

US EMBARGOES AND SANCTIONS



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The US Office of Foreign Assets Control (OFAC), a part of the US Treasury Department, administers and enforces two principal types of trade, financial and economic sanctions and embargoes. It maintains extensive sanctions against more than 6,000 individuals, entities and ships known as “Specially Designated Nationals” (SDNs). SDNs are generally designated because of their involvement in terrorist, WMD proliferation, drug trafficking or other activities inimical to US interests. The listing of such sanctioned persons (the “SDN list”) is constantly being updated.

Without an OFAC licence, US persons cannot engage in any transactions with SDNs, and all SDN property in the possession or control of US persons must be placed in an interest-bearing “blocked account” at a US depository institution.

Blocking requirements and dealing prohibitions also apply to Cuban and Sudanese government agencies and officials, Cuban entities, and persons who have been Cuban citizens, residents or domiciled persons at any point since 8 July 1963 (except for such persons who are US residents).

OFAC also maintains trade, financial and economic embargoes and sanctions against 15 countries (in some cases, together with the US Department of Commerce), and against US exports/imports of uncertified diamonds. The country sanctions range from:

- Comprehensive trade, economic and financial embargoes of Cuba, Iran and Sudan
- Broad, but somewhat lesser embargoes of Myanmar (Burma), North Korea and Syria
- Sanctions against nine other countries that are, for the most part, limited to designating specified persons and organisations from such countries as SDNs.

OFAC’s embargoes and sanctions generally apply to US persons, which means US citizens and permanent resident aliens, wherever they may be located and for whomever they are employed, persons physically in the United States, and US organised entities, including their foreign branches. With respect to the US embargo of Cuba, US persons also include foreign entities owned or controlled by US companies or by US citizens/residents.

OFAC not only prohibits US persons themselves from engaging in transactions with targeted companies and persons, but also prohibits, without an OFAC licence, US persons from approving, guaranteeing, financing or “facilitating” transactions by foreign persons with sanctioned countries, entities or individuals, if those transactions would be prohibited by OFAC if engaged in directly by US persons. Such prohibited facilitation can include referring to a foreign person business opportunities involving OFAC-prohibited countries or persons, and financing, insuring or transporting a shipment of goods sold by a foreign person to an OFAC-sanctioned country or person.



Some specific OFAC prohibitions relating to shipping and insurance activities include: (i) shipping goods to and from Iran, Sudan and Cuba, or on behalf of a resident of those countries; (ii) insuring property located, originating in, or being transported to or from an embargoed country; (iii) shipping or insuring merchandise in which any SDN, other blocked person or embargoed country national has an interest; (iv) marine and aviation liability policies covering scheduled stops in an embargoed country; (v) having a ship make a port call in an embargoed country to deliver cargo; (vi) chartering a ship to a SDN, other blocked person or embargoed country national; (vii) shipping merchandise to a SDN or on a SDN’s ships, such as ships owned/operated by the Islamic Republic of Iran Shipping Lines (IRISL); and (viii) chartering, booking cargo on or otherwise dealing with a blocked ship.

Violations of OFAC sanctions carry potentially severe penalties, including criminal penalties of 20 years in jail, a \$1m fine, or both, per violation, and civil penalties, in most cases, of up to the greater of \$250,000 or twice the value of the transaction, per violation. Signifying the severity with which it views violations of US sanctions and embargoes, the US Congress has increased the authorised maximum civil penalty dramatically in recent years. Before 9 March 2006, the maximum civil penalty was \$11,000 per violation. On 9 March 2006, it was increased to \$50,000 per violation and, on 16 October 2007, it was raised to its current level.

While, as noted, OFAC embargoes/sanctions apply to US persons, with respect to Iran, the United States has also recently enacted legislation (the “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010”) that targets certain foreign company activities involving Iran. Foreign companies engaging in sanctionable conduct can have their US activities severely restricted or totally blocked.

Such sanctionable conduct includes making significant investments in Iran’s energy sector, providing (above certain threshold amounts) refined petroleum products to Iran, or goods, technology, services, information or support that would directly and significantly: (i) enhance Iran’s ability to import refined petroleum products; or (ii) facilitate Iran’s ability to maintain or expand its domestic production of refined petroleum products. The statute also specifically makes sanctionable shipping, financing and (re)insuring the shipment of refined petroleum products to Iran, or (re)insuring/financing shipments of goods, technology, services, information or support that would enhance Iran’s ability to import refined petroleum products.

US and foreign companies subject to US sanctions should make sure that they have effective compliance and due diligence programmes/procedures in place to ensure that they do not engage in sanctionable conduct. Experience in developing such programmes/procedures for a variety of insurance and shipping clients has shown that, in order to be effective, they must not only be comprehensive, but must be practical and must meld easily with the company’s business processes. In the event of problematic transactions occurring, such programmes can be an important mitigating factor in deciding whether the imposition of sanctions is warranted and in determining the amount of any penalty to be imposed.