that are prohibited under UN Security Council resolutions.

Provides the President with discretionary authority to designate persons to the SDN List that engage in certain activities involving North Korea, including:

- Purchasing significant types or amounts of textiles from the Government of North Korea,
- Selling or transferring significant amounts of crude oil, petroleum products, liquefied natural gas, or other natural gas resources to the Government of North Korea,
- Conducting significant transactions in North Korea's transportation, mining, energy, and financial services industries,
- Engaging in certain other North Korea-related activities prohibited under UN Security Council resolutions.

OFAC, on 03/1/2018, reissues N. Korea Sanctions regulations and publishes new FAQs to reflect the new law.

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## New Law Financial & Import Restrictions

Prohibits US financial institutions from maintaining, administering, or managing indirect correspondent accounts that benefit any parties designated under this legislation. However, US financial institutions are authorized to process transfers of funds to or from North Korea if the transfer is authorized by an OFAC specific or general license and does not involve debiting or crediting a North Korean account.

Prohibits the importation of any significant goods, wares, articles, and merchandise manufactured by the labor of North Korean nationals unless a finding by U.S. Customs and Border Protection establishes that they are not the products of convict labor, forced labor, or indentured labor

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## New Law Shipping Restrictions

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Imposes shipping sanctions against North Korea that include a prohibition on the entry of certain foreign vessels over 300 gross tons in navigable waters of the United States. These prohibitions apply to:

- Vessels owned or operated by or on behalf of the Government of North Korea or a North Korean person, and
- Vessels owned or operated by or on behalf of a foreign country in which a sea port is identified as having failed to implement or comply with certain UN Security Council resolutions targeting North Korea. Such sea ports will be identified in reports submitted by the President to Congress identifying the operators of such foreign sea ports.
- CAATSA specifically requires the reports to include findings related to certain sea ports in China, Iran, Russia, and Syria.

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## Three Key OFAC Cases For Lessons Learned

PNB Paribas, Schlumberger and ZTE

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## PNB Paribas – largest OFAC civil penalty

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- In June 2014, BNP Paribas SA [BNPP] agreed to pay OFAC \$964 million (out of a total of almost \$9 billion in civil penalties to US regulators for various offenses).
- The settlement agreement details numerous instances of facilitation and concealment all of which BNPP's subsidiary in Geneva and branch in Paris overwhelmingly conducted in violation of U.S. sanctions laws.
- Those instances of facilitation and concealment included omitting references to sanctioned parties; replacing the names of sanctioned parties with BNPP's name or a code word; and structuring payments in a manner that did not identify the involvement of sanctioned parties in payments sent to U.S. financial institutions.

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## Chief Lessons Learned in the PNPP case

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- A failure to recognize that foreign office facilitation and sanctions evasion activities that still make use of the U.S. intermediary banks in New York City in processing U.S. dollar wire transfers will constitute OFAC violations.
- Because of BNPP's presence in the United States and continued desire to make use of the U.S. dollar reserve currency in its international commercial operations,
  - BNPP was subject to OFAC jurisdiction,
  - The bank was forced to pay heavy fines for its egregious facilitation and evasion activities, and
  - All to retain its player status in the U.S. financial market.

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# The Schlumberger Case

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## **SCHLUMBERGER PROHIBITED CONDUCT**

■ On March 25, 2015, Schlumberger settled its OFAC criminal case in the amount of \$232.7 million (largest OFAC criminal penalty yet). Schlumberger's US Drilling & Measurements (D&M) did the following:

(1) approving and disguising the company's capital expenditure requests from Iran and Sudan for the manufacture of new oilfield drilling tools and for the spending of money for certain company purchases (D&M personnel outside the United States referred to Iran as "Northern Gulf" and Sudan as "Southern Egypt" or "South Egypt" in their email communications with D&M personnel in the United States);

(2) making and implementing business decisions specifically concerning Iran and Sudan (that is, D&M headquarters personnel made and implemented business decisions in the day-to-day operations of Iran and Sudan); and

(3) providing certain technical services and expertise in order to troubleshoot mechanical failures and to sustain expensive drilling tools and related equipment in Iran and Sudan (that is, at times, queries entered by, or on behalf of, D&M personnel in Iran and Sudan were addressed by D&M personnel located in the United States).

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# Lessons Learned from Schlumberger

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## **SCHLUMBERGER LESSONS LEARNED**

■ Schlumberger, though incorporated outside the United States, managed to violate U.S. sanctions laws by involving persons (including non-US citizens or residents), affiliates, unaffiliated business partners or facilities located in the United States.

■ Any involvement in sanctioned country activities by a person or entity (whether an affiliate or not) within the United States, or by US citizens or residents anywhere in the world, may trigger liability for a foreign company that itself has no direct presence in the United States but which benefits from those facilitated activities.

■ Schlumberger is undergoing a three-year probationary period and is required to hire an independent consultant to review its sanctions compliance program.

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## The ZTE Case – The Prohibited Conduct

- From January 2010 to about March 2016, ZTE engaged in: (i) the exportation, sale, or supply, directly or indirectly, from the United States of goods to Iran or the Government of Iran; (ii) the reexportation of controlled U.S.-origin goods from a third-country with knowledge that the goods were intended specifically for Iran or the Government of Iran; and (iii) activity that evaded or avoided, attempted and/or conspired to violate, and/or caused violations of the ITSR prohibitions.
- From about January 2010 to March 2016, ZTE's highest-level management developed, approved, and implemented a company-wide plan to conceal and facilitate ZTE's illegal business with Iran. ZTE's highest-level management was specifically aware of and considered the legal risks of engaging in such activities prior to signing contracts with Iranian customers. Essential to the performance of such contracts was ZTE's procurement of and delivery to Iran of U.S.-origin goods, including goods controlled for anti-terrorism, national security, regional stability, and encryption item purposes. Pursuant to its contracts with Iranian customers, ZTE was required to and did in fact enhance the law enforcement surveillance capabilities and features of Iran's telecommunications facilities and infrastructure.
- ZTE's unlawful business activities with Iran were publicly disclosed in a media report in 2012. Shortly thereafter, ZTE learned of the U.S. government's investigation into the company's business activities with Iran. ZTE subsequently communicated to the U.S. government that it had wound down and ceased its Iran-related activities. However, ZTE's highest-level leadership decided to resume its Iran-related business in 2013, which it continued until 2016, when the Commerce Dept. suspended the company's export privileges by adding it to the Entity List. Under the direction of its leadership, ZTE deleted evidence and provided the U.S. government with altered information to hide the fact that it had resumed its unlawful business with Iran.

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## Lessons Learned from ZTE

Lesson 1 -> Don't lie and Don't create false/misleading records!

Lesson 2 -> Don't destroy evidence!

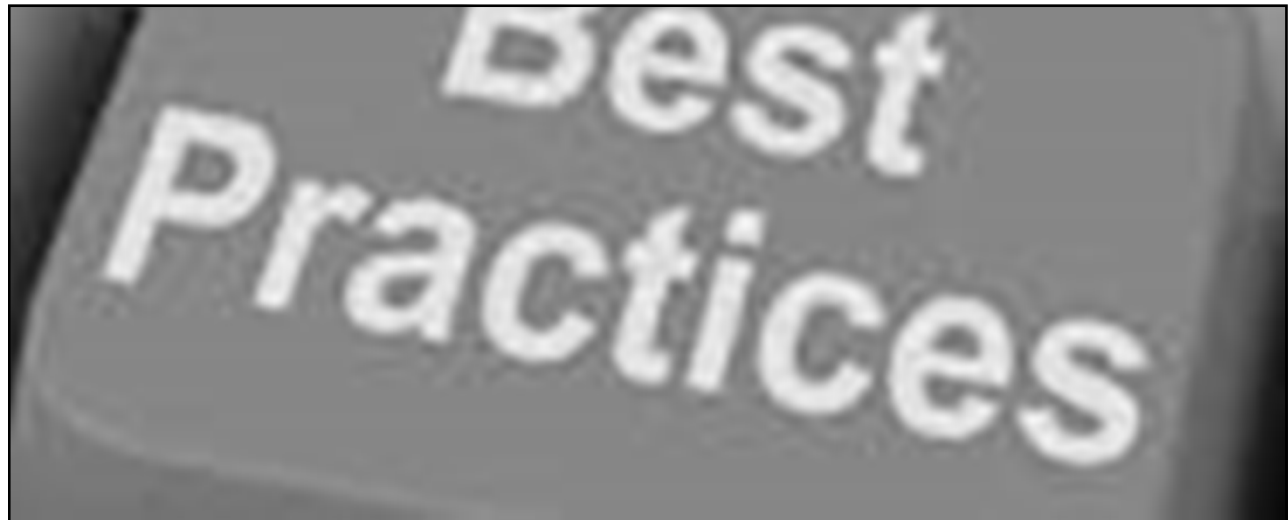
Lesson 3 -> Don't rely on non-disclosure agreements to cover-up crimes!

Lesson 4 -> Don't restart your criminal activity during the investigation!

Lesson 5 -> Don't create a written, approved corporate strategy to systematically violate the law!

Lesson 6 -> Don't lie about reprimanding involved employees only to provide 35 of them with bonuses!

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## Best Practices for Avoiding OFAC Violations

Best Practices for policies and procedures, screening, due diligence and training.

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## Best Practices for Policies and Procedures

- If you're operating globally or *even only domestically*, you absolutely need policies and procedures, even if made a part of your Export Control and Anti-Boycott Compliance policies and procedures.
- The policies and procedures should designate a responsible party/department, e.g. international trade compliance department or even the chief compliance officer.
- That department should be authorized to issue a stop order when a red flag is raised (ITAR empowered official concept).
- The policies and procedures should provide an up-to-date overview of the sanctions programs impacting the company's operations (not to mention discuss all country-wide embargoes so personnel know when they must refrain from facilitating).
- The policies and procedures should provide contract clause model language (including destination controls statements to prevent unauthorized diversion).

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## The Procedures should cover Red Flags

- The customer or its address is similar to one of the parties found on the Commerce Department's [BIS's] list of denied persons, or on the Treasury Department's OFAC SDN/SSI Lists.
- The end-destination is Iran, Crimea, North Korea, Cuba, Belarus, Syria or another country with either OFAC or BIS list-based or activity-based restrictions
- The customer or purchasing agent is reluctant to offer information about the end-use or end-user of the item.
- The product's capabilities do not fit the buyer's line of business (e.g., an order for sophisticated computers for a small bakery).
- The item ordered is incompatible with the technical level of the country to which it is being shipped (e.g., semiconductor manufacturing equipment being shipped to a country that has no electronics industry).
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer has little or no business background.
- The customer is unfamiliar with the product's performance characteristics, application, and support equipment but still wants the product.
- Routine installation, training, or maintenance services are declined by the customer.
- Delivery dates are vague, or deliveries are planned for out of the way destinations.
- A freight forwarding firm or export company with no apparent connections to the purchaser is listed as the product's final destination.
- The shipping route is abnormal, non-economic, or circuitous for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- The customer is willing to pay well in excess of market value for the commodities.
- Firms or individuals from foreign countries other than the country of the stated end-user place the order.
- "Fragile" or other special markings on the package are inconsistent with the commodity described.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for reexport.

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## Screening Best Practices

- A Best in Class Screening practice is one that is fully automated and internalized in the company's ERP system, including an automated block imposed for potential black-list matches (high volume big companies such as banks and Fortune 500 companies have this level of screening sophistication).
- Even for companies with a limited budget but poised to launch globally, OFAC provides an updated screening tool link on its website at no cost as follows:
  - <https://sanctionssearch.ofac.treas.gov/>
- Just the same, some algorithmic search capability for alias names is recommended ("Fuzzy Logic").
- There are vendors that provide such alias search capability that are cost effective, including a free service: <http://www.instantofac.com/> as well as an inexpensive option with guaranteed updates at: <http://ofacalyzer.com/>
- Try also "Visual Compliance" ([https://www.visualcompliance.com/compliance\\_solutions/restricted\\_party\\_screening.html](https://www.visualcompliance.com/compliance_solutions/restricted_party_screening.html)), and
- Try in addition "Bridger Insight" (<https://risk.lexisnexis.com/products/bridger-insight-xg>).
- Audit Trail recordation via the chosen system is highly recommended.

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## Best Practices for Due Diligence

- Conduct a Risk Assessment on Vulnerabilities for your Company.
- Ask yourself these questions:
  - Do you do business with third parties in known transshipment cities such as Dubai, Hong Kong, Istanbul, or Singapore?
  - Is your industry known for involvement in countries neighboring embargoed countries where diversion could easily occur?
  - Do you have sensitive goods, technologies and services with both civilian/military dual-use applications?
  - What is your process for intervention if and whenever needed? Stop order? Is it effective? Do contracts excuse performance for true match discoveries?
- Vendor/Customer Set-Up Due Diligence is critical for OFAC sanctions in addition for FCPA concerns.
- Global Trade Compliance Questionnaire for vetting new export customers and supply chain is critical.
- For screening on business and transaction partners, is your chosen system capable of handling the volume without overly disrupting the business?
- Does your system screen for potential aliases?
- What is your standard for gauging a false positive versus a match when screening for aliases?
- On the 50% rule respecting the Iranian, Ukraine (33% rule for the O&G industry) related sanctions etc., what is your process for uncovering entity ownership?
- Can you independently verify ownership? If not or if inadequate info is provided, are transaction stops imposed?
- Is there a clear escalation process when issues arise?
- When is enough due diligence enough?

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## Training and Monitoring Best Practices

- Training must be up-to-date and scenario based to ensure audience understanding/engagement
- At a minimum, obtain annual certifications of training attendance and satisfactory quiz completion from all employees touching sales, order processing and fulfillment as well as in shipping
- Consider creating your own training with course-builder software to target it appropriately
- If screening is done manually, make sure training highlights that all order processing must first be subjected to the company's screening process
- If there is a considerable lag time between order processing and shipment, consider screening not just before order acceptance but re-screening just before shipment too (list updates happen daily)
- Continuously build support through highlighting examples of enforcement actions
- Understand and communicate sanctioned country program updates to those impacted
- A best practice in monitoring is to use big-data software within the ERP system to detect certain terms, such as the appearance of fully sanctioned country names (e.g., Cuba, Iran, N. Korea, Syria and Crimea), URL addresses with the same country abbreviations as well as SDN and other blacklist names
- Spot audits of known transshipment vulnerable offices along with a heavy dose of training would also be highly recommended

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