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## Sanctions: Beyond Banks

How corporations can navigate compliance  
with the "new FCPA"



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“... in today’s world, sanctions are  
the new FCPA.”

**Lisa O. Monaco**  
Deputy Attorney General  
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# Introduction

In a world of heightened geopolitical risks, sanctions are an important tool to address international peace and security concerns.

Whilst historically sanctions enforcement has focused on banks and financial institutions, regulators have stated that the issue cuts across industries and geographies.<sup>2</sup> Sanctions have taken on a role like the U.S. Foreign Corrupt Practices Act of 1977 (FCPA<sup>3</sup>) and corporations operating in the global market place need to be vigilant in navigating high-risk situations to avoid regulatory violations and penalties.

It is a risk close to home as evidenced by recent enforcement actions involving companies operating in Southeast Asia.

## History of sanctions

Sanctions have a long and intricate history as crucial tools of foreign policy, dating back to ancient Greece in 432 BC when the Athenian Empire imposed economic and trade sanctions against Mengara (known as the Mengarian Decree). They were utilised to exert economic pressure and influence political outcomes.<sup>4</sup> From the Napoleonic Wars, where Britain imposed a blockade on France<sup>5</sup>, to the comprehensive trade restrictions placed on Iraq in the 1990s<sup>6</sup>, sanctions have evolved to address various geopolitical challenges. Sanctions can play a crucial role in maintaining global security and promoting international norms.

## Importance in today's world

The United Nations Security Council (UNSC) maintains a UNSC Consolidated List which consists of individuals, entities, and other groups that are subject to sanctions. This is binding to all United Nations members and each member state is required to implement and enforce them.

In the United States, sanctions are regulated by the US Department of the Treasury, Office of Foreign Assets Control (OFAC). OFAC is responsible for promulgating the sanctions regulations, designating individuals and entities to the Specially Designated Nationals and Blocked Persons (SDN) List, and enforcing these measures.



## Sanctions 101

To date, sanctions are created by a variety of international, regional, and state bodies. Corporations need to be alert to the different ways in which sanctions can affect their operations, even if they are not directly dealing with a sanctioned party or a sanctioned country.



**Financial sanctions** target monetary assets and financial transactions.

Example: In 1999, United Nations sanctioned Osama bin Laden through Al-Qaeda and Taliban Sanctions Committee, which imposed financial sanctions, travel bans, and arms embargoes.



**Trade sanctions** restrict or ban the import and export of goods and services.

Example: In 2016, U.S. expanded its sanctions against North Korea, which prohibit the export of goods to, and any investment in, North Korea.



**Services sanctions** limit or prohibit the provision of specific services to or from a targeted entity or country.

Example: In 2022, UK prohibited any UK persons anywhere and other persons in the UK from providing accounting, business and management consultancy, and public relations services to a person connected with Russia.



While the U.S. remains a key player in sanctions enforcement, other countries such as the UK and European Union (EU) member states have shown a commitment to more robust enforcement efforts. Sanctions regulations, enforced by various government bodies around the world such as OFAC, UK's Office of Financial Sanctions Implementation (OFSI) and the Organisation for Security and Cooperation in Europe (OSCE), aim to control and restrict certain types of trade and financial transactions with designated entities, individuals, and countries.

### **Impact on enforcement and compliance**

Just as the FCPA transformed compliance for corporations by targeting bribery and corruption in international business, sanctions now play a critical role in shaping the operational landscape for those conducting business around the globe. The FCPA's impact has been profound, setting a precedent for anti-corruption laws worldwide and ratcheting up the compliance agenda for corporations.

Similarly, the evolving nature of sanctions regimes requires businesses to adopt rigorous compliance strategies whilst demanding that businesses stay informed and adaptable to the rapidly changing compliance landscape. The penalties for sanctions non-compliance include hefty fines, criminal prosecution, and significant reputational damage but also go beyond the FCPA - regulatory agencies have the administrative authority to exclude a corporation from the U.S. financial system, deny access to essential technology, and freeze assets.





# Sanctions and corporations

Traditionally, banks and financial institutions have been the subject of sanctions enforcement by regulators. However, the enforcement spotlight is also on corporations who need to avoid falling afoul of applicable legislation by being aware of the overall process such as source materials, transport goods, sell products and services, determine end users, and engage with business partners.

As illustrated by the case examples below, OFAC's enforcement actions have recently impacted companies operating in Southeast Asia, including one of the largest fines levied against a non-financial institution for sanctions violations.

Year: 2023

Monetary penalty: US\$629 million

Party: Multinational consumer goods company and its Singapore subsidiary

Overview of violation: Selling product to a sanctioned country through a joint venture and front companies and causing U.S. banks to process transactions that would have been frozen, blocked, investigated or declined had the banks known the connection.

Year: 2024

Monetary penalty: US\$20 million

Party: Thai manufacturing company

Overview of main violation: Requesting payment in U.S. dollars for goods sold that originated from a sanctioned country and deceiving U.S. banks by using shipping and documentation practices that obfuscated the fact where the goods originated.

A key takeaway from these case examples is that commercial activity that potentially falls outside the jurisdiction of OFAC may result in an enforcement action for a company operating in Southeast Asia when the financial transactions related to the activity are processed through or involve U.S. banks.

"The risk of sanctions violations cuts across industries and geographic regions."<sup>7</sup>

**Lisa O. Monaco**  
Deputy Attorney General  
U.S. Department of Justice

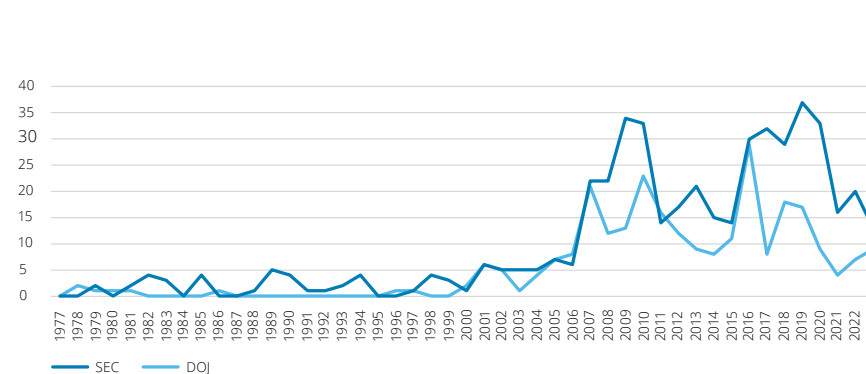


With the comments made by regulators, the history of FCPA enforcement tells us we may see rapid sanctions enforcement. As depicted below, enforcement of the FCPA remained sporadic until the mid-2000's. The dramatic increase in enforcement actions and penalties may have been attributable to:

- An increasing international anticorruption consensus, particularly with the Organisation for Economic Co-operation and Development's Anti-Bribery Convention raising awareness of the problem of foreign corruption committed by corporations;
- A wave of high-profile corporate scandals in the U.S in the early 2000's; and
- Emphasis by U.S. regulators on corporate cooperation when wrongdoing was uncovered.

### Growth of FCPA enforcement: Part 1

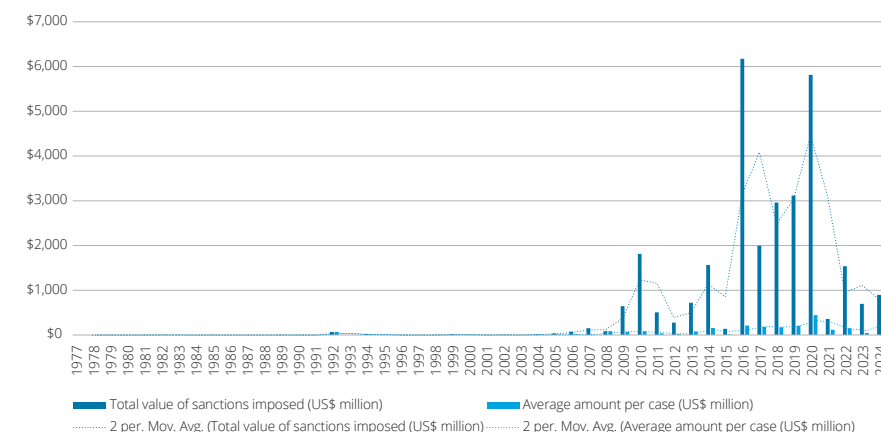
DOJ and SEC FCPA enforcement actions



**Figure 1** depicts the number of enforcement actions that the DOJ and SEC initiated per year. The years 2010 and 2011 showed a continued surge in enforcement actions.

### Growth of FCPA enforcement: Part 2

Total average FCPA sanctions imposed on entity groups



**Figure 2** depicts the total monetary sanctions imposed per year.

### The need to comply

The comments of U.S. regulators around sanctions enforcement following the path of the FCPA appear to be playing out with OFAC making history last year. A total of \$1.5 billion in civil monetary penalties was imposed, with 34% allocated to non-financial institutions and 66% to financial institutions.<sup>9</sup>

“The growth of sanctions enforcement follows the path that the FCPA traveled before it.”<sup>8</sup>

**Lisa O. Monaco**  
Deputy Attorney General  
U.S. Department of Justice

# Compliance: Mitigating the risk

Individuals and organisations may inadvertently engage in activities that violate sanctions due to a lack of awareness and understanding of updates to restrictions and potential legal consequences.

## What are the challenges?

- 
**Complexity of regulations:** Sanctions regulations are often complex and can vary significantly between jurisdictions. Corporations must navigate multiple sets of regulations, each with its requirements and restrictions, making compliance challenging, especially for multinational corporations operating in multiple countries.
- 
**Changing regulatory landscape:** Sanctions regimes are dynamic and can change frequently in response to geopolitical developments. Corporations must stay informed about updates to sanctions lists, changes in regulations, and new compliance requirements to ensure they remain compliant.
- 
**Identifying sanctioned entities:** It can be difficult for companies to accurately identify sanctioned individuals and entities, particularly when dealing with complex ownership structures or when conducting business in regions with limited transparency. Failure to properly identify sanctioned parties can result in severe penalties.
- 
**Transaction monitoring:** Monitoring transactions to ensure compliance with sanctions regulations requires sophisticated systems capable of analysing large volumes of data in real time.
- 
**Supply chain complexity:** Corporations often have complex supply chains involving numerous vendors, distributors, and partners across the globe. Ensuring that all entities within the supply chain comply with sanctions regulations can be challenging, particularly when dealing with subcontractors or third-party intermediaries.
- 
**Cross-border transactions:** Corporations engaged in cross-border transactions face additional challenges due to differences in sanctions regimes between countries. Ensuring compliance with multiple sets of regulations while conducting international business requires careful coordination and monitoring.
- 
**Resource constraints:** Compliance with sanctions regulations requires significant resources, including personnel, technology, and expertise. Many corporations, particularly smaller ones, may lack the resources necessary to implement robust compliance programmes effectively.
- 
**Risk of violations by third parties:** Corporations may inadvertently violate sanctions regulations due to the actions of third parties, such as customers, suppliers, or business partners.

“Where in years past a compliance team might have mitigated national security risks through sanctions-screening software and attention to a few sanctioned countries, today a new level of diligence and attention is required. In this way, to quote Deputy Attorney General Monaco, **sanctions truly are the new FCPA.**” <sup>10</sup>

**Marshall Miller**  
Principal Associate  
Deputy Attorney General  
U.S. Department of Justice



# Regulator guidance on building a compliance framework

OFAC published '**A Framework for OFAC Compliance Commitments**'<sup>11</sup> which aims to provide organisations subject to U.S. jurisdiction, and foreign entities that have links with the United States, with OFAC'S perspective on the essential components of a sanctions compliance programme. This provides a useful compliance benchmark for corporations across the globe.

OFAC specifically expects to see the following five essential components of compliance in an organisation's sanctions compliance programme:

## 1. Management commitment

The OFAC framework emphasises management commitment and having a "culture of compliance" at the top and throughout the organisation.

Senior leadership must demonstrate a commitment to sanctions compliance by fostering a culture of compliance throughout the organisation. This includes providing adequate resources, setting the tone at the top, and ensuring that compliance is an integral part of the organisation's business strategy and decision-making processes.

## 2. Risk assessment

Organisations must conduct thorough risk assessments to identify and evaluate their exposure to potential sanctions risks. This involves understanding the specific areas of the business that may be at risk, such as certain markets, customers, or transactions. By assessing risk, corporations can tailor their compliance programmes to address the most significant vulnerabilities.

## 3. Internal control

Effective internal controls are crucial for mitigating the risks identified in the assessment. This includes implementing policies and procedures that provide clear guidance on sanctions compliance and establish processes for conducting due diligence, screening transactions and customers, and reporting suspicious activities.

### What to consider?

Technology is crucial for enhancing sanctions compliance. Effective tools include transactional sanctions screening software enhanced by machine learning and automated screening integrated into procurement systems. Sanctions lists are versatile, they are constantly updated as data changes with SDN and the like – which is why automation is essential.

## 4. Testing and auditing

Organisations should conduct regular testing and auditing of their compliance programmes to assess their effectiveness and identify any areas for improvement. This may involve internal or external audits, as well as periodic self-assessments. Testing and auditing provide valuable feedback for refining compliance controls and enhancing programme effectiveness. They are essential to identify any weaknesses and shortcomings.

## 5. Training

Continuous training and awareness programmes are essential for ensuring that employees at all levels understand their roles and responsibilities in complying with sanctions regulations. Organisations should provide regular training sessions and updates to keep employees informed of changes in regulations and reinforce the importance of compliance.





## What's next?

Sanctions have become a critical aspect of international business compliance for corporations, mirroring the transformative impact of the FCPA. With U.S. regulators stating sanctions enforcement will follow the path of the FCPA and it not just being a concern for banks and financial institutions, corporations must remain vigilant and proactive in their approach to managing sanctions risk, integrating comprehensive compliance strategies, and fostering a culture of ethical conduct to navigate the complexities of this ever-evolving regulatory landscape.

### Has your corporation considered the following?

1. Do we have the necessary in-house expertise to meet our sanctions compliance obligations?
2. Do we have internal sanctions policy that is implemented across the organisation?
3. What is our sanctions exposure?
  - Known countries (e.g., Russia and Iran);
  - Countries near those with significant sanctions or known to be friendly to them.
4. Are we screening not only customers and their beneficial owners, but everyone we do business with (e.g., vendors, distributors, independent contractors, consultants, etc.)?
5. What is the volume of transaction activity that needs to be screened for sanctions – can we realistically do manually or need to implement a solution?
6. Have we provided tailored training to staff on sanctions and the red flags to look out for?
7. Do we have necessary experience in-house (e.g., internal audit) to evaluate the effectiveness of our sanctions compliance efforts?
8. How long do we keep our records (OFAC has issued guidance to adhere with U.S. legislation update of the statute of limitations from five years to 10 years for civil and criminal violations of IEEPA or TWEA)<sup>12</sup>?



# About Deloitte Forensic & Financial Crime

Deloitte Forensic & Financial Crime is experienced in advising clients and working with their legal counsel on sanctions related matters. Our global network allows us to combine an understanding of local business culture and global regulatory issues to find a path to a successful resolution and leave our clients better prepared to protect their assets and reputation.

Global events have changed the way sanctions regimes are being implemented around the world. We understand sanctions risk and are experienced in advising clients on sanctions related matters including policy, procedures, risk assessments and best practices across a range of corporations.

## Key contacts

With an experienced multidisciplinary team of over 150 forensic professionals located throughout Southeast Asia, we support our clients in solving tough problems and achieving deeper and more comprehensive insights. Our team has extensive experience in performing prominent and challenging engagements across industries and geographies.

If you need help with any aspect of your sanctions compliance framework, or assistance with responding to a regulatory investigation, please contact:

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# Endnotes

- 1 <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>)
- 2 <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monacodeliverskeynote-remarks-2022-gir-live-women>
- 3 Foreign Corrupt Practices Act (FCPA), enacted in 1977, prohibits US companies, their subsidiaries, officers, directors, or employees from bribing foreign officials, either directly or indirectly through intermediaries, with the intention to obtain or retain business.
- 4 <https://www.livius.org/articles/concept/megarian-decree/>
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