大成 DENTONS

Sanctions Year-in-Review

January 2020

Contents

Canada Sanctions

Key Contacts

Paul M. Lalonde
Partner
Toronto
D +1 416 361 2372
paul.lalonde@dentons.com

Sean Stephenson
Senior Associate
Toronto
D +1 416 863 4519
sean.stephenson@dentons.com

Canada Sanctions Year-in-Review

A. 2019 IN BRIEF

2019 saw amendments to Canada's country-based sanctions, UN and Magnitsky sanctions, and Canadian nationals bracing for potential claims under the US Helms-Burton Act. Throughout the year, Canadian businesses have been particularly concerned about US secondary sanctions and their extra-territorial implications. Meanwhile, the existing country- and list-based programs run by Canada continue to cover 20 countries.

Canada's actions over the course of the year underscore Canada's increasing reliance on sanctions as a foreign policy tool that may be rapidly employed in response to a shifting global geo-political landscape and international events. While 2019 has demonstrated that Canada will not shy away from imposing unilateral sanctions, Canada has continued to coordinate sanctions closely with its allies to maximize their impact.

Here are some highlights, which we explore further in this report:

- Canada amended its country-based sanctions in relation to Nicaragua, Ukraine, Russia and Venezuela.
- In accordance with sanctions adopted by the UN, Canada amended its sanctions program vis-à-vis Yemen.
- As the US recently lifted the long-standing suspension of Title III of the Helms-Burton Act (thus allowing US nationals to file lawsuits against any individual or entity that "traffics" in property confiscated by the Cuban government), Canadian companies have prepared for potential lawsuits relating to their business activities and investments in Cuba. This has included preparations to bring corresponding suits in Canada under Canada's blocking statute, the Foreign Extraterritorial Measures Act.

B. 2020 OUTLOOK

2020 looks poised to be an active year for sanctions in Canada.

Canada will continue to monitor developments and actions relating to the Russian incursion into Crimea, as well as the actions of Iran and its non-compliance with the Joint Comprehensive Plan of Action (JCPOA).

We note that Germany, the UK and France recently issued a Joint Declaration[1] referring Iran's non-compliance with the JCPOA to the Dispute Resolution Mechanism set out in paragraph 36 of the JCPOA. If this process leads to the reinstatement of sanctions by EU countries, or other forms of retaliation against Iran, Canada is likely to coordinate and align with its European allies on such measures.

Canada is closely monitoring the situation in northern Syria and any further incursions or actions taken by the Turkish government in that area. To date Canada has stopped short of sanctioning Turkey for their recent military action in Syria. However, on October 15, 2019, Global Affairs Canada confirmed that it has suspended all new exports permits destined for Turkey. Many believe that official sanctions will be imposed should any further action be taken by Turkey, which would be consistent with several of Canada's close allies who have already imposed certain sanctions on Turkish individuals and entities.

In addition, Canada has shown increasing concern over the actions taken by the government of Myanmar and its treatment of the Rohingya people. Proceedings have been brought to the International Court of Justice by Gambia against Myanmar alleging that Myanmar has engaged in genocide. Canada, along with the Netherlands, has pledged its support for Gambia's case, which may result in sanctions against members of the Myanmar regime.

2020 will likely see the conclusion of the Royal Canadian Mounted Police's (RCMP) investigation into a Canadian lobbying firm who contracted with the Sudanese military to lobby US officials for increased military aid. In addition, a decision will be rendered in the enforcement case of Nader Kalai, who has been charged with violating Canada's Syrian sanctions by making a payment to a sanctioned Syrian company.

On the basis of a recent electoral promise made by Canada's Liberal Party, it is expected that Canada will begin to develop an expansion of its existing Magnitsky legislation to include a framework for victim protection. This will include developing measures to transfer seized assets from those who commit grave human rights abuses to victims.

1 The Joint Declaration is available at: https://www.auswaertiges-amt.de/en/newsroom/news/-/2292574.

Country programs

Cuba

As of May 2, 2019, US nationals have been able to file lawsuits, under Title III of the Helms-Burton Act, seeking compensation from individuals or entities that have "trafficked" in property confiscated by the Cuban government on or after January 1, 1959.[2]

The statute's broad definition of "traffic" in confiscated property potentially encompasses a wide range of conduct, which leaves the door open to substantial damage awards and other legal risks for many foreign companies, even if they do not directly do business in or with Cuba.[3]

To date, suits have been filed relating to cruise ships, hotels, airlines and related booking agencies, among others. Initial cases have yet to be resolved, and have yet to target any Canadian businesses. Notwithstanding this, Canadian companies doing business in Cuba that may be subject to such suits have been mindful of the protections afforded to them under Canada's blocking statute, the Foreign Extraterritorial Measures Act (FEMA). The FEMA, adopted in 1985, contains four principal countermeasures to protect Canadians against the extraterritorial application of the Helms-Burton Act. Some of the protections for Canadians named as defendants under Title III in the US are as follows:[4]

- Before a Title III judgment has been rendered, with the consent of the attorney general of Canada, Canadians may commence actions in Canada to recover their costs associated with defending Title III actions from US plaintiffs, in Canadian courts.
- If US courts have exercised jurisdiction or powers under Title III, or are likely to do so, Canadians may petition the attorney general of Canada to order the prohibition or restriction of the identification, disclosure and production of records in Canada or controlled by Canadian citizens and residents, and the giving of evidence.
- After a judgement is made under Title III in the US, or if such an award is satisfied outside Canada, Canadians may petition the attorney general of Canada for an order to commence an action in Canada for the full recovery of any and all amounts awarded against them in the Title III proceedings (i.e., a "clawback").
- Judgements made pursuant to Title III of the Act will not be recognized or enforced in Canadian courts.

If US plaintiffs do not have assets in Canada, such decisions may be enforced through the normal course of recognition and enforcement proceedings in other jurisdictions (though enforcement in the US is unlikely).[5]

The Foreign Extraterritorial Measures (United States) Order 1992, relating to Cuba requires notification to the attorney general of Canada of directives, instructions, intimations of policy or communications relating to US extraterritorial measures with respect to trade and commerce between Canada and Cuba, and prohibits compliance with those directives, instructions, intimations of policy or communications.

2 Dentons, "US courts open to lawsuits for "trafficking" in confiscated Cuba property" (April 25, 2019), online: https://www.dentons.com/en/insights/alerts/2019/april/25/us-courts-open-to-lawsuits-for-trafficking-in-confiscated-cuba-property.

3 *Ibid.*

4 *Ibid.*

5 *Ibid.*

Nicaragua

Canada has closely monitored the situation in Nicaragua where the longstanding Ortega regime has faced significant unrest over the course of 2018 and 2019. Since April 2018, the Nicaraguan government began a systematic campaign to suppress anti-government protests.[6]

In order to address what the Canadian government viewed as gross and systematic human rights violations taken in response to the internal unrest in Nicaragua, Canada imposed sanctions against key members of the government of Nicaragua under the Special Economic Measures Act (SEMA).

On June 21, 2019, the Regulations Amending the Special Economic Measures (Nicaragua) (Regulations) came into force to impose a dealings prohibition and an effective asset freeze on listed persons.[7] Currently, there are nine individuals on the list, which renders them inadmissible to Canada.

Further, the Regulations prohibit any person in Canada and any Canadian outside Canada from:

- dealing in property, wherever situated, that is owned, held or controlled by listed persons or a person acting on behalf of a listed person;
- entering into or facilitating any transaction related to a dealing prohibited by these Regulations;
- providing any financial or related services in respect of a dealing prohibited by these Regulations;
- making available any goods, wherever situated, to a listed person or a person acting on behalf of a listed person;
- providing any financial or other related services to or for the benefit of the listed person.[8]

6 Dentons, "Canadian sanctions amended in relation to Nicaragua, Ukraine, Venezuela and Yemen" (June 28, 2019), online: https://www.dentons.com/en/insights/alerts/2019/june/28/canadian-sanctions-amended-in-relation-to-nicaragua-ukraine-venezuela-and-yemen [Sanctions].

7 *Ibid.*

8 Government of Canada, "Canadian Sanctions Related to Nicaragua" (July 24, 2019), online: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/nicaragua.aspx?lang=eng.

The above-noted asset freezes and prohibition on dealings do not apply to certain activities and transactions, which include:

- payments made by or on behalf of a listed person pursuant to contracts entered into prior to the coming into force of the Regulations, provided that the payments are not made to a listed person or to a person acting on behalf of a listed person;
- dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with any person other than a listed person, and for enforcement and realization of security in respect of those loans, or repayments by guarantors guaranteeing those loans;
- pension payments to any person in Canada or any Canadian outside Canada;
- transactions in respect of accounts at financial institutions held by diplomatic missions, provided that the transaction is required in order for the mission to fulfill its diplomatic functions, or transactions required in order to maintain the mission premises if the diplomatic mission has been temporarily or permanently recalled;
- transactions by the government of Canada that are provided for in any agreement or arrangement between Canada and Nicaragua.[9]

Ukraine

In 2019, Canada imposed additional sanctions against certain individuals and entities from Ukraine, for their involvement in Russia's annexation and occupation of the Crimean Region.[10]

Canada's initial sanctions related to Ukraine were enacted under SEMA, and came into force on March 17, 2014 (Regulations). On March 15, 2019, targeted Canadian sanctions against individuals and entities in Ukraine believed to be linked with Russia's actions in Ukraine were amended to coordinate with the United States and the European Union. At that time, Canada imposed sanctions on 89 additional individuals and one additional entity. This brings the total sanctioned individuals to 196 and sanctioned entities to 39. The most recent amendments were enacted on June 25, 2019, to correct an error in the name of one of the individuals listed in the March 15, 2019, amendment by deleting and replacing it with the correct name. No additional names were added with this recent amendment.

The Regulations impose an asset freeze and dealings prohibition on designated persons, which include both individuals and entities involved in Russia's illegal annexation of Crimea and the ongoing Russian occupation in parts of eastern Ukraine. They prohibit persons in Canada and Canadians abroad from:

- dealing in any property, wherever situated, held by or on behalf of a designated person;
- entering into or facilitating, directly or indirectly, any transaction related to such a dealing;
- providing any financial or related service in respect of such a dealing;
- making goods, wherever situated, available to a designated person;
- providing any financial or related service to or for the benefit of a designated person.

Additionally, it is prohibited for any person in Canada or any Canadian outside Canada to:

- make an investment in the Crimea region of Ukraine if that investment involves a dealing in any property, located in the Crimea region of Ukraine, held by or on behalf of the Crimea region of Ukraine or a person in the Crimea region of Ukraine;
- import, purchase, acquire, ship, or otherwise deal in goods, wherever situated, that are exported from the Crimea region of Ukraine after the day on which this section comes into force;
- export, sell, supply, ship or otherwise deal in goods, wherever situated, destined for the Crimea region of Ukraine or any person in the Crimea region of Ukraine.

9 *Ibid*.

10 Government of Canada, "Canadian Sanctions Related to Ukraine" (October 16, 2019), online https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/ukraine.aspx?lang=eng.

Equally, these sanctions will not apply to certain activities and transactions, which include:

- payments made by or on behalf of a listed person pursuant to contracts entered into prior to the coming into force of the Regulations, provided that the payments are not made to a listed person or to a person acting on behalf of a listed person;
- dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with any person other than a listed person, and for enforcement and realization of security in respect of those loans, or repayments by guarantors guaranteeing those loans;
- pension payments to any person in Canada or any Canadian outside Canada;
- transactions in respect of accounts at financial institutions held by diplomatic missions, provided that the transaction is required in order for the mission to fulfill its diplomatic functions, or transactions required in order to maintain the mission premises if the diplomatic mission has been temporarily or permanently recalled;
- transactions by the government of Canada that are provided for in any agreement or arrangement between Canada and Nicaragua.[11]

On March 4, 2019, a separate order was issued to extend the application of the Freezing Assets of Corrupt Foreign Officials Act Regulations for a period of five years beginning on March 6, 2019.[12] This order was based on the recommendation of the Minister of Foreign Affairs, allowing the GIC to issue to any person in Canada or any Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction, that is restricted or prohibited under the Regulations.

A separate order was issued to extend the application of the Freezing Assets of Corrupt Foreign Officials Act Regulations for a period of five years

11 *Ibid.*

12 SOR/2019-69, online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-69/page-1.html.

Russia

In line with Canada's sanctions against Ukraine, Canada has also sanctioned a significant number of Russian individuals and entities for related acts under the Special Economic Measures (Russia) Regulations. Canada continues to intensify these sanctions in order to restore Ukraine's sovereignty and territorial integrity.

On November 25, 2018, the situation in Crimea escalated with Russia ramming, firing shots at, seizing several Ukrainian vessels and detaining their crew members.[13] In response to these events, on March 15, 2019, Canada amended the Special Economic Measures (Russia) Regulations to list 25 additional individuals and 14 entities to signal Canada's continued condemnation of Russia's actions in Ukraine.[14]

The Regulations impose an asset freeze and dealings prohibition on designated persons, which include both individuals and entities. The Regulations also impose restrictions on certain sectors, such as the financial and energy sectors.[15] With some exceptions, the Regulations prohibit any person in Canada and Canadians abroad from dealing in new debt of longer than 30 days maturity in relation to persons listed in Schedule 2 of the Regulations; or 90 days maturity in relation to persons listed in Schedule 3 of the Regulations. Additionally, the Regulations prohibit any person in Canada or Canadians abroad from dealing in new securities in relation to persons listed in Schedule 2 of the Regulations. Persons under both Schedule 2 and Schedule 3 are entities.[16]

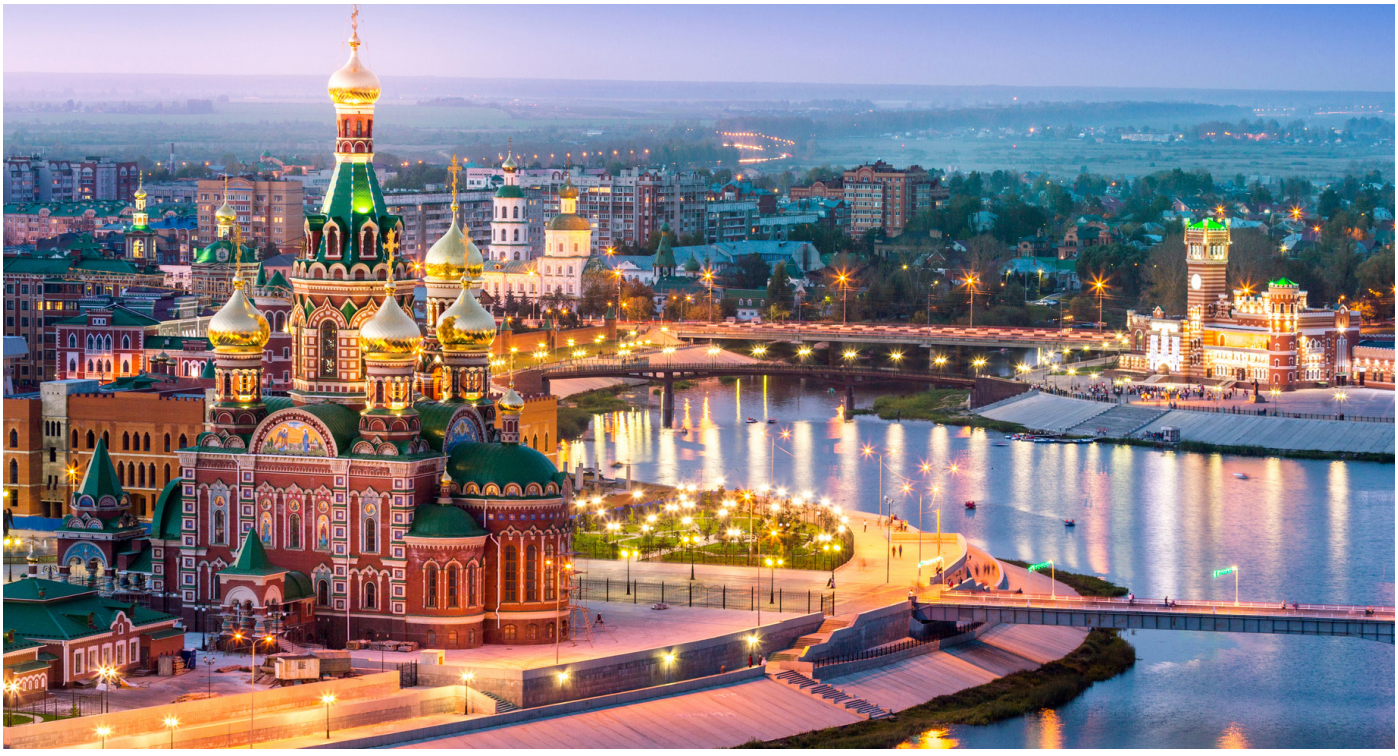
The Regulations also prohibit the export, sale, supply or shipping of goods listed in Schedule 4 of the Regulations, to Russia or to any person in Russia for their use in offshore oil (depth greater than 500m), shale or Arctic oil exploration and production. This includes a ban on the provision of any financial, technical or other services related to the goods subject to this prohibition.

13 *Ibid.*

14 *Ibid.*

15 Government of Canada, "Canadian Sanctions Related to Ukraine" (April 12, 2019), online: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/russia-russie.aspx?lang=eng.

16 *Ibid.*



Venezuela

Canada's sanctions against Venezuela fall under the Special Economic Measures Act and the Justice for Victims of Corrupt Foreign Officials Act.

Since 2017, Canada, along with its allies, including the United States, has called for economic measures against Venezuela and persons responsible for the current situation in Venezuela; namely, the erosion of Venezuela's democratic institutions and its grave human rights abuses. In this light, Canada has enacted the Special Economic Measures (Venezuela) Regulation[17] and on September 22, 2017, listed 40 individuals linked to the Maduro regime.[18]

In addition, on November 23, 2017, Canada announced targeted sanctions against 19 Venezuelan officials under the Justice for Victims of Corrupt Foreign Officials Act. These individuals are considered by Canada to be responsible for, or complicit in, gross violations of internationally recognized human rights, have committed acts of significant corruption, or both.[19]

In response to Maduro's continuous destabilizing role in the erosion of democratic institutions in Venezuela and an illegitimate 2018 presidential election, the Special Economic Measures (Venezuela) Regulation were amended in May 2018 to add 14 additional individuals, bringing to 70 the total number of Venezuelan officials sanctioned by Canada.[20]

Shortly after Maduro swore himself into the presidency in January 2019, Canada and several other states, including the United States, rejected recognizing Maduro as president, and recognized the president of the National Assembly as the interim president. Consequently, with Maduro having continued to hold on to power, Canada amended the Regulations on April 15, 2019, to add 43 new individuals, most of whom are high-level officials of the Maduro regime.[21] This amendment brought the total number of Venezuelan individuals subject to Canadian sanctions to 113. The last amendment of the Regulations was on June 25, 2019, to remove Manuel Ricardo Cristopher Figuera, who previously led the Bolivarian National Intelligence Service and who has since broken with the Maduro regime.[22]

17 Government of Canada, "Canadian Sanctions Related to Venezuela" (July 24, 2019), online: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/venezuela.aspx?lang=eng.

18 *Ibid.*

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

Canada announced targeted sanctions against **19 Venezuelan officials** under the Justice for Victims of Corrupt Foreign Officials Act. These individuals are responsible for, or complicit in, **gross violations of internationally recognized human rights**, have committed acts of significant corruption, or both.

List-based sanctions programs

1. Justice for Victims of Corrupt Foreign Officials Act (Magnitsky Act)

In addition to SEMA, Canadian sanctions are also imposed under the Magnitsky Act. The Magnitsky Act was passed and received Royal Assent on October 28, 2017. The Magnitsky Act creates a legal framework to allow the Governor in Council (GIC) to make orders and regulations to restrict dealings in property and freeze the assets of foreign nationals, if the GIC is of the opinion that the circumstances below have occurred:[23]

- a foreign national is responsible for or complicit in gross violations of internationally recognized human rights against individuals in any foreign state who seek to obtain, exercise, defend or promote internationally recognized human rights and freedoms or who seek to expose illegal activities carried out by a foreign public official;
- a foreign national acts as an agent of or on behalf of a foreign state in a matter relating to an activity described above;
- a foreign public official, or an associate, is responsible for or complicit in ordering, controlling, or otherwise directing acts of significant corruption;
- a foreign national has materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of, an act of significant corruption by a foreign public official or their associate.

On November 3, 2017, Canada imposed sanctions pursuant to the Magnitsky Act by enacting the Justice for Victims of Corrupt Foreign Officials Regulations (Regulations). The Regulations prohibit persons in Canada and outside Canada from:

- dealing, directly or indirectly, in any property, wherever situated, of the listed foreign national;
- entering into or facilitating, directly or indirectly, any financial transaction related to a dealing described above;
- providing or acquiring financial or other related services to, for the benefit of, or on the direction or order of the listed foreign national;
- making available any property, wherever situated, to the listed foreign national or to a person acting on behalf of the listed foreign national.

The Magnitsky Act also amended the Immigration and Refugee Protection Act, which renders inadmissible to Canada persons, other than permanent residents, who are subject to orders and regulations under the Magnitsky Act and its Regulations.[24]

The latest action under the Magnitsky Act was on November 29, 2018, when Canada included 17 foreign nationals from Saudi Arabia, who, in the opinion of the GIC, are responsible for or complicit in gross violations of internationally recognized human rights, in particular the extrajudicial killing of Saudi journalist Jamal Khashoggi.[25] 2019 did not see any additions to the Magnitsky Act sanctions.

---

23 Government of Canada, "Justice for Victims of Corrupt Foreign Officials Act" (October 16, 2019), online: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/victims_corrupt-victimes_corrompus.aspx?lang=eng&_ga=2.215011348.2093784686.1575330033-54809398.1575330033.

24 *Ibid.*

25 *Ibid.*

2. United Nations Act—Yemen

Consistent with Canada's UN obligations, Canada imposed sanctions in line with those adopted by the UN Security Council. Canada had previously adopted UN-related sanctions corresponding to United Nations Security Council Resolution 2140 (2014), in response to the ongoing political crisis and conflict in Yemen.[26] These Regulations imposed a travel ban and asset freeze on individuals and entities designated by the 2140 Committee for engaging in or providing support for acts that threaten the peace, security or stability of Yemen, including human rights violations.[27]

The amended Regulations entered into force on June 25, 2019, to incorporate the recent UN Resolution 2216, which prohibits any person in Canada and any Canadian outside of Canada from knowingly dealing in property in Canada that is owned or controlled by a person designated by the 2140 Committee.[28]

26 Government of Canada, "Canadian Sanctions Related to Yemen" (July 24, 2019), online: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/yemen.aspx?lang=eng.

27 *Ibid.*

28 *Sanctions, supra* note 5.

Ongoing investigations and enforcement

Canada is currently investigating at least one potential violation of its sanctions regime and prosecuting another alleged violation.

1. Dickens & Madson (Canada) Inc.

The federal government has asked the RCMP to investigate a Montreal-based lobbyist firm in relation to potential violations of Canadian sanctions. The firm, Dickens & Madson (Canada) Inc. signed a US$6 million contract with Sudan to seek funding and military equipment from the US for Sudan's new military regime.[29] Dickens & Madson had stated it could obtain favorable media coverage of Sudan's military regime, seek funds and equipment for its armed forces and security agencies, search for possible oil investors, as well as arrange a meeting with US President Donald Trump.[30]

2. The ongoing case of Mohamad Kalai

Mohamad Kalai will likely be the first individual to face a trial after violating Canada's sanctions regime.[31] Since SEMA's introduction in 1992, only one entity has been prosecuted under SEMA, which was a company.[32]

In 2011, Canada imposed sanctions on Syria after Syrian President Bashar al-Assad's violent crackdown on peaceful protests calling for democratic reform. In 2018, the Canada Border Services Agency (CBSA)

29 Geoffrey York, "Ottawa recommends RCMP investigate Canadian lobby firm representing Sudan military" (July 3, 2019), online: https://www.theglobeandmail.com/world/article-ottawa-recommends-rcmp-investigate-canadian-lobby-firm-representing/.

30 *Ibid.*

31 Alexander Quon, "Halifax man first to face trial for violating Canada's international economic sanctions" *Global News* (November 12, 2019), online: https://globalnews.ca/news/6086031/halifax-man-syria-economic-measures-act/ *[Quon]*.

32 The company is Lee Specialties Ltd. of Red Deer, Alberta. See, e.g. https://www.theglobeandmail.com/report-on-business/international-business/african-and-mideast-business/rcmp-charges-alberta-company-over-illegal-shipment-to-iran/article17959104/.

laid the charge against Kalai alleging that Kalai had violated the Special Economic Measures Act (Syria) Regulations by making a payment of 15 million Syrian pounds, the equivalent of approximately US$106,000, to a company called Syrialink on November 27, 2013. Kalai's trial is set to be heard by a judge over three days beginning May 25, 2020.[33] If convicted, Kalai could face up to five years in prison.[34]

Kalai owns and operates ongoing businesses in Syria, including government-owned construction projects. A Syrian analyst stated that Kalai is a very powerful person in Syria and well connected to the inner circle of Bashar's regime. According to court documents, a statement sworn by a CBSA investigator outlined a two-year-long investigation into Kalai that began after an intelligence officer received anecdotal information that Kalai was in business with individuals associated with the Syrian regime. CBSA believes that Kalai has been working for numerous businesses abroad, which he has not declared to the Canadian government, and that Kalai had made false statements to Immigration, Refugee and Citizenship Canada about this work history and was improperly granted a Canadian Permanent Resident Card.[35]

Separately, Kalai's income is the focus of a separate Canada Revenue Agency investigation, based on search warrants for Kalai's financial records. It is believed that Kalai did not report income of US$851,269 between 2013 and 2016.[36] Additionally, in January 2019, Kalai was placed under sanctions by the European Union when the European Union accused Kalai of violating its economic sanctions on Syria. As a result, Kalai has been added to a list of individuals and companies that have had their assets frozen and become subject of a travel ban.[37]

33 *Ibid.*

34 *Ibid.*

35 Laura Lynch and Sylvene Gilchrist, "Halifax man charged with violating Syria sanctions continues to conduct business in war-torn country" *CBC News* (August 2, 2018), online: https://www.cbc.ca/news/canada/nader-kalai-syria-sanctions-halifax-1.4770099.

36 *Ibid.*

37 *Quon, supra* note 30.

A Syrian analyst stated that **Kalai is a very powerful person in Syria** and well connected to the inner circle of Bashar's regime. According to court documents, a statement sworn by a CBSA investigator outlined a **two-year-long investigation into Kalai** that began after an intelligence officer received anecdotal information that **Kalai was in business with individuals associated with the Syrian regime.**

EU and UK Sanctions

Key Contacts

Daren Allen
Partner
London
D+44 20 7246 7651
daren.allen@dentons.com

Samuel Berneman
Associate
Brussels
D +32 2 552 29 38
samuel.berneman@dentons.com

Isabel Fressynet
Associate
Brussels
D +32 25 52 2978
isabel.fressynet@dentons.com

Maria Krestiyanova
Senior Associate
Brussels
D +32 2 552 29 06
maria.krestiyanova@dentons.com

Roger Matthews
Partner
London
D +44 20 7246 7469
roger.matthews@dentons.com

Nadiya Nychay
Partner
Brussels
D +32 2 552 29 00
nadiya.nychay@dentons.com

Anastasia Stankova
Associate
London
D+44 20 7246 7456
anastasia.stankova@dentons.com

Nicoleta Tuominen
Counsel
Brussels
D +32 2 552 29 16
nicoleta.tuominen@dentons.com

EU-level sanctions developments

A. New Commission (and re-allocation of responsibility for sanctions)

The end of 2019 marked the arrival of a new European Commission ("Commission") under the presidency of Ursula von der Leyen. The allocation of portfolios to the new 2019-2024 commissioners shifted the responsibility for EU sanctions from the High Representative of the Union for Foreign Affairs and Security Policy ("HR") to the DG on Financial Stability, Financial Services and Capital Markets Union ("DG FISMA") under the responsibility of Vladis Dombrovskis.[1]

As part of the responsibilities entrusted to him according to Ms. von der Leyen's mission letter, Mr. Dombrovskis' role will be to "ensure that the **sanctions imposed by the EU are properly enforced**." In addition, Mr. Dombrovskis will be expected to develop proposals to ensure Europe is more resilient to extraterritorial sanctions by third countries.[2]

This division of portfolios is a novelty, and it remains to be seen what this change will bring to the EU 2020 sanctions regime.

B. New thematic EU sanctions[3] (cyber and human rights)

1. Sanctions against cyber-attacks

Following years of legislative debate, on May 17, 2019, the EU adopted Council Decision 2019/197 and Council Regulation 2019/796 ("Decision and Regulation"). This constitutes a **legal framework setting out sanctions targeting persons and entities responsible for significant cyber-attacks** aiming to undermine the integrity, security and economic competitiveness of the EU.[4] The Decision and Regulation define a cyber-attack as any action involving access to information systems, information systems interference, data interference or data interception that is not authorized by the owner or holder of the relevant rights of the system or the data, or which is illegal under the laws of the relevant Member State. To fall under the scope of the relevant legislative framework, a cyber-attack must (1) be an external threat to the interests of the EU or its Member States, and (2) have a potentially significant effect. The Decision and the Regulation allow for the imposition of a travel ban and asset freeze against persons deemed responsible for cyber-attacks. These measures extend to persons or entities which provided support or participated in the planning of the cyber-attack, as well as persons or entities associated with those responsible.

2. Sanctions against human rights violators

Under the impulse of a new Commission, 2020 is bound to bring another significant new development. Josep Borrell, the new HR, has announced his ambition to give a fresh impulse to the Foreign Affairs Council, seeking to guide his work by realism, unity and partnership. As part of his tenor, under the request of several Member States, he agreed to launch the preparatory work for a **global sanctions regime to address serious human rights violations**, an EU equivalent of the so-called Magnitsky Act in the United States.[5] Despite a narrower portfolio, with the shift of all Commission sanctions prerogatives to DG FISMA,

1 https://ec.europa.eu/commission/sites/beta-political/files/allocation-portfolios-supporting-services_en_0.pdf.

2 https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-valdis-dombrovskis-2019_en.pdf.

3 EU sanctions are referred to as "restrictive measures" in EU legal texts.

4 Council Decision 2019/197 and Council Regulation 2019/796 ("Decision and Regulation").

5 https://eeas.europa.eu/headquarters/headquarters-homepage/71725/remarks-high-representativevice-president-josep-borrell-press-conference-following-foreign_en.

Mr. Borrell remains in charge of the European Union External Action Service (EEAS) and thus will define the EU's policy in terms of sanctions.

C. New country-based EU sanctions (Turkey, Nicaragua, Mali)

In terms of new restrictive measures adopted by the EU in 2019, two new countries have been targeted, i.e., Turkey and Nicaragua. With respect to Turkey, on November 11, 2019, the Council adopted a framework for **restrictive measures in response to Turkey's unauthorized drilling activities in the Eastern Mediterranean.**[6] The restrictive measures include travel bans, asset freezes and a prohibition to make funds available to listed individuals and entities.

On October 14, 2019, the Council adopted a **framework for targeted restrictive measures against Nicaragua**. This framework provides for the possibility to impose targeted and individual sanctions against persons and entities responsible for human rights violations or abuses, for the repression of civil society and democratic opposition in Nicaragua, as well as persons and entities whose actions, policies or activities otherwise undermine democracy and the rule of law. Sanctions consist of a travel ban to the EU and an asset freeze.[7]

The EU also implemented its first UN-Mali listings, following the UN Security Council Resolution 2374 (2017)[8] and its first listing under the new chemical weapons regime, by adding nine individuals and one entity.[9]

D. Strengthening existing EU sanctions

The EU strengthened certain existing sanctions regimes, namely sanctions targeting Venezuela and Russia.

In September 2019, **the Council added seven members of the Venezuelan security and intelligence forces** under restrictive measures for their involvement in acts of torture and other serious human rights violations.[10] This decision brings the total number of individuals subject to the Venezuela sanctions to 25. The measures include a travel ban and an asset freeze.

6 Council Decision (CFSP) 2019/1894 and Council Regulation (EU) 2019/1890.

7 Council Decision (CFSP) 2019/1720 and Council Regulation (EU) 2019/1716.

8 Council Implementing Decision (CFSP) 2019/29.

9 Council Decisions (CFSP) 2019/86 and Council Implementing Regulation (EU) 2019/84.

10 Council Decision (CFSP) 2019/1596 and Council Implementing Regulation 2019/1586.

On March 14, 2019, the **EU responded to the Kerch Strait and the Sea of Azov escalation** by adding eight Russian officials to the list of those subject to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.[11]

In 2019, the EU also **renewed most existing sanctions regimes** that were in place in 2018. In January, it extended sanctions targeting those responsible for the misappropriation of Tunisian state funds, for one year, until January 31, 2020.[12] The EU further renewed, among others, the sanctions regime against Belarus, until February 28, 2020,[13] Iran until April 13, 2020,[14] Ukraine until March 6, 2020,[15] Myanmar until April 30, 2020,[16] and Syria until June 1, 2020.[17] In addition, the EU for the first time extended the restrictive measures addressing the use and proliferation of chemical weapons until October 16, 2020.[18]

While taking into consideration the first peaceful transfer of power in the country's history, early December 2019, the EU also renewed sanctions against the Democratic Republic of the Congo for one year. The EU maintained individual restrictive measures, but lifted measures for two individuals, based on the re-evaluation of the situation.[19]

Concurrently, the EU **listed but also delisted several entities and individuals from its sanctions lists**. The Council removed Mohamed Mabrouk from the current 2019 Tunisia sanctions list, after he had been unsuccessful before the EU General Court ("GC") for his 2017 and 2018 listings. The EU also delisted two individuals from the Libya sanctions list, Abdussalam Mohammed and Abdulqader Mohammed[20] and extended its Libya-related sanctions in respect of three individuals for six months, until April 2020.[21]

11 Council implementing Regulation (EU) 2019/409.

12 Council Decision (CFSP) 2019/135.

13 Council Decision (CFSP) 2019/325.

14 Council Decision (CFSP) 2019/562 and Council Implementing Regulation (EU) 2019/560.

15 Council Decision (CFSP) 2019/354.

16 Council Decision (CFSP) 2019/678.

17 Council Decision (CFSP) 2019/806.

18 Council Decision (CFSP) 2019/1722.

19 Council Decision (CFSP) 2019/2109 and Council Implementing Regulation (EU) 2019/2101.

20 Council Decision (CFSP) 2015/1333 and Council Implementing Regulation (EU) 2019/1292.

21 Council Decision (CFSP) 2019/1663.

E. Revocation of pre-existing EU sanctions

On June 17, 2019, the Council decided to **revoke the 2018 framework for restrictive measures against the Maldives**, after the April 6, 2019, peaceful and democratic parliamentary elections.

F. Other developments regarding EU sanctions

1. Trade with Iran: INSTEX

In January 2019, Germany, France and the UK (E3) set up INSTEX, the long awaited payment vehicle with Iran. INSTEX stands for "Instrument in Support of Trade Exchanges." Its purpose is to allow EU business to trade with Iran despite US sanctions. INSTEX became operational and available to all EU Member States, and it processed the first transactions on June 28, 2019.[22] On November 29, 2019, six additional EU Member States — Belgium, Denmark, Finland, the Netherlands, Norway and Sweden — announced they were in the process of becoming INSTEX shareholders.[23] Moreover, on December 6, 2019, the same countries reaffirmed their commitment to the Joint Comprehensive Plan of Action, urging Iran to take all necessary steps to fully implement its nuclear commitments and avoid further escalations.

2. Cooperation with neighboring countries

Finally, the year 2019 also reflected a very close cooperation between neighboring countries, namely, North Macedonia, Montenegro, Albania, Iceland, the Republic of Moldova, Norway, Liechtenstein, Ukraine, Serbia, Georgia, Armenia and Bosnia and Herzegovina, which all aligned themselves to most EU sanctions regimes.

3. New EU foreign direct investment screening

As another new development, the EU adopted a **new framework for screening foreign direct investments (FDI) into the EU,** which entered into force on April 10, 2019.[24] The framework aims at helping the EU to better protect its strategic interests. Member States and the Commission will have the possibility to cooperate on incoming FDI affecting national security or public order. The relevant criteria include critical infrastructure and technologies, the supply of critical inputs, access to sensitive information, or media freedom and pluralism. Currently, 15 Member States have national investment screening mechanisms in place, and several others are in the course of reforming or creating one. Under the new framework, FDI will face scrutiny at the EU level. However, the new rules expressly provide that final FDI-related decisions remain with the Member States receiving the FDI. From its entering into force, EU Member States and the Commission have 18 months to make the new mechanism operational. The new framework will be fully applicable as from October 11, 2020.

4. Proposal to allow the EU to sanction countries that are violating WTO rules and blocking the renewal of the WTO's Appellate Body

To close 2019, the EU unveiled a proposal that will allow it to protect its trade interests despite the paralysis of the multilateral dispute system of the World Trade Organization ("WTO"). The Commission's proposal, an update of the existing Enforcement Regulation,[25] will enable the EU to react even if the WTO is not delivering a final ruling at the appellate level because the other WTO member blocks the dispute procedure through an appeal into the void.[26] The new mechanism will also apply to the dispute settlement provisions included in regional or bilateral trade agreements where the EU is a party. In addition, in line with the political guideline of President von der Leyen, the Commission increased the focus on compliance and enforcement, by creating the position of Chief Trade Enforcement Officer, to be filled early 2020.[27]

22 https://www.gov.uk/government/news/iran-statement-on-jcpoa-meeting-in-vienna.

23 https://um.fi/current-affairs/-/asset_publisher/gc654PySnjTX/content/vain-englanniksi.

24 Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union, March 19, 2019.

25 Council Regulation (EU) 654/2014 of May 15, 2014.

26 https://trade.ec.europa.eu/doclib/press/index.cfm?id=2091.

27 https://trade.ec.europa.eu/doclib/press/index.cfm?id=2091.

5. Commission's opinion on the compatibility with EU law of Member States' imposed asset freezes

2019 also ends with an important and long-awaited Commission opinion regarding the compatibility with EU law of national asset freezes imposed by Member States. The Commission took the view that the unilateral adoption of national asset freeze measures for reasons related to the achievement of the Common Foreign and Security Policy ("CFSP") objectives, set out in Article 215 TFEU, would have a clear negative impact on the functioning of the internal market, and would undermine its purpose and effectiveness. Therefore, such measures would not be compatible with EU law.[28]

G. EU export controls

1. Recommendation on internal compliance programmes

In August 2019, the EU published **Recommendation (EU) 2019/1318 on internal compliance programmes** for dual-use trade controls under Regulation (EC) 428/2009. The recommendation provides non-binding guidance "to help exporters identify, manage and mitigate risks associated with dual-use trade controls, and to ensure compliance with the relevant EU and national laws and regulations" in their internal compliance programmes (ICP).

The EU guidance focuses on seven core elements identified as cornerstones for a company's tailor-made ICP. For each core element, the guidance sets out clear expectations for internal compliance, as well as any necessary implementation steps. The core elements are (1) top-level management commitment to compliance; (2) organization structure, responsibilities and resources; (3) training and awareness raising; (4) transaction screening process and procedure; (5) performance review, audits, reporting and corrective actions; (6) recordkeeping and documentation; and (7) physical and information security. For each of these elements, the Commission summarizes its expectations and the different steps involved. To assist companies and exporters with the implementation of their ICP, as well as with the specific risk assessment for each of the core elements, Annex I to the guidance provides some practical questions with comments on best practices. Moreover, Annex II sets out examples of red flags that should help companies and businesses to better identify and calibrate any dual-use risks.

2. Rules governing control of exports of military technology and equipment

In the same vein, the **Council adopted conclusions amending Common Position 2008/944/CFSP** defining common rules governing control of exports of military technology and equipment, and revised the user's guide. Council Decision (CFSP) 2019/1560 takes into account a number of developments at both the EU and international levels that have resulted in new obligations and commitments for Member States since the adoption of the 2008 Common Position. The Council recalls its commitment to strengthening military technology and equipment exports control, and to reinforce cooperation and promote convergence in this field.[29]

3. Recast of Regulation 428/2009 on the control of exports of dual-use items

In June 2019, EU ambassadors agreed to grant the Council a negotiating position on a **proposed recast of Regulation 428/2009 on the control of exports, transfer, brokering, technical assistance and transit of dual-use items**. Based on this, the Council Presidency will start negotiations with the European Parliament. If approved, the new rules will introduce a number of changes to the EU export control system on dual-use items. These changes will simplify and improve the current rules and optimize the EU licensing architecture. In particular, new provisions include the further harmonization of the licensing processes through the introduction of new general export authorizations (EU GEAs); harmonization of the control of the supply of technical assistance for sensitive items. Furthermore, a new reference is made to cyber surveillance items, highlighting that competent

28 Commission opinion, on the compatibility of national asset freezes imposed by Member States with Union Law, C (2019) 8007, November 8, 2019.

29 https://www.consilium.europa.eu/en/press/press-releases/2019/09/16/control-of-arms-export-council-adopts-conclusions-new-decision-updating-the-eu-s-common-rules-and-an-updated-user-s-guide/.

authorities have the possibility to control such items as well as all non-listed dual-use items that could be used for directing or committing serious human rights violations.[30]

H. EU jurisprudence

1. T-231/15, George Haswani v. Council, of September 11, 2019; and C-313/17, of January 24, 2019

In March 2017, the General Court annulled George Haswani's designation on the account that the evidence supporting his designation was vague, and did not substantiate the reasons given for his listing in the first place. The GC rejected as inadmissible George Haswani's challenge to the subsequently amended sanctions motivation. He appealed this decision and the Court of Justice of the EU ("CJEU") admitted the appeal and in January 2019 it referred the case back to the GC. In September 2019, the GC concluded that the act in question clearly enabled the applicant to understand the reasons for which his name was re-listed and for the court to exercise its control over the legality of this listing. In addition, through the first inclusion of his name on the list, the applicant was already aware of the context and scope of the restrictive measures taken against him. Also, the new wording was sufficiently clear and precise for him to understand the reasons why the Council considered that he met the listing criteria.

2. C-123/18, HTTS Hanseatic Trade Trust & Shipping GmbH v. Council, of September 10,2019

The Grand Chamber of the CJEU sent Hanseatic Trade Trust & Shipping's ("HTTS") claim for damages resulting from its 2010 designation back to the GC. The CJEU upheld the appeal and found that the concept of "sufficiently serious breach" and "damage" were two separate concepts that differ temporally. The court found that sufficiently serious breach is a static concept, fixed at the time when the unlawful act or conduct took place, whilst the concept of damage is a dynamic concept, since the damage may emerge after the unlawful act or conduct was adopted and its extent may change over time. The lower court was wrong to decide that the Council could rely on all relevant matters arising before the action for damages in order to demonstrate it did not commit a sufficiently serious breach of EU law to give rise to EU's non-contractual liability.

3. T-406/15, Fereydoun Mahmoudian v. Council, and T-405/15, Fulmen v. Council, of July 2, 2019

Further, the court ordered damages following the removal of two individuals from the Iran sanctions list. The GC ordered €71,000 to Mr Mahmoudian in non-pecuniary damages and €21,000 for each month in which his assets were frozen (T-406/15) and €50,000 to Fulmen for reputational damage (T-405/15).

4. T-434/15, Islamic Republic of Iran Shipping Lines v. Council, and T-433/15, Bank Saderat plc v. Council, of June 5, 2019

However, the GC also dismissed the application by the Islamic Republic of Iran Shipping Lines ("IRISL") and six related companies for damages following their annulled designation in 2013, on the ground that the Council did not make a manifest error of assessment as serious and inexcusable as to make the EU responsible of non-contractual liability (T-434/15). Similarly, the GC dismissed Bank Saderat Plc's application for damages after the bank won its de-designation (T-433/15).

5. C-168/17, SH v. TG, of January 17, 2019

Finally, the CJEU defined the notion of making funds available to or for the benefit of a designated person on a request for a preliminary ruling from a Hungarian court in proceedings between two Hungarian banks. The court found that the notion of making funds indirectly available to a listed entity was not applicable if the costs payable under a counter guarantee agreement had to be paid by an EU bank to a Libyan bank whose name was no longer on the list. This did not apply if the payment to the bank would lead, as a result of the legal or financial links between the bank receiving the payment and the entity on the list, to the costs in question being made available indirectly to the listed entity.

30 https://www.consilium.europa.eu/en/press/press-releases/2019/06/05/dual-use-goods-council-agrees-negotiating-mandate/.

EU Member State sanctions developments

Belgium

On May 21, 2019, the Belgian legislator published an Act Implementing the EU Blocking Regulation. The Act, which came into force on May 31, 2019, implements among others the following changes as regards financial restrictive measures:

1. Asset freeze measures adopted by the UN Security Council will be immediately implemented in Belgium; they do not require a separate confirmation by a ministerial decree, i.e., whenever the Security Council adds entities or individuals to the UN sanctions list, the asset freezes will be directly implemented in Belgium.
2. The implementation of Council Regulation 2271/96, also called the "Blocking Regulation," in order to protect EU enterprises among others against the effects of an extra-territorial application of new measures taken by the United States against Iran.
3. The Belgian Federal Public Service for Finance was entrusted to monitor compliance and report any breach of financial restrictive measures.

Also noteworthy are the administrative fines introduced in the Act, that can now be imposed by the competent Belgian authorities to sanction infringements of the EU Blocking Regulation in Belgium. For legal entities, the administrative fine ranges from €10,000 to 10 per cent of the entity's annual net turnover of the previous business year. For individuals, the fine ranges from €250 to €5 million.

On the enforcement side in Belgium, there was one particularly notable sanctions-related judgment rendered by the Antwerp Criminal court in 2019 (reported on in our 2018 edition of this review). In particular, on February 7, 2019, three Belgian companies (AAE Chemie Trading, Anex Customs and Danmar logistics) and two managing directors were convicted for shipping without an export license 168 tons of the chemical substance isopropanol with 95 per cent purity to Syria between 2014 and 2016. In addition to the forfeiture of the chemicals owned by the companies, the court sentenced:

- AAE Chemie Trading to pay a fine of €346,443, of which €50,000 to be paid effectively;
- Anex Customs to pay a fine of €500,000, of which €100,000 to be paid effectively;
- Danmar Logistics to pay a fine of €75,000, of which €50,000 to be paid effectively;
- The manager of AAE Chemie Trading, to a suspended prison sentence of four months, and to pay a fine of €346,443, of which €50,000 to be paid effectively; and
- The manager of Anex and Danmar, to an effective prison sentence of twelve months, and to pay a fine of €500,000, of which €100,000 to be paid effectively.

In a separate development, three entities and two individuals were added to Belgium's national ISIS and Al-Qaeda sanctions lists by way of ministerial decree.[31]

As already noted above, Belgium is one of the countries which decided to join the EU-Iran INSTEX financial trading mechanism. In its decision, Belgium underlined that it attaches utmost importance to the preservation and full implementation of the JCPOA, and that it becoming an INSTEX shareholder will strengthen the ongoing efforts to implement the economic part of it and to facilitate legitimate trade with Iran.

31 List of Ministerial Decrees adopted in relation to freezing measures on the Federal Public Service – Finance's website, last accessed on December 12, 2019, https://finance.belgium.be/en/about_fps/structure_and_services/general_administrations/treasury/financial-sanctions/international.

Denmark

The Danish State Prosecutor for Serious Economic and International Crime has started an investigation into the bunker company Dan-Bunkering, a subsidiary of Bunking Holdings, on suspicion of violating the EU-Syria sanctions. Dan-Bunkering is alleged to have sold and supplied at least 30,000 tons of jet fuel for use in Syria from 2015 to 2017 through sales to the Russian shipping company Sovfracht. The fuel was then shipped to Syria and used to supply Russian fighter planes engaged in the Syrian civil war. The allegations came to light following an investigation by the Danish Broadcasting Corporation into confidential documents sent to Danish authorities from the US Department of Justice during their investigation into Sovfracht.[32] This is a clear example of how cross-border cooperation and intelligence sharing across jurisdictions can improve sanctions prosecution and enforcement.

France

1. The French Banking Authority imposed a financial penalty of €50 million against La Banque Postale (LBP)[33] and applied a disciplinary sanction against Raguram International

LBP, a fully owned subsidiary of the La Poste Group, offered, among its activities, "money orders" services, i.e., a service for settling fund transfers within the meaning of Article L 314-1 of the French Monetary and Financial Code (MFC). The setting-up of an effective asset freezing mechanism imposes essential requirements for reporting entities, in particular banking institutions, which are in the front line and have a performance obligation. Therefore, reporting entities have an obligation to set up a system to detect transactions carried out by or for persons or entities subject to EU or national asset freezing measures because of their involvement in terrorist activities or violations of international law. However, LBP had excluded from its filtering framework its

32 https://www.dr.dk/nyheder/indland/danish-state-prosecutor-investigates-dan-bunkering-violation-eu-syria-sanctions.

33 https://acpr.banque-france.fr/sites/default/files/medias/documents/20190117_resume_lbp.pdf.

"money orders" activities, representing several million transactions per year, which allowed persons, with or without an open account, to transfer cash. As a result, LBP was not able to detect, before the execution of such transactions, whether or not clients were subject to an asset freeze or to a prohibition to make funds available. The on-site inspection concluded that the LBP's asset freezing framework was not, due to the exclusion of domestic money orders from its scope, at an adequate level for a large public sector bank.

On March 29, 2019, the same French Banking Authority sanctioned Raguram International (Raguram), a limited liability company, registered on the list of manual moneychangers, and carrying out its foreign exchange operations through a one-stop shop located in Paris. The Authority considered that the company only set an asset freeze detection mechanism as of December 16, 2017, and that before that date no screening operations had been carried out. Therefore, the company was unable to detect persons subject to an EU or national asset freezing measure. Consequently, the Authority imposed the most stringent sanction possible, by withdrawing Raguram's license to operate as moneychanger.[34]

2. A French restrictive measure prompts an EU designation

On March 15, 2019, in response to the deadly attack in Pulwama on February 14,[35] the French authorities imposed a six-month asset freeze on Mohammad Masood Azhar Alvi, the head of Jaish-e-Mohammed,[36] pursuant to Article L 562-2 of the MFC.[37] This happened after the listing of Masood Azhar on the UN list was blocked by China.

Subsequently, France raised the issue of Mosood Azhar's designation on the EU sanctions list with its EU partners. As a result, on May 3, 2019, the EU added Masood Azhar to the ISIL (Da'esh) and Al-Qaeda sanctions list following China's decision to lift its veto on the proposal to designate Masood Azhar.[38]

3. Two French nationals were added on the EU sanctions list

At EU level, two French nationals, Brahim el Khayari[39] and Guillaume Pirotte,[40] were also added to the ISIL (Da'esh) and Al-Qaeda sanctions list for their involvement with these organizations.

4. France report proposing to combat the extraterritorial imposition of sanctions

The French National Assembly released its report on restoring the sovereignty of France and on the protection of French and EU businesses from the application of extraterritorial law and measures. The report proposes several measures, including recommendations, which will help to fill certain gaps and improve the effectiveness of EU protection against the extraterritorial effect of restrictive measures. Such recommendations include referring the matter to the International Court of Justice for an opinion on the state of international law on extraterritoriality. Further, the report proposes the launch of a French OECD initiative to set common rules, and measures with extraterritorial effect, making it possible to better regulate their use. Finally, the report also suggests developing a French proposal to strengthen EU tools for protecting European companies against requests from foreign administrative and judicial authorities.[41]

34 https://acpr.banque-france.fr/sites/default/files/media/2019/04/10/190409_pd_raguram.pdf.

35 JORF n° 0063, March 15, 2019, text n°20, Order of 13 March 2019 on the application of Article L. 562-2 of the Monetary and Financial Code.

36 A Pakistan-based Deobandi jihadist terrorist group.

37 The Minister for Economic Affairs and the Minister for the Interior may jointly decide, for a renewable period of six months, to freeze funds and economic resources: 1) belonging to, owned, held or controlled by natural or legal persons, or any other entity that commits, attempt to commit, facilitates, finances, incites or participates in terrorist acts; 2) belonging to, owned, held or controlled by legal persons or any other entity owned or controlled by or knowingly acting on behalf of or at the direction of the persons mentioned in 1).

38 Commission Implementing Regulation (EU) 2019/696.

39 Council Decision (CFSP) 2019/271 and Council implementing regulation (EU) 2019/270.

40 Council Implementing Regulation (EU) 2019/1943 and Council Implementing Decision (EU) 2019/1944.

41 https://www.vie-publique.fr/sites/default/files/rapport/pdf/194000532.pdf.

Germany

2019 was very dynamic in terms of sanctions developments.

On November 28, 2018, in Bank M.I v T. Deutschland GmBH [2018], the Regional Court in Hamburg granted an interim injunction on the basis of the EU Blocking Regulation, requiring a telecoms company to provide telephone and internet access to the claimant "Bank M.I." that had been targeted by US Iran sanctions.

In another judgment of October 15, 2018, the same court rejected a request from the claimant, an international logistics company, for an injunction under the Blocking Regulation to order the defendant, a savings bank, to maintain the claimant's savings account. According to the bank's terms and agreements, ordinary termination of an account requires a valid reason. The court held that the valid reason "lies in the secondary sanctions of the competent US authority," the defendant had shown that its correspondent banks, which are necessary for its functions, may refuse to cooperate with it to avoid secondary sanctions.

A German bank, Norddeutsche Landesbank-Girozentrale (NordLB), has alleged that two Chinese vessels, "Gas Infinity" and "Gas Dignity," breached US sanctions on Iran by transporting Iranian oil, which in turn infringed the sanctions clause in the bank's mortgage agreement with the Chinese owners. Reportedly, the vessels deactivated their transponders when approaching the Strait of Hormuz, and reactivated them several days later when the vessels were loaded with fuel. The allegations were made in a claim filed in Singapore's High Court seeking seizure of the vessels following defaults on loans. Both ships were placed under sheriff's arrest in Singapore, but have since been released.

Germany's Federal Office for Economic Affairs and Export Control (BAFA) has published guidance on Export Control in Science & Research. The guidance says "sensitive technological expertise is found in German industry, but also in institutes, research institutions, and departments of Germany universities and technical colleges," which makes them the target audience for regulations concerning "handling potential critical goods, including technology, software, and sensitive knowledge transfer." Although scientific freedom is guaranteed by the German Basic Law, there is no exemption from compliance with foreign trade regulations. It warns of the potential for misuse of their own research, in areas ranging from nuclear technology to medicine, and the guidance lists a number of red flags including the involvement of countries that are known or suspected to be seeking technical expertise relating to proliferation and suspicions about misuse.

In June 2019, Deutsche Bank discovered failings in its sanctions and anti-money laundering controls, which may have led to cheques and high-value electronic payments from corporate clients to foreign recipients being processed without proper screening. The bank's internal auditors in London identified the issues in a report to executives, and classed the issues as a grave deficiency and an extremely grave deficiency on the German financial regulator BaFin's AML scale. Upon reviewing the audit findings, the bank's executives determined that the cheque-related filtering gap did not merit a formal disclosure to UK and German regulators.

On January 2019, Berlin announced a complete ban against Mahan Air, a "civilian" airline that doubles as an adjunct to the Iranian regime's nefarious activities across the Middle East. The decision came, reportedly, after months of US efforts to persuade the Germans that Mahan is no ordinary carrier.

Lastly and very recently, the Administrative Court in Frankfurt annulled the national arms export ban on Saudi Arabia imposed since November last year, in response to the killing of journalist Jamal Khashoggi. The court ruled the ban lacked sufficient reasoning, required for trade-related decisions, even when they are made in the interests of foreign policy and security.[42]

42 Frankfurt Administrative Court decision of December 3, 2019, Az 5 K 1067/ 19.F.

Italy

Italian courts delivered two interesting rulings on the EU Blocking Regulation.

In the first case, an Italian company controlled by partners in Iran was notified by its bank that its banking services would be terminated due to concerns about US sanctions. The court ordered an injunction to prevent the bank from terminating its services. The court found this would breach Article 5 of the EU Blocking Regulation, which prohibits compliance in the EU with some US sanctions against Iran.

In the second case, an Italian company had a supply contract with an Iranian company. Payment was made through a US-designated bank, and was subsequently frozen by the Italian entity's bank. The Italian court found the US designation to be ineffective in the EU, and ordered the release of the funds.

Netherlands

The Netherlands has been very active in its enforcement of sanctions and export control rules in 2019.

Five individuals were added to the 2019 Dutch National Sanctions List, and a handful of cases of violations of export control rules were dealt with by the Dutch courts.

In addition, this year's most notable court ruling rendered on 18 February 2019 in the southern province of Limburg, condemned a Dutch company, Euroturbine BV, for illegally exporting in 2008-2010 gas turbine parts – which qualify as dual use items – to Iran with full knowledge that the said items were destined for Iran. Euroturbine BV was fined €500,000 and their Bahrain-based subsidiary was fined €350,000. The company's director, an indirect shareholder and two employees, were sentenced to perform unpaid community service for their involvement in the illegal export. The unpaid community service sentences varied between 120 hours and 240 hours depending on each individual's level of involvement in the transactions.

Dutch courts also rendered an interesting decision on the application of the EU Blocking Regulation in the context of US Cuba sanctions. Opposing parties in the case were a Dutch company, Exact B.V. and Curaçao-based PAM International N.V. (PAM), pursuant to the distribution agreement between which, PAM distributed software supplied by Exact to companies in Cuba. Exact terminated the agreement based on the force majeure claim, following its acquisition by a US-based investment company. The court ordered Exact to restore its services, finding that Exact and its shareholders' exposure to the risk of US sanctions, as a result of the continuation of the agreement, constitutes a risk that is for them to bear, and which cannot be passed onto PAM. The court further noted that Exact may have breached the EU Blocking Regulation by terminating the agreement.[43]

Last but not least, the Netherlands is one of the six EU countries that decided to join INSTEX in 2019.

43 The Hague District Court decision of June 25, 2019, PAM International N.V. v. Exact Software Nederland B.V.C-09-573240-KG ZA 19-430.

United Kingdom

(i) OFSI enforcement

Since April 2017, the Office of Financial Sanctions Implementation, OFSI, has had the power to take enforcement action by way of administrative penalty, as an alternative to pursuing a criminal prosecution. It did not use this power in 2017 or 2018, prompting doubts as to its enforcement ambitions. OFSI has clarified that in its view, it can only use the administrative penalty power in relation to breaches that took place after April 2017 which explains the delay. However, it has now issued its first three penalties using this power:

- **Raphael's Bank** (January 21, 2019) was found to have breached the Egypt financial sanctions regime by dealing with funds (£200) belonging to a designated person. It was fined £5,000 (reduced from £10,000 on account of having self-disclosed and cooperated with OFSI's investigation);
- **Travelex (UK) Ltd** (March 8, 2019) was fined for its role in the same offending £200 transaction. In this case, the monetary penalty was set at £10,000, on the basis that, unlike Raphael's Bank, Travelex (UK) had not self-reported; and
- **Telia Carrier UK Ltd (**September 9, 2019) was fined £146,341 for breaches of the Syria sanctions. The OFSI notice reports that Telia "indirectly facilitated international telephone calls to SyriaTel," a designated entity. Initially OFSI had imposed a £300,000 penalty but this amount was reduced after Telia had exercised its right to a Ministerial review and provided further clarification of the nature of the transactions, which was not available to OFSI when the original penalty was imposed.

In March 2019, the UK House of Commons reviewed the performance of OFSI since its establishment, noting that "public examples of enforcement will be necessary if OFSI is to be recognised as an effective deterrent." OFSI will likely take this as a cue to pursue enforcement more aggressively going forward – perhaps not to a level of enforcement comparable with OFAC, but likely more assertive than is currently seen in other EU member states. During the autumn there were reports of an imminent £10 million fine against a UK-based international bank (which was also fined by OFAC this year for sanctions breaches), although at the time of writing no such fine has been announced.

Further information about OFSI's activities can be found in its Annual Review Document.[44]

(ii) UK Regulatory influence in OFAC enforcement against a UK entity

Another enforcement development of note in 2019 is the involvement of the PRA (the Prudential Regulation Authority, the UK's macro-prudential finance sector regulator) in relation to the quantum of OFAC's fine on **British Arab Commercial Bank** for breach of US sanctions. OFAC had initially concluded that the penalty would be US$228 million; but following consultation with the PRA, this was reduced to US$4 million, with the remainder "suspended." The precise nature of the PRA's intervention is not known, but the involvement of the PRA in this settlement is notable, in that it suggests OFAC may consult with – and will give weight to the view of - foreign prudential regulators on enforcement actions, even when the actions are based solely on US law. This OFAC enforcement is also noteworthy for displaying an exceptionally broad assertion of US sanctions jurisdiction, which should be noted by non-US entities, especially banks (see the section on US developments for more detail on this aspect).

(iii) Decisions on interpretation or application of sanctions

Two court decisions of interest in 2019 are particularly noteworthy in relation to the application of sanctions in the UK in commercial activity:

a. Lamesa Investments Limited v. Cynergy Bank Limited[45]

   This case concerned interest repayments under a facility agreement governed by English law. Lamesa's ultimate beneficial owner, Viktor Vekselberg, was added to the US SDN List rendering

44 Annual Review: April 2019 to March 2019.

45 Lamesa Investments Ltd v. Cynergy Bank Ltd [2019] EWHC 1877 (Comm).

Lamesa a "Blocked Person" such that "significant financial transactions" with Lamesa fell within the reach of US secondary sanctions. This meant that if Cynergy (an EU entity with significant US business and assets) had made repayments under the facility agreement, it would have risked being subject to US restrictions affecting, in particular, its US business and assets (the effects of which would, it asserted, have been "ruinous" for it). Cynergy therefore ceased making repayments under the facility agreement, on the basis that the US secondary sanctions constituted "mandatory provisions of law," compliance with which was a legitimate basis for non-payment under the agreement.

The High Court found that the facility agreement did allow the borrower to withhold payment of interest installments where there was a risk of US secondary sanctions being imposed on the borrower: the words "mandatory provision of law" were wide enough to include US secondary sanctions measures. This decision is going to appeal.

b. Palladyne International Asset Management v. Upper Brook[46]

This Cayman Islands case concerned the interpretation of the Libyan sanctions regime.[47] Cayman Islands sanctions laws are made by the UK government (by an Overseas Territories Order) and are, it was acknowledged, intended to replicate UK (i.e., EU) sanctions in the UK Overseas Territories.

The key issue was whether the exercise of the voting rights that attach to frozen shares constitutes a prohibited "use" of those shares. In this instance, the shares were owned by the LIA (and related entities), who used the voting rights to appoint new directors to one of their portfolio management companies and dismiss the previous directors.

Both the High Court and the Court of Appeal of the Cayman Islands found that this exercise of voting rights did not constitute use in the sense prohibited by the asset freeze. The court considered that one had to apply the restrictions purposively. In this case the purpose was to preserve the financial value of the assets; the vote to change directors did not undermine that objective. The court also rejected an alternative argument based on alleged circumvention of sanctions.

Judgements of Cayman Islands courts are not binding on UK courts, but are persuasive.

46 Palladyne Investment Asset Management (PIAM) v Upper Brook (A) Ltd & Ors (18 November 2019) CICA Appeal No 5 of 2019.

47 Libya (Restrictive Measures) (Overseas Territories) Order 2011.

UK sanctions outside of EU after Brexit

The effect of Brexit on UK sanctions

The UK currently applies EU sanctions and has been prominent in shaping EU sanctions in recent years. After it ceases to be subject to EU sanctions laws, it will need its own sanctions laws (in order to ensure that the UK continues to impose the same sanctions restrictions that it currently applies), and will no longer give effect to, or have a formal role in shaping, EU sanctions law or policy. Immediately after the UK leaves the EU framework, UK sanctions will be substantively very similar to EU sanctions. But there will be some differences from the outset, and further divergence over time seems likely.

The Transition Period

Assuming the current UK/EU Withdrawal Agreement is passed, the UK will leave the EU on 31 January 2020, and enter a Transition Period from then until the end of 2020. It is most likely that EU sanctions will continue to apply in UK until the end of 2020, although as described below, there may be divergence before them.

The Withdrawal Agreement provides for the possibility of a separate agreement on common foreign and security policy (CFSP), including sanctions, during the Transition Period. If such an agreement is reached, EU sanctions law will cease to apply in the UK from the date that this separate agreement takes effect (and the UK sanctions regulations described below will commence from that date).

Additionally, the Withdrawal Agreement recognizes that, during the Transition Period, the UK may decide not to apply EU CFSP Decisions for "vital and stated reasons of national policy," provided that the UK does not take action likely to conflict with or impede EU action based on that CFSP Decision, and may be consulted in relation to EU external action where there is "a need for coordination." In this regard, we report below on the possible introduction of a UK human rights sanctions regime during the Transition Period.

Sanctions laws in the UK after Brexit

1. Overall framework and post-Brexit sanctions guidance

The Sanctions and Anti-Money Laundering Act (SAMLA) was passed in 2018. In 2019, the government made a number of statutory instruments (Regulations) for specific sanctions regimes, under the framework of SAMLA, which will commence on the day that EU sanctions laws cease to apply in the UK. The UK has published Regulations for many, but not yet all, of the sanctions regimes currently applied by the EU, and explanatory notes and guidance for each sanctions Regulation. OFSI has published a post-Brexit version of its general sanctions guidance. Where it has not published UK Regulations corresponding to each EU sanctions regulation, those EU sanctions regulations will in fact carry over into UK law applying the principle of "EU Retained Law".

2. Key changes from current EU sanctions

While containing virtually identical measures to EU sanctions (for the time being), the UK's post-Brexit Regulations (and the associated OFSI guidance) include a number of differences. They are too many and too detailed to be set out in full, but we set out some key changes here:

- we understand that only around 97 percent of EU-designated persons are likely to be designated in the UK. This is because the UK has decided that a small proportion of the current EU designations do not meet the SAMLA evidential threshold or the new criteria applicable in relation to a particular sanctions programme;
- each sanctions Regulation must state the purpose(s) for which the Regulation is made, which could be relevant in judicial reviews and in relation to allegations of circumvention of sanctions;

- the concepts of "ownership and control" are more clearly defined than is the case in current EU law, with further concepts such as "connected persons" introduced;
- there is provision for issuing of general licenses in certain circumstances;
- a new broad licensing ground in relation to asset freezing permits issuing a license to "enable anything to be done to deal with an extraordinary situation";
- sharing of information is authorized between Secretary of State, Treasury and HMRC and third parties, including for the purpose of "facilitating the exercise by an authority outside the United Kingdom or by an international organisation of functions which correspond to functions under these Regulations."

There are also a small number of situations where the EU law cannot simply be applied in the UK. So, for example, in the Russia sanctions, UK subsidiaries of the investment-ban target entities were previously exempt from EU sanctions on those entities, but will not be after the UK leaves the EU framework. Similarly, EU subsidiaries of such entities will be subject to UK sanctions. OFSI produced specific additional guidance on the Russia sanctions after Brexit.

Over time, greater divergences may develop, including on the substance of measures.

The UK has approved the draft Protection against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2019, which in effect transposes the effects of the EU Blocking Regulation into UK law.

3. New UK Human Rights (Magnitsky) sanctions during Transition Period

The Government has announced its intention to introduce a human rights sanctions regime (often known as "global Magnitsky sanctions"), and it looks likely to press ahead with this as early as February 2020 (i.e., during the Transition Period), rather than waiting to align with the anticipated EU proposal (reported earlier in this note). Already, SAMLA empowers it to impose sanctions as asset freeze and travel ban for "gross violations of human rights," so such a measure could potentially be introduced relatively quickly without the need for new primary legislation.

Export controls after the Transition Period

There will be impacts on the operation of UK export controls (including in some cases affecting UK or EU exports to other non-EU countries) after the end of the Transition Period, although the extent of these will likely be the subject of negotiations during 2020, and we expect to provide further update on this during the year.

The UK government has introduced an OGEL (Open General Export License) allowing the export of dual-use items from the UK to EU which will apply after the Transition Period in the absence of any other agreement. In a similar vein, the EU has decided to add the UK to the list of countries in the Union General Export Authorization EU001, which facilitates exports of low-risk dual-use items from the EU to certain low-risk jurisdictions.

The proposed recast (i.e., modernization) of the EU dual-use regulation (reported earlier in this note) is likely to be agreed during 2020. It will likely not come into force until after the UK has left the EU legal framework, in which case it will be for the UK to decide at the time whether or not to align with the changes made by the EU.

Foreign direct investment restrictions

Currently, the UK government can intervene and scrutinise foreign investments in UK companies (with a turnover exceeding £1m) under the domestic merger regime, on national security grounds and in some cases on other public interest considerations such as financial stability and media plurality. As reported earlier in this note, the EU has adopted a new framework for screening foreign direct investments, which will apply in the UK from 11 October 2020 until the end of the Transition Period.

While the UK can strengthen its FDI regulation while in the EU, Brexit will likely give it greater freedom. In that context, the Government announced in December 2019 that it will introduce a National Security and Investment Bill (based upon proposals published in a 'White Paper' in July 2018) which would allow the government wider powers to scrutinise and intervene in business transactions (takeovers and mergers) in order to protect national security (and potentially other concerns), while recognising WTO members rights and freedoms under GATS and its obligations under BITs.

US Sanctions

Key Contacts

Peter G. Feldman
Partner
Washington, DC
D +1 202 408 9226
peter.feldman@dentons.com

Shahrzad Noorbaloochi
Associate
Washington, DC
D +1 202 496 7224
shahrzad.noorbaloochi
@dentons.com

Jason M. Silverman
Partner
Washington, DC
D +1 202 496 7423
jason.silverman@dentons.com

Cody Wood
Associate
Kansas City
D +1 816 460 2544
cody.n.wood@dentons.com

Michael E. Zolandz
Partner
Washington, DC
D +1 202 408 9204
michael.zolandz@dentons.com

US Sanctions Year-in-Review

A. 2019 IN BRIEF

2019 offered a steady drumbeat of sanctions developments, which at times seemed to increase to a frenetic pace. The past year's developments also cemented sanctions as a favored foreign policy tool of the Trump administration.

In many respects, sanctions developments in 2019 reflected an extension of policy measures from 2018. Having withdrawn from the Joint Comprehensive Plan of Action (JCPOA) in 2018, the US clearly signaled a plan to impose "maximum pressure" on **Iran** through sanctions. With an express goal of regime change in **Venezuela**, it was anticipated that the US would aggressively use sanctions authorities with respect to that country. **Russia** has continued to not only present foreign policy concerns and challenges for the US government, but also dominate the news cycle. All three programs saw numerous and at times significant developments in 2019.

That the general direction of these sanctions programs may have been predictable, however, does not mean the specific developments were any less disruptive or consequential. Iran's Islamic Revolutionary Guard Corps (IRGC) became the first foreign government entity to be designated as a Foreign Terrorist Organization (FTO). The Central Bank of Iran (CBI), already heavily sanctioned, was subjected to further designations that are expected to significantly complicate authorized humanitarian trade with that country. Venezuela, meanwhile, saw its state petroleum company, Petróleos de Venezuela, S.A. (PdVSA), and its central bank added to the Specially Designated Nationals And Blocked Persons List (SDN List), followed a few months thereafter by the entire government of Venezuela. And Russia, following a delayed implementation of a second round of sanctions arising from the poisoning of Sergei Skripal, faces additional pressure on its Nord Stream 2 and TurkStream LNG pipelines as a result of late-year legislation.

In total, OFAC made more than 780 additions to the SDN List while removing more than 140 previously named SDNs from the List.

One category of designations in particular appeared to occur at a significantly increased pace over the last year—those under the **Global Magnitsky** program, targeting human rights abuses and corruption. The program was new as of late 2017, so single year-over-year changes do not demonstrate a long-term trend. But the program's increased use is consistent with this administration's willingness to use available sanctions programs for maximum impact.

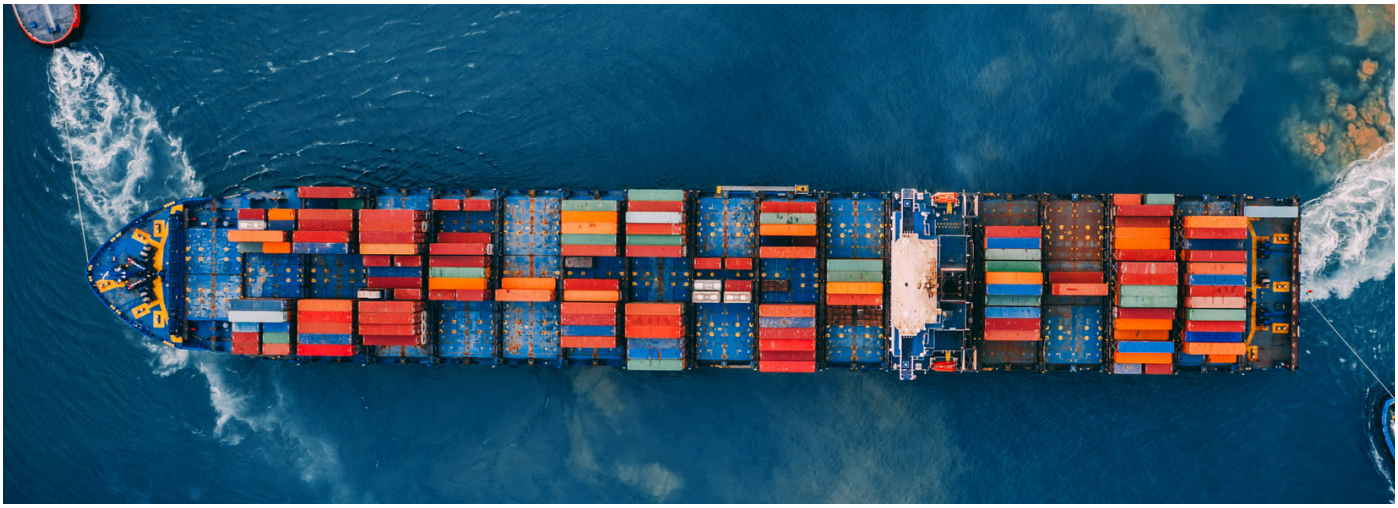
A number of designations reflected an increased use of sanctions authorities against non-US entities for conduct or transactions occurring entirely outside the United States—whether under true "secondary" sanctions or otherwise. These designations saw their greatest use in connection with Venezuela and Iran.

Throughout 2019, OFAC also emphasized that sanctions are not intended to be permanent, but are meant to incentivize a change in behavior. This was illustrated by delistings under the Ukraine-Russia and Venezuela programs, and perhaps most strikingly by the listing and subsequent delisting of the Turkish defense and natural resources ministries under the newly created **Syria-Related Sanctions** program.

OFAC also communicated extensively with the public about its compliance expectations and requirements, issuing a large volume of policy guidance and advisories, imposing additional compliance requirements and issuing new or revised regulations. Some of this guidance was tied to specific programs, such as humanitarian trade with Iran in the wake of additional designations of the CBI and other advisories related to Iran, Syria, and North Korea's efforts to circumvent sanctions. Other guidance and policy developments were cross-programmatic, including the first-ever Framework for OFAC Compliance

Commitments, new data delivery standards, and new requirements for reporting rejected transactions. The Cuba, Venezuela, Iran, and North Korea programs all received updates to their implementing regulations, as did several terrorism-related and transnational criminal sanctions programs. The Nicaragua and Election Interference sanctions program regulations were new in 2019, although those programs were established by executive order in 2018.

Finally, enforcement actions were a major feature of 2019. While 2018 saw relatively few enforcement actions, OFAC resolved 26 enforcement actions in 2019 for a total of $1,289,027,059. It also issued four findings of violation. This makes clear that OFAC will continue to aggressively enforce its sanctions programs against both US and non-US persons, including under terminated sanctions programs. However, that enforcement authority has limits and is subject to judicial review as was shown in dramatic fashion before 2019 came to a close when, on December 31, a US federal court vacated OFAC's 2017 finding of violation and accompanying $2 million penalty against Exxon Mobil Corporation on the ground that the agency had not provided sufficient prior notice of the regulatory interpretation on which it had predicated that enforcement action.



Combating cryptocurrency and malicious cyber activity are likely to be significant priorities.

B. 2020 OUTLOOK

All signs suggest that sanctions will remain a key tool for US foreign policy in 2020 and, therefore, a key legal and commercial risk factor—and one that continues to be highly dynamic.

In 2020, the Department of Treasury's Terrorism and Foreign Intelligence division, of which OFAC is a part, will have at its disposal a approximately 15 percent increase in funding, from $142 million in FY 2019 to $167 million in FY 2020. These new resources will help OFAC administer an ever-growing series of US sanctions programs and sanctions designations, including new measures targeting the Nord Stream 2 and TurkStream pipelines, the situation in Hong Kong, global terrorism, narcotics and organized crime concerns, and more targeted geo-political issues in Nicaragua, Mali, South Sudan, Syria, and Myanmar.

As it administers these programs in 2020, OFAC is likely to continue its regulatory and enforcement focus on financial institutions, but also enhance its focus on the rest of the economy. Over the past few years, as OFAC has unveiled a series of major enforcement actions involving banks, the US Congress has adopted several bills to expand the scope of sanctions programs beyond the banks, and OFAC has published a series of advisories—and enforcement actions—targeting other sectors. We anticipate that this trend will continue in 2020, with particular focus on the aviation, manufacturing and shipping sectors.

Absent major geo-political developments, the year ahead is likely to see a continuation of the "maximum pressure" campaigns targeting Cuba, Iran and the Maduro regime in Venezuela. While many commentators have questioned what more could be done to intensify the existing sanctions on Cuba and Iran, the past year saw the US both repeal previous sanctions relief and creatively expand restrictions beyond historic controls. 2020 may see more of the same.

The start of 2020 saw a significant escalation of tensions between the United States and Iran, including attacks on the US embassy in Baghdad, the targeted killing of IRGC head and SDN Qassem Soleimani, and Iranian attacks on Iraqi bases housing US troops. Iran announced it would cease complying with all obligations under the JCPOA, and President Trump announced that the United States would impose additional sanctions against Iran going forward. And this was merely the first 10 days of the new year.

As for Venezuela, the US has not yet imposed a full-scale embargo, and there remains significant space for the US to intensify and expand sanctions (or tailor them) to advance its policy goals.

TThe new year will also see the US continue to implement a patchwork of sanctions targeting Russia. Many of these provisions only became effective in early 2017, and many of the key sanctions designations occurred starting in 2018. Given the passage of time, 2020 may start to see enforcement actions involving these newer authorities. OFAC will also need to implement new authorities targeting Russia's Nord Stream 2 pipeline project and, if passed, still more secondary sanctions as contained in one or more of the several bills under consideration by Congress that would ratchet up the pressure on Russia.

In 2020, if the Department of Treasury's stated goals in requesting its budget increase are any indication, **combating cryptocurrency and malicious cyber activity** are likely to be significant priorities. This development already began to unfold in 2019, with several sweeping designations of malign cyber actors and cryptocurrency developers occurring in the Iran, Russia, North Korea, and Venezuela sanctions programs. 2020 will likely see OFAC continue to try to keep pace with these new technological challenges.

In approaching all of these programs in the year, OFAC is likely to continue implementing a **new approach to sanctions policymaking that it believes is more tailored and therefore more effective**. This new approach is marked by the adoption of sweeping sanctions measures (including designations), but issued alongside general licenses to authorize certain activities, as exemplified by OFAC's 2019 designations in the Russia and Venezuela context. 2020 will, therefore, carry both new challenges, increasing the complexity of sanctions compliance obligations, and new opportunities, creating room for engagement with OFAC as to certain potentially licensable activities.

OFAC advisories, guidance and framework

In 2019, OFAC continued the trend of publishing updated guidance and more detailed advisories related to sanctions compliance and, for the first time, published a compliance framework document aimed at affording clarity to the compliance community. OFAC advisories increasingly serve as a preview and waypoint for identifying areas of enforcement priority for the agency and often provide more detailed insight into OFAC's data collection, analysis, and investigation processes. While these advisories do not all have immediately binding effect, they serve an increasingly valuable role in the compliance arena by offering enhanced understanding of the risks of sanctions evasion, and in the case of the compliance framework published this year, direct inputs into the creation and maintenance of effective sanctions compliance programs.

Compliance framework

Published on May 2, 2019, OFAC's *A Framework for OFAC Compliance Commitments* was aimed at both US organizations and foreign (i.e., non-US) entities that conduct business in or with the US, US persons, or using US-origin goods or services, and represented the first time that the agency provided direct guidance with respect to building and maintaining an effective sanctions compliance program across sectors.

The Framework described five essential components of a risk-based compliance program, along with examples of how companies can implement them, and identified the "root causes" of compliance breakdowns that frequently can lead to sanctions violations. The five essential elements are largely similar to other US agency guidance in the anti-corruption context and include:

1. The commitment of senior management to supporting a compliance program, including appointing dedicated compliance personnel, providing compliance teams with adequate resources and support, and promoting a "culture of compliance";
2. Periodic risk assessments, counterparty risk and risk arising from mergers and acquisitions;
3. Internal controls, with an emphasis on written policies and procedures to "identify, interdict, escalate, report (as appropriate), and keep records pertaining to activity" that is prohibited by US sanctions;
4. Enterprise-wide audits to ensure that organizations can accurately identify compliance program weaknesses and deficiencies and remediate and improve, reflecting a comprehensive and objective assessment of the organization's OFAC-related risk assessment and internal controls;
5. Training that is tailored based on risk—including as to individual employees or functions—and relevant to the organization's business activity, including the products and services that it offers.

The Framework also highlighted frequent compliance breakdowns that create substantial risk. While many of these factors focused on US jurisdictional connections such as US-dollar payments, US-origin goods, and involvement of US persons, there were also a number of deficiencies that have broader applicability, including:

- Using outdated screening lists or failing to implement comprehensive screening programs

- Conducting transactions outside of established commercial practices or failing to conduct adequate risk-based diligence on customers or other counterparties
- Using decentralized compliance structures, such as those involving personnel scattered across different offices or business units, which can lead to miscommunications or compartmentalization of information and responsibilities.

New expanded reporting requirements

In addition to the advisories and framework, OFAC also issued new reporting regulations in June that substantially changed the scope of reporting related to blocked and rejected transactions and expanded the scope of entities required to report, to include all US persons, not just financial institutions. Prior to the issuance of the Interim Final Rule on June 21, 2019, only financial institutions were required to report on "rejected funds transfers," a term that was fairly narrow in respect of banking transactions. Effective with the final rule, all US persons (including commercial businesses other than financial institutions) must now report "rejected transactions," defined to include transactions that are not blocked but where "processing or engaging in the transaction" would constitute a sanctions violation. Transactions specifically referenced in the new regulations include those related to "wire transfers, trade finance, securities, checks, foreign exchange, and goods or services." While OFAC requested comment on these rules, no further guidance has yet been issued clarifying the broad scope of the definition or further limiting the scope of entities required to submit reports.

Industry-specific advisories

Continuing a trend affecting transportation and energy markets, OFAC issued two advisories related to shipping and aviation in 2019. The first related to Syria and the second focused on Iran.

Syria shipping advisory: Published March 25, 2019, the Syria shipping advisory focused on deceptive practices involved in shipping Iranian-origin petroleum to Syria in violation of both the Iran and Syria sanctions programs. In addition to providing guidance recommendations related to screening programs, due diligence, and other compliance measures for the maritime industry, the advisory also included a listing of over 50 vessels by name and the International Maritime Organization (IMO) number (including any prior names) that had been involved in direct delivery of petroleum to Syria or ship-to-ship (STS) transfers. Of particular note, when OFAC issued a similar advisory related to maritime shipments to Iran in 2018, it was followed by enforcement actions and vessel designations—so careful attention to these advisories is warranted.

Iran civil aviation advisory: On July 23, 2019, OFAC published a specific advisory outlining how the government of Iran and specific Iranian airlines partner with other airlines and front companies to attempt to secure US-origin equipment in violation of applicable sanctions. In addition, the OFAC advisory directly tied Iran's civil aviation sector to flights supporting military operations in Syria, highlighting the risks that US and non-US companies face in providing direct or indirect support to Iran's civil aviation industry. As with the Syria advisory, the aviation advisory named specific companies and their country of registration, although not specific aircraft.

Country programs

Cuba

2019 saw the US ratchet up sanctions targeting Cuba, adding new legal and compliance risk considerations to the longstanding and far-reaching commercial embargo. According to the Trump administration, these changes were intended to further repeal the sanctions relief implemented by President Obama, and to intensify pressure on the Cuban government in connection with its human rights abuses and continued support for the Maduro regime in Venezuela.

Some of the key changes over the past year included several related to travel, such as:

- Removing general licenses that had allowed individual "people-to-people" educational travel to Cuba (though formal group-sponsored educational travel authorities remain available);
- Further restricting private aircraft and vessels from traveling to Cuba, and further restricting the ability of Cuban state-owned airlines to lease aircraft subject to the US Export Administration Regulations (EAR);
- Prohibiting scheduled air service between the US and Cuba, other than to Havana's José Martí International Airport.

The US also tightened financial controls, including by:

- Imposing new $1,000 per quarter caps on family remittances, prohibiting all remittances to close family members of Cuban government officials or the Cuban Communist Party, and prohibiting all "donative" remittances (i.e., remittances to friends and organizations) to Cuba (but authorizing remittances to certain "self-employed individuals");
- Removing a general license that had allowed financial institutions subject to US jurisdiction to engage in certain "U-turn" transactions involving Cuba (which must now be rejected, but not blocked absent some other sanctionable activity).

Additionally, the US extended its Cuba-related sanctions to an even wider range of products made outside the US. This occurred when the US reduced the *de minimis* level for Cuba to 10 percent from 25 percent, meaning that non-US made items are now

subject to the EAR (which generally prohibit exports to Cuba) if the value of incorporated US-origin controlled content exceeds 10 percent.

In addition to reinstating—and intensifying—these key aspects of the Cuba embargo, the Trump administration also activated Title III of the LIBERTAD Act, also known as the Helms-Burton Act, which allows US nationals to file lawsuits in US federal court against any individual or entity that "traffics" in property "confiscated" by the Cuban government on or after January 1, 1959. Title III broadly defines the key terms and scope, and allows plaintiffs to claim potentially onerous damages—raising a novel and potentially significant US legal risk for companies that do business with Cuba, even indirectly.

While the US enacted the Helms-Burton Act in 1996, successive presidents and/or secretaries of state had always suspended the operation of this private "cause of action" under Title III. However, in April 2019, US Secretary of State Michael Pompeo announced that the US would no longer extend the suspension and, accordingly, Title III became active as of May 2, 2019.

According to public reports, since that time, there have been at least 20 Helms-Burton Title III lawsuits filed, reflecting 75 plaintiffs, 67 defendants, and four requests for class action certification. There have also been dozens of threatened Helms-Burton Title III lawsuits.

2019 also saw the US "ramp up" investigations under Title IV of the Helms-Burton Act. This provision, which has been in force since 1996, allows the US to deny a visa to, and exclude from the US, non-US persons who "traffic" in confiscated property, their officers, principals, and controlling shareholders, and their immediate family members. Visa bans under Title IV may increasingly be a legal risk in their own right and in the context of potential lawsuits under Title III.

Iran

What happens when an irresistible force meets an immovable object? As the Trump administration ratcheted up sanctions on Iran in 2019 beyond those reimposed after the JCPOA withdrawal and Iran continued to engage in provocative acts, this "maximum pressure" campaign left many observers questioning the sanctions' efficacy and whether the administration had room to increase that pressure.

As in past years, 2019 saw multiple designations of regime members and entities found to be engaged in various malign activities, including support for Iran's nuclear program, its involvement in Syria, its human rights abuses, and efforts to circumvent sanctions and access international financial networks. Some designations were particularly noteworthy:

- In April, the State Department designated the IRGC as a FTO. The IRGC was, of course, already subject to numerous designations and blocking sanctions. Adding the FTO designation, however, had symbolic significance, as this is the first and only time that such measures have been applied to a government entity. It also allows the possibility of international criminal enforcement against foreign persons for engaging in certain transactions involving the IRGC—a new risk factor beyond secondary sanctions.

In addition to reinstating—and intensifying—these key aspects of the Cuba embargo, the Trump administration also **activated Title III of the LIBERTAD Act**, also known as the Helms-Burton Act, which **allows US nationals to file lawsuits** in US federal court against **any individual** or entity that **"traffics" in property "confiscated"** by the Cuban government **on or after January 1, 1959.**

- In June, the president issued Executive Order (EO) 13876, which designated the Supreme Leader of Iran and provided designation authority for those determined to be acting on his behalf. In July, OFAC designated Iran's Foreign Affairs Minister, Mohammad Javad Zarif, under that EO.
- In September, following an apparent Iranian missile attack on an oil production facility in Saudi Arabia, OFAC imposed additional sanctions on the CBI and the National Development Fund of Iran under the counterterrorism authorities in EO 13224. The CBI was already designated prior to this action, and US persons were generally prohibited from engaging in transactions with it. However, prior to this designation, transactions involving CBI in connection with authorized humanitarian trade with Iran were permitted. A significant impact of the additional designation of the CBI, therefore, was to make humanitarian trade with Iran more fraught with risk.

Following the CBI designation under EO 13224, OFAC issued guidelines under which foreign governments and foreign financial institutions may obtain assurances from OFAC that their activity in connection with humanitarian trade with Iran will not expose them to secondary sanctions risk. The guidelines require foreign governments and financial institutions to provide OFAC with highly detailed information concerning the transactions and the parties involved, including beneficial ownership information on Iranian entities.

The US also created and implemented new sanctions authorities, and expanded sanctions under existing authorities.

- On May 8, the president signed EO 13871, which targeted the copper, iron, steel, and aluminum sectors of Iran. Entities that are determined to be a part of those sectors can be designated solely on that basis. Any person who knowingly engages in significant transactions involving the export of those commodities from Iran, provides goods or services in support of such transactions, or provides material support to entities designated under EO 13871 risks designation itself. Financial institutions that conduct or facilitate significant financial transactions in connection with such sanctionable transactions can have their ability to maintain correspondent and payable-through accounts with US financial institutions restricted or prohibited. In August, OFAC published amendments to the Iranian Financial Sanctions Regulations (IFSR) (31 CFR Part 561) and the Iranian Human Rights Abuses Sanctions Regulations, which were also renamed as the Iranian Sector and Human Rights Abuses Sanctions Regulations (31 CFR Part 562), to implement the sanctions targeting the identified sectors of Iran.
- Finally, in October, the State Department issued determinations under Section 1245 of the Iran Freedom and Counter-Proliferation Act (IFCA) of 2012. IFCA § 1245 allows sanctions to be imposed on any person who knowingly engages in a supply

transaction to or from Iran of raw and semi-finished metals, graphite, coal, and software for integrating industrial processes, where such materials are to be used in connection with a sector of the Iranian economy determined to be controlled by the IRGC, or in connection with Iran's nuclear, military, or ballistic missile programs. The State Department determined that (a) the Iranian construction sector is controlled by the IRGC, and (b) four strategic metals (stainless steel 304L tubes; MN40 manganese brazing foil; MN70 manganese brazing foil; and stainless steel CrNi60WTi ESR + VAR (chromium, nickel, 60 percent tungsten, titanium, electro-slag remelting, vacuum arc remelting)) are being used in connection with Iran's nuclear, military, or ballistic missile programs. As a result of these determinations, if a person engages in a transaction for the supply to or from Iran of raw or semi-finished metals, graphite, coal, or software for integrating industrial processes and that transaction involves the Iranian construction industry, the person will be potentially subject to sanctions. Likewise, if a person provides any of the identified strategic metals to Iran, regardless of the end use or end user, they will be exposed to sanctions.

There were also some notable impositions of "secondary sanctions" involving Iran in 2019:

- In July, OFAC designated the Zhuhai Zhenrong Company of China and one of its executives pursuant to EO 13846 for knowingly engaging in a significant transaction for the purchase of Iranian oil.
- In September, OFAC used the same sanctions authority against a higher-profile target: certain subsidiaries and vessels of the Chinese shipping giant COSCO. Notably, those sanctions do not by themselves have secondary sanctions implications and only apply to specifically listed vessels and COSCO entities and their wholly-owned subsidiaries, not the ultimate parent and all of its subsidiaries.

The COSCO designations reflected an increased focus on the role of shipping in Iran's efforts to circumvent sanctions. Shortly before those designations, OFAC published additional FAQ relating to when bunkering of Iranian vessels, and non-Iranian vessels engaged in trade with Iran of sanctionable goods, could subject a non-US person to sanctions. The FAQ re-emphasized that providing bunkering services to such vessels can expose non-US persons to sanctions themselves. OFAC also published an advisory to the maritime petroleum shipping community warning that knowingly engaging in a significant transaction involving Iranian oil will expose any person participating in such a transaction to sanctions risk. The advisory highlighted methods used to obfuscate the source of Iranian oil and articulated OFAC's expectations with respect to the measures potentially affected companies should take to mitigate the risk from such deceptive practices. This "advance warning" is similar in approach to the shipping and related advisories issued in 2019, which often precede enforcement actions.

On March 14, 2019, **OFAC introduced the List of Foreign Financial Institutions** Subject to Correspondent Account or Payable-Through Account Sanctions (the CAPTA List). The CAPTA List identifies FFI that are **prohibited from opening correspondent** or payable-through accounts in the US, or for whom maintaining such an account is subject to strict conditions. The CAPTA List is **not a new sanctions authority** but a new organizational structure that **consolidates already-existing sanctions lists and authorities**. As of year's end, the CAPTA List contains **only one bank**: the Bank of Kunlun Co. Ltd (Bank of Kunlun).

Finally, there were cross-program changes relating to sanctions lists, which primarily had an impact under the Iran sanctions program. The IFSR permit the imposition of correspondent and payable-through account (CAPTA) sanctions on FFI. FFI subject to CAPTA sanctions had previously been included on the "Part 561 List," referring to the part of the Code of Federal Regulations containing the IFSR. However, other sanctions programs (including Ukraine/Russia and Hizballah) also feature CAPTA sanctions. In March, OFAC introduced the CAPTA List, which includes all entities subject to such restrictions and phased out the Part 561 List.

North Korea

In 2019, the US further strengthened sanctions targeting North Korea, with specific emphasis on curbing illicit ship-to-ship (STS) transfers and combatting North Korean malicious cyber activity.

Unprecedented negotiations between the Trump administration and North Korean leader Kim Jong-Un continued into 2019, with the two leaders meeting on February 27 and 28. Despite high expectations, the parties did not reach an agreement, and the United States subsequently further intensified sanctions against North Korea.

On March 21, 2019, the United States updated its February 2018 North Korean shipping advisory to highlight the use of STS transfers to evade sanctions. In so doing, OFAC outlined specific measures to mitigate the risk of participating in such evasive activities and identified commonly-used ports of call. The advisory also identified dozens of vessels that according to OFAC had participated in STS transfers and exported coal from North Korea. In conjunction with these updates, OFAC also announced the designation of two companies alleged to be trading in North Korean metal and ore and operating in North Korea's transportation industry.

Further highlighting OFAC's focus on the shipping sector and the illicit use of STS transfers, OFAC designated two individuals and three entities believed to have conducted STS transfers of refined petroleum products on behalf of North Korea.

OFAC also targeted North Korean malicious cyber activity in 2019, sanctioning three North Korean state-sponsored malicious cyber groups: "Lazarus Group," "Bluenoroff," and "Andariel." OFAC alleged that all three groups are related to North Korea's Reconnaissance General Bureau. Lazarus Group was involved in the destructive WannaCry 2.0 ransomware attack, which targeted the United Kingdom's National Health Service (NHS), among others, resulting in over $112 million in costs to the NHS. Lazarus Group also committed the 2014 cyber-attacks against Sony Pictures Entertainment. "Bluenoroff" and "Andariel"—both sub-groups of Lazarus Group—were sanctioned for targeting FFI and businesses, government agencies, financial services infrastructure, and the defense industry on behalf of the North Korean regime.

Simultaneous with the announcement of these sanctions, the Department of Treasury also announced a joint effort with the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency and US Cyber Command to disclose malware samples to the private cybersecurity industry to better prepare them to combat North Korean malicious cyber activity.

Additionally, OFAC again amended and reissued the North Korean Sanctions Regulations to, among procedural changes, more clearly identify secondary sanctions risks facing FFI in Note 3 to paragraph (a) of §510.201 and Note 1 to paragraph (b) of §510.210. Note 3 and Note 1 explain the relevant identifiers that accompany names designated on the SDN List pursuant to EO 13382 and were revised to include "Secondary sanctions risk: North Korea Sanctions Regulations, §§510.201 and 510.210."

Russia

Compared to 2018, 2019 was a less active year with respect to Russia sanctions. However, there were several developments that reflect notable trends in the use of sanctions authorities, or that represent significant developments in US sanctions policy. Moreover, Russia-related sanctions were front-page news and a continued compliance challenge given the patchwork of far-reaching authorities, scarcity of regulatory guidance, and overall complexity of the Russia sanctions program.

Arguably the most significant development arrived late in the year with the enactment of new sanctions legislation targeting Nord Stream 2, the liquefied natural gas (LNG) pipeline under construction between Russia and Europe, and TurkStream, the LNG pipeline under construction between Russia and Turkey. Both pipeline projects have long been a contemplated target of US sanctions policy. The Countering America's Adversaries Through Sanctions Act (CAATSA), enacted in 2017, contained provisions for such sanctions, but using those authorities requires coordination with the US's European allies, who support completion of the pipelines.

In December 2019, as part of the annual National Defense Authorization Act (NDAA), the president enacted the "Protecting Europe's Energy Security Act" (PEESA). PEESA requires the president to submit a report to Congress within 60 days of enactment and every 90 days thereafter identifying vessels installing underwater pipe at depths exceeding 100 feet for Russian energy export pipelines (currently, Nord Stream 2 and TurkStream), as well as persons who have sold, leased or provided those vessels for these projects. PEESA also requires the president to block the property of any person determined to have sold, leased, or provided such vessels, and to exclude from the US any person who has engaged in such activity or is a corporate officer or controlling shareholder of an entity determined to have engaged in such activity. While the first report under PEESA is not due until early 2020, the sanctions authority of PEESA became effective immediately upon signing. There is, however, a provision that allows the president to, in his discretion, waive the application of the sanctions for any person who, within 30 days of enactment, makes good-faith efforts to cease sanctionable operations. OFAC issued guidance that any vessels engaged in activity sanctionable under PEESA had to immediately cease such activity in order to take advantage of this wind-down period and avoid imposition of sanctions. Shortly thereafter, the one company known publicly to be engaged in PEESA-sanctionable Nord Stream 2 activity announced it would cease doing so.

Earlier in 2019, the administration issued a long-awaited second round of sanctions under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act) against Russia arising from the poisoning of Sergei Skripal in Salisbury, England, in 2018. The first round of CBW Act sanctions were imposed in August 2018, and a second round was to follow within three months if the US determined that the Russian Federation did not meet certain conditions aimed at assuring against future use of chemical weapons—a determination the US made in November 2018. The second round of sanctions, issued in August 2019, prohibit US financial institutions from participating in the primary market for non-ruble denominated bonds and lending non-ruble denominated funds to the Russian Federation, except for the purchase of food and other agricultural commodities. The US will also oppose multilateral bank loans to the Russian Federation. Finally, the US Commerce Department's Bureau of Industry and Security (BIS) will apply a policy of denial to any

application for a license to export or re-export to Russia US-origin commodities controlled for reasons relating to chemical and biological weapons.

There were also a substantial number of designations under existing sanctions authorities. A number of these designations were not related to the "core" Russia sanctions authorities relating to the Russian Federation's activity with respect to Ukraine and Crimea (although there were certainly designations relating to such activity as well). For instance, there were a number of designations of Russian individuals and entities arising from alleged activities such as election interference, malicious cyber activity, and provision of support for the ongoing civil war in Syria. There were also notable designations of Russian entities under the Venezuela sanctions program.

In January 2019, a number of Russian entities that had been added to the SDN List in 2018 for their connection to Oleg V. Deripaska were removed from the SDN List. The removals followed significant governance and structural changes that reduced Deripaska's ownership and severed his ability to control the entities. As OFAC made clear during the removal process, the objective of sanctions is to change behavior, and through the targeted companies' governance and structural changes, OFAC had achieved its objectives in imposing sanctions.

One Deripaska-linked entity, GAZ Group (GAZ), has remained on the SDN List, but the full impact of sanctions on that company has been held at bay under a general license. Since its issuance and until mid-2019, that general license authorized transactions necessary and ordinarily incident to the maintenance or wind-down of operations, contracts and other agreements involving GAZ that pre-date the imposition of sanctions. Over the second half of 2019, however, that general license has been expanded to authorize a wider range of transactions with GAZ—specifically, those relating to certain driver assistance systems and emissions standards for GAZ-produced vehicles.

2020 also saw the introduction and advancement of **several sanctions bills targeting Russia**. Most notably, Congress passed the Protecting Europe's Energy Security Act of 2019 (PEESA) as part of the NDAA for FY 2020. **The president signed this into law on December 20, 2019.**

PEESA mandates the imposition of **blocking sanctions on those involved in the sale**, leasing, facilitation, or provision of vessels used in the undersea construction of Russian export pipelines at 100 feet below sea level, including Nord Stream 2. PEESA also **requires the denial of visas to executives from companies linked to such vessels**.

The Senate Foreign Relations Committee also approved the "Defending American Security from Kremlin Aggression Act of 2019" (DASKA), **also known as the sanctions bill "from hell,"** in the last month of the year. Although unclear when the full Senate may vote on the bill, DASKA **requires sanctions targeting Russian interference in democratic institutions** abroad and aggression in Ukraine. **DASKA requires sanctions on Russian banks** that support Russia's efforts to **undermine democratic institutions abroad**, investment in Russian LNG projects outside of Russia, Russia's cyber sector, Russia's sovereign debt, and persons facilitating **illicit and corrupt activities** on behalf of Vladimir Putin. Additionally, DASKA **requires sanctions on Russia's shipbuilding sector** in the event that Russia violates the freedom of navigation in the Kerch Strait or anywhere else in the world; support for the **development of crude oil resources** in Russia; and Russian state-owned energy projects outside of Russia.

Other sanctions bills pending in Congress are the Defending Elections from Threats by Establishing Redlines Act of 2019 (DETER) as well as a **bill to respond to and deter Russian attacks on the integrity of United States elections**, discussed in the House in May 2019 but not yet introduced.

Syria

OFAC also made significant moves pertaining to Syria in 2019. Chief among these was the October 24 issuance of EO 13894 and the designation of two Turkish ministries and three senior Turkish government officials in response to Turkey's military operations in northeastern Syria. While this related to activity in Syria, it was directed primarily at Turkey and thus we discuss it in more detail in the Turkey update below.

Further highlighting OFAC's continued focus on illicit shipping activities, OFAC took several measures targeting this sector. On March 25, 2019, OFAC updated its advisory to the Maritime Petroleum Shipping Community to outline risks associated with facilitating shipments of Iranian-origin petroleum to Syrian-government owned or operated ports. In conjunction with the update, OFAC also announced the designation of dozens of new vessels, including 16 vessels for making illicit oil shipments to Syria and 30 vessels for engaging in illicit STS transfers.

In addition, on June 11, 2019, OFAC announced the designation of 16 individuals and entities supplying and financing luxury reconstruction and investment efforts on behalf of the Assad regime. In so doing, OFAC designated numerous Lebanese companies for facilitating shipments of Iranian oil to Syria.

Finally, on September 26, 2019, OFAC also designated one entity, three individuals, and five vessels for their participation in a scheme to deliver fuel to Russian forces' fighter jets in Syria. These designations were the results of a coordinated effort with the Federal Bureau of Investigation and the US Attorney's Office for the District of Columbia. The three individuals designated were also indicted on June 12, 2018, on charges of conspiracy to violate US economic sanctions.

Venezuela

2019 was the year in which the US committed publicly to forcing out the Maduro regime and exerting maximum sanctions pressure against it.

Building on the designations and expansion of sanctions authorities in 2018, President Trump issued EO 13884, which targeted virtually all instrumentalities of the Venezuelan government as subject to blocking (although not as SDNs). This followed the January 25, 2019, designation of Petróleos de Venezuela, S.A. (PdVSA) as an SDN under EO 13850. Given the significant global impacts of sanctions for a number of energy services firms operating in Venezuela, as well as a need to ensure that a full scale embargo was not in place, OFAC issued over 30 general licenses to allow continued commercial activity in areas such as transportation, mail service, telecommunications, specified energy-sector activity, and humanitarian relief. This represented a change from the prior sanctions approach that had primarily focused on sectoral sanctions in the form of "capital market restrictions" against all of the government of Venezuela and its agencies, including subsidiaries in which the government held a 50 percent or greater ownership, directly or indirectly (including PdVSA).

There have been seven rounds of Venezuela-related designations, including a number of individuals associated with the government of Venezuela, and a range of subsidiary entities of Venezuelan state companies, the Venezuelan Central Bank, and the Venezuelan Economic and Social Development Bank (BANDES). Each of these successive designations has been aimed at further restricting access to capital by the Maduro government and preserving those assets (including PdVSA operations) in the event that there is a new government installed. In addition to sanctions pressure, the US (along with a number of other

governments) recognized Juan Guaidó as the interim president of Venezuela and has supported efforts for regime change short of military intervention.

While the vast majority of the restrictions in the Venezuela program apply only to US persons and do not extend to foreign entities (whether owned or controlled by US persons or not), the wording of EO 13884 and EO 13850 authorizes OFAC to impose sanctions on any person (including foreign persons that provide "material support" to entities designated under those orders. This language, combined with aggressive rhetoric by the US government related to efforts to pressure the Maduro regime, created substantial uncertainty regarding the scope of the "material support" language. In addition, OFAC used this authority to designate Russia's Evrofinance Mosnarbank for allegedly supporting the Maduro regime by funneling revenue from oil sales, and designated a number of shipping companies and vessels involved in making shipments of Venezuelan crude oil to Cuba.

In this context, the political situation on the ground in Venezuela remains the single biggest factor in sanctions policy—along with a continued effort (for now) by OFAC to maintain licenses in place for certain firms that are operating in the energy sector so long as such activities are transparent.

OFAC has also demonstrated a willingness to remove sanctions on individuals that publicly denounce Maduro, although those changes have had less of a material impact than the licensing related to contracts with PdVSA. Similarly, OFAC has also shown a willingness to remove sanctions on entities and vessels that publicly cease trading with sanctioned Venezuelan firms. As OFAC has noted, "U.S. sanctions need not be permanent; they are intended to change behavior. The U.S. would consider lifting sanctions for persons … that take concrete and meaningful actions to restore democratic order, refuse to take part in human rights abuses and speak out against abuses committed by the government, and combat corruption in Venezuela."

List-based sanctions programs

1. Global Magnitsky Act sanctions

The Global Magnitsky Act sanctions authority has now been in effect for a full two years, with the administration announcing many of its 2019 designations on International Anti-Corruption and International Human Rights Days (which occurred December 9 and December 10, respectively). Global Magnitsky, or "Glomag," targets non-US persons that are believed to have engaged in human rights abuses or "corruption" and has become one of the most targeted sanctions programs with a growing, worldwide application.

Perhaps the most high-profile implementation of the Glomag sanctions in 2019 was the targeting of four high-level Myanmar military leaders, including the commander-in-chief, for alleged human rights abuses against the Rohingya and other minorities. These sanctions, imposed December 10, 2019, were levied because the US determined that "elements of the Burmese military have committed serious human rights abuse" against ethnic minorities.[1] In addition to the commander-in-chief, the US sanctioned the deputy commander as well as two high-level infantry commanders.

On the same day, the US imposed Glomag sanctions on a Pakistani police chief, a Libyan militia commander, several members of a Congolese rebel army, multiple Sudanese citizens, and a prominent Slovakian businessman along with six businesses owned or controlled by him. The Slovakian citizen, Marian Kocner, was accused of orchestrating the murder of an investigative reporter that had authored over a dozen articles on Mr. Kocner's allegedly corrupt dealings. Public outcries over the assassination resulted in the resignation of Slovakia's prime minister.[2]

On December 9, the US designated a Latvian mayor and "oligarch," along with four companies he owns or controls, for alleged money laundering, bribery, and abuse of office.[3] The US levied sanctions for alleged corruption on a Cambodian official and 11 related entities, a Cambodian general, three members of his family, and four additional businesses, along with nine individuals and multiple companies alleged to support the previously-sanctioned Serbian arms dealer, Slobodan Tesic.

2. SDGTs, SDNTKs, TCOs

The US also made use of its existing list-based sanctions authorities to designate individuals and entities in 2019, including some of OFAC's core authorities related to Specially Designated Global Terrorists (SDGTs), Specially Designated Narcotics Trafficking Kingpins (SDNTKs) and Transnational Criminal Organizations (TCOs).

Some of the more notable designations in 2019 included:

- The designation of Lebanon-based Jammal Trust Bank SAL and related subsidiaries as SDGTs for alleged support of financing and providing bank facilities to Hizballah[4]

1 Press Release, US Dep't the Treas., *Treasury Sanctions Individuals for Roles in Atrocities and Other Abuses* (Dec. 10, 2019), https://home.treasury.gov/news/press-releases/sm852.

2 *Id. See also*, Marc Santora and Miroslava Germanova, *Slovak Businessman Charged with Ordering Murder of Journalist Jan Kuciak*, N.Y. TIMES (Mar. 14, 2019), https://www.nytimes.com/2019/03/14/world/europe/slovakia-jan-kuciak-kocner.html.

3 Press Release, US Dep't the Treas., *Treasury Sanctions Corruption and Material Support Networks* (Dec. 9, 2019), https://home.treasury.gov/index.php/news/press-releases/sm849.

4 Press Release, US Dep't the Treas., *Treasury Labels Bank Providing Financial Services to Hizballah as Specially Designated Global Terrorist* (Aug. 29, 2019), https://home.treasury.gov/news/press-releases/sm760.

- A coordinated action with Treasury's Financial Crimes Enforcement Network (FinCEN) against Chinese national Fujing Zheng and several others in his enterprise for the alleged sale and distribution of narcotics into the US[5]
- The designation of Dominican national Cesar Emilio Peralta and eight others for operating an international drug trafficking organization responsible for selling opioids and other narcotics into the US[6]
- The sanctioning of Guatemalan Mayor Erik Salvador Suñiga Rodriguez, four other individuals, and five businesses for being "major drug trafficker[s] in Guatemala who suppl[y] cocaine to Mexico's Sinaloa Cartel"[7]
- The imposition of sanctions on Indian national Jasmeet Hakimzada for his role in running a global drug operation that smuggles heroin, cocaine, ephedrine, ketamine, and synthetic opioids into the United States, Australia, New Zealand, and the United Kingdom.[8]

3. Cyber activity-related sanctions

The US continues to use sanctions to address concerns about hacking and other cyber-related activities.

Actions taken in 2019 include the sanctioning of an Iranian company and several individuals for attempting to install malware to compromise the data of US intelligence agents,[9] the Russia-based "Evil Corp" cybercriminal organization that stole login information from hundreds of banks in over 40 countries, stealing more than $100 million,[10] and several North Korean hacking collectives that targeted the US government, military, financial, manufacturing, publishing, media, entertainment, and international shipping sectors, as well as critical infrastructure, using tactics such as cyber espionage, data theft, monetary heists, and destructive malware operations.[11]

4. Nicaragua

The US continued to apply pressure to Nicaragua's government by levying new sanctions under the list-based program it created last year. These sanctions, which are intended to address concerns about the government of Nicaraguan President Daniel Ortega, have been imposed on a growing range of senior Nicaraguan officials and Ortega family members.

After targeting President Ortega's wife and vice president in 2018, in April 2019, the US listed his son, as well as Banco Corporativo SA, for their support of the Ortega regime.[12] Banco Corporativo was already subject to sanctions as an indirect subsidiary of the sanctioned PdVSA, but the US designated it separately under the Nicaraguan sanctions as well. The US then targeted four more Nicaraguan officials, plus an additional two pursuant to the Nicaragua Human Rights and Anticorruption Act of 2018. In November 2019, the US designated three more Nicaraguan officials "who have had a role in directing entities engaged in human rights abuses, election fraud, and corruption."[13]

---

5 Press Release, US Dep't the Treas., *Treasury Targets Chinese Drug Kingpins Fueling America's Deadly Opioid Crisis* (Aug. 21, 2019), https://home.treasury.gov/news/press-releases/sm756.

6 Press Release, US Dep't the Treas., *Treasury Designates Dominican Republic-Based Peralta Drug Trafficking Organization Under the Kingpin Act* (Aug. 20, 2019), https://home.treasury.gov/news/press-releases/sm755.

7 Press Release, US Dep't the Treas., *Treasury Sanctions Guatemalan Mayor and His Drug Trafficking Organization* (Dec. 19, 2019), https://home.treasury.gov/index.php/news/press-releases/sm863.

8 Press Release, US Dep't the Treas., *Treasury Sanctions Indian Narcotics Trafficker Jasmeet Hakimzada and His Network* (Feb. 20, 2019), https://home.treasury.gov/news/press-releases/sm614.

9 Press Release, US Dep't the Treas., *Treasury Sanctions Iranian Organizations and Individuals Supporting Intelligence and Cyber Targeting of U.S. Persons* (Feb. 13, 2019), https://home.treasury.gov/news/press-releases/sm611.

10 Press Release, US Dep't the Treas., *Treasury Sanctions Evil Corp, the Russia-Based Cybercriminal Group Behind Dridex Malware* (Dec. 5, 2019), https://home.treasury.gov/news/press-releases/sm845.

11 Press Release, US Dep't the Treas.,*Treasury Sanctions North Korean State-Sponsored Malicious Cyber Groups* (Sep. 13, 2019), https://home.treasury.gov/news/press-releases/sm774.

12 Press Release, US Dep't the Treas., *Treasury Targets Finances of Nicaraguan President Daniel Ortega's Regime* (Apr. 17, 2019), https://home.treasury.gov/news/press-releases/sm662.

13 Press Release, US Dep't the Treas., *Treasury Sanctions Nicaraguan Government Officials Involved in Human Rights Abuse and Social Security Corruption* (Nov. 7, 2019), https://home.treasury.gov/news/press-releases/sm828.

5. Turkey

Perhaps one of the clearest examples of the rapid pace and modification of US sanctions—and the potentially massive commercial implications that can occur—was reflected in the imposition and removal of sanctions against Turkey. In a span of less than 10 days, the US established a new and far-reaching sanctions program targeting its NATO ally, sanctioned three cabinet ministers and two ministries, and then lifted the designations but kept the underlying authorities in place.

On October 14, President Trump issued EO 13894 authorizing far-reaching sanctions against Turkey in connection with the country's military operations in northeastern Syria. The EO targeted Turkish government officials, government agencies and "instrumentalities," and individuals or entities operating in certain sectors of the Turkish economy (to be identified later). It also authorized "secondary sanctions" on FFI for knowingly engaging in or facilitating significant transactions with certain targeted individuals and entities. Concurrent with the issuance of EO 13894, OFAC imposed sanctions on the Turkish Ministries of National Defense and Energy and Natural Resources, and three Turkish senior government officials: the Ministers of National Defense, Energy and Natural Resources, and Interior.

Nine days later, on October 23, OFAC lifted these sanctions designations, in response to a ceasefire agreement in Syria. The underlying authorities of EO 13894, however, remain in place, providing a legal framework for the US to reimpose sanctions on Turkey without any further notice.

In addition to EO 13894, Turkey was also the subject of significant congressional efforts to impose sanctions under CAATSA, as a result of Turkey's purchase of S-400 surface to air missiles from Russia. The US has already used a variety of other economic and diplomatic measures, including the suspension of sales of the F-35 jet and increased tariffs on Turkish steel, as bargaining chips in its negotiations with the Turkish government. Turkey has threatened to close key US military bases should sanctions go into effect. This will continue to be an area that merits close monitoring in 2020, particularly in light of the growing regional issues involving Iran.

On July 26, 2019, the president issued EO 13882, **authorizing blocking sanctions and US visa restrictions** against persons **undermining democratic processes** or institutions in Mali, or who **threaten the peace**, security, or stability of Mali. OFAC utilized these new authorities concurrently with a parallel action by the UN Security Council in the last few days of 2019, **designating five Malian individuals.** Four of the five individuals were designated for being responsible for, or complicit in, or having directly or indirectly **engaged in, actions or policies** that threaten the peace, security, or stability of Mali. The fifth individual was **designated for his role** in obstructing the delivery or distribution of, or access to, **humanitarian assistance in relation to Mali**.

6. Combatting foreign interference in US elections

While the president signed EO 13848 "Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election" in September 2018,[14] the first and only sanctions imposed under that regime were not levied until a full year later. These sanctions targeted four entities, seven individuals, three aircraft and a yacht that are all associated with the Internet Research Agency and its alleged financier, Russian citizen Yevgeniy Prigozhin.[15] According to OFAC, the Internet Research Agency and its affiliates were sanctioned for their continued efforts to interfere in US elections by spreading misinformation about the 2018 US midterms. The Internet Research Agency, along with Prigozhin and many other individuals, were previously sanctioned under other US sanctions programs targeting malicious cyber-enabled activities for attempting to interfere with the 2016 US elections.[16]

14 Exec. Order 13848 (Sept. 12, 2018).

15 Press Release, US Dep't the Treas., *Treasury Targets Assets of Russian Financier who Attempted to Influence 2018 U.S. Elections* (Sep. 30, 2019), https://home.treasury.gov/news/press-releases/sm787.

16 Press Release, US Dep't the Treas., *Treasury Sanctions Russian Cyber Actors for Interference with the 2016 U.S. Elections and Malicious Cyber-Attacks* (Mar. 15, 2018), https://home.treasury.gov/news/press-releases/sm0312.

Published civil penalty settlements

OFAC's 2019 published civil monetary penalty settlements span a range of sanctions programs and authorities, geographic regions, industry sectors and types of businesses—including a growing roster of corporate (i.e., non-bank) entities.

These settlements include the first-ever enforcement action based on an apparent violation of the Sectoral Sanctions against Russia (Haverly), a hybrid corporate/individual penalty (Kollmorgen), and transactions related to a foreign judicial proceeding (Atradius), along with more traditional sanctions enforcement fact patterns, such as those related to US-dollar clearing and travel to Cuba. 2019 also saw several settlements resulting from cross-border mergers and acquisitions, including settlements involving pre-acquisition misconduct for which the acquirer was then liable, and settlements involving post-acquisition misconduct that circumvented newly implemented compliance controls.

This past year, OFAC published a total of 26 civil penalty settlements, with an aggregate penalty amount of $1,289,027,059. OFAC also published a total of four findings of violation. Many of these settlements also specifically reference compliance commitments by the parties involved—a new trend that has emerged alongside OFAC's *Framework for OFAC Compliance Commitments*.

The 2019 civil penalty totals are significantly greater than the 2018 figures and, when considered together with the proliferation of sanctions designations in 2019, suggest that enforcement remains a high priority. However, not all enforcement actions result in a public settlement, and many enforcement actions involve conduct that occurred several years prior to the settlement. Accordingly, while the number and amount of penalties in 2019 far exceed those of 2018, it does not necessarily follow that enforcement is more rigorous this year than it was in the past year.

Set forth below is a high-level summary of each OFAC civil penalty settlement announced in 2019 in the chronological order of announcement. Unless otherwise noted, these summaries reflect only OFAC's portion of each settlement and do not include any parallel settlement proceedings that may have occurred before other US or non-US agencies.

In a rare occurrence, 2019 also saw a **federal district court act as a check** against OFAC's enforcement authority. On the last day of 2019, a Texas district court granted summary judgment **in favor of Exxon Mobil Corporation (Exxon)** in Exxon's challenge to a $2 million penalty issued by OFAC in 2017 for **alleged violations of Ukraine/Russia-related sanctions**. In the lawsuit, Exxon argued it lacked sufficient notice that its engaging **in business with Rosneft**—not a sanctioned entity—**would constitute a violation of US sanctions** merely because Igor Sechin—a SDN and the president and chairman of Rosneft's management board—signed the underlying contracts in his **official capacity**. The court concluded that neither the text of the relevant regulations nor other statements by OFAC provided adequate notice that a **US person could violate OFAC regulations** by signing a contract with a non-SDN company where a SDN individual signs on behalf of that company.

A. e.l.f. Cosmetics

On January 31, 2019, OFAC announced a $996,080 settlement with e.l.f. Cosmetics ("ELF") in connection with apparent violations of the North Korea sanctions.[17] According to OFAC's announcement, ELF imported false eyelash kits into the United States from two suppliers in China, and approximately 80 percent of these kits contained materials from North Korea. "This enforcement action highlights the risks for companies that do not conduct full-spectrum supply chain due diligence when sourcing products from overseas, particularly in a region in which the DPRK, as well as other comprehensively sanctioned countries or regions, is known to export goods."

B. Kollmorgen

On February 7, 2019, OFAC announced a settlement with Kollmorgen Corporation (Kollmorgen), on behalf of its Turkish affiliate, in connection with apparent violations of the Iran sanctions.[18] This affiliate apparently serviced certain machines in Iran and provided products, parts or services to a third country with knowledge they were destined for Iran. According to OFAC, notwithstanding Kollmorgen's "extensive efforts" to ensure that the affiliate complied with applicable US sanctions, this did not occur, and the affiliate, among other things, attempted to conceal the Iranian-related business and to obstruct an internal investigation into it. As part of the settlement, Kollmorgen paid $13,381 and OFAC imposed sanctions on the person who managed its Turkish affiliate—a relatively uncommon hybrid outcome involving penalties on both entities and individuals.

C. AppliChem

On February 14, 2019, German chemical company AppliChem GmbH (AppliChem) reached a $5,512,564 settlement with OFAC in connection with apparent violations of the Cuba sanctions. AppliChem was acquired by a US company and then continued to sell products to Cuba, contrary to the directions and in circumvention of the compliance controls of the acquirer. In 2013, the acquirer submitted a voluntary self-disclosure to OFAC regarding these sales, and in 2015, OFAC issued a cautionary letter in response. However, after receiving an anonymous report to its helpline in 2016, the acquirer conducted a new investigation which revealed continued sales to Cuba—again contrary to company policy—and the acquirer then filed a new voluntary self-disclosure with OFAC.

D. ZAG IP, LLC

On February 21, 2019, OFAC announced a $506,250 settlement with ZAG IP, LLC (ZAG), a US company that purchased Iranian-origin cement clinker from a company in the United Arab Emirates, with knowledge that the clinker was sourced from Iran, and then resold the clinker to a company in Tanzania.[19] According to OFAC, ZAG had contracted to source the clinker from India, but a technical problem at the production plant threatened to impair the delivery. ZAG identified an alternative supplier in the United Arab Emirates and relied on that supplier's misrepresentation that the clinker it had on offer was not subject to US sanctions on Iran, even though ZAG knew that the clinker was produced by an Iranian manufacturer and shipped from a port in Iran.

E. Stanley Black & Decker

On March 27, 2019, Stanley Black & Decker, Inc. (Stanley Black & Decker) agreed to pay $1,869,144 to settle apparent violations of the Iran sanctions by its China-based subsidiary.[20] According to OFAC, after Stanley Black & Decker acquired 60 percent of the subsidiary and formed a joint venture with it, the subsidiary exported and attempted to export power tools and spare parts to Iran or to a third country with knowledge that the goods were intended specifically for Iran. According to OFAC, "Stanley Black & Decker

17 US Dep't the Treas., e.l.f. *Cosmetics, Inc. Settles Potential Civil Liability for Apparent Violations of the North Korea Sanctions Regulations* (Jan. 31, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190131_elf.pdf.

18 US Dep't the Treas., *Kollmorgen Corporation Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations* (Feb. 7, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190207_kollmorgen.pdf.

19 US Dep't the Treas., *ZAG IP, LLC Settles Apparent Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations* (Feb. 21, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190221_zag.pdf.

20 US Dep't the Treas., *Stanley Black & Decker, Inc. Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations Committed by its Chinese-Based Subsidiary Jiangsu Guoqiang Tools Co. Ltd.* (Mar. 27, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190327_decker.pdf.

did not implement procedures to monitor or audit [the subsidiary's] operations to ensure that its Iran-related sales did not recur post-acquisition."

F. Standard Chartered Bank

On April 9, 2019, OFAC announced two settlements with Standard Chartered Bank (SCB).[21] The first, in connection with apparent violations of multiple sanctions programs, was part of a global settlement with the US Department of Justice, New York County District Attorney's Office, New York State Department of Financial Services, and the UK Financial Conduct Authority. The penalties issued by all of the agencies totaled approximately $1.1 billion, of which $639,023,750 was assessed by OFAC (though payment to OFAC was deemed satisfied up to the amount paid to the other agencies). The second settlement, for $18,016,213, involved SCB's apparent violations of the US sanctions related to Zimbabwe, including processing transactions in the United States or causing transactions to be processed by US financial institutions in which US-sanctioned persons had an interest.

G. Acteon Group

On April 11, 2019, OFAC announced two settlements.[22] The first was with Acteon Group Ltd. (Acteon), a UK company, its UK-based subsidiary, 2H Offshore Engineering Ltd. (2H Offshore), and 2H Offshore's affiliates in Malaysia in connection with apparent violations of the Cuba sanctions. According to OFAC, during a period of time in which Acteon was "majority owned by funds associated with a US investment firm," the Malaysian affiliates produced analytical reports or sent employees to Cuba to present these reports for oil exploration projects in Cuban waters. The second settlement was with Acteon in connection with other apparent violations of the Cuba sanctions and with Acteon's "US investor-parent company, KKR & Co. Inc.," in connection with apparent violations of the Iran sanctions. This second settlement involved certain of Acteon's subsidiaries that rented, sold or received a commission for referring shipments of equipment for projects in Cuban waters and provided engineers who traveled through Cuba to reach the vessel on which the equipment was embarked. Certain of Acteon's other subsidiaries rented or sold equipment to two Emirati companies that appeared to have embarked the equipment on vessels that operated in Iranian territorial waters.

21 US Dep't the Treas., *Standard Chartered Bank Settles Potential Civil Liability for Apparent Violations of Multiple Sanctions Programs* (Apr. 9, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190408_scb_webpost.pdf.

22 US Dep't the Treas., *Acteon Group Ltd., and 2H Offshore Engineering Ltd. Settle Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations and Separately, Acteon Group Ltd. Settles Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations, and KKR & Co. Inc. Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations* (Apr. 11, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190411_acteon_webpost.pdf.

In May 2019, the Department of Commerce's Bureau of Industries and Security (BIS) placed Huawei Technologies Co., Ltd., the Chinese telecommunications giant, and 68 of its non-US affiliates on the Entity List. In August 2019, BIS **added an additional 46 non-US Huawei entities** to the list. The Entity List designation **bans the listed Huawei entities from receiving and US firms from exporting, reexporting, or transferring to them** items subject to the EAR without first obtaining an export license from BIS. BIS has also issued 90-day Temporary General Licenses (TGL), which **remove certain transactions from this license requirement.** These transactions include those to continue the operation of existing networks and equipment, provide support to existing handsets, **provide cybersecurity research and vulnerability disclosure**, and engage as necessary for the development of 5G standards by a duly-recognized standards body. This TGL has been **renewed for 90-day periods numerous times**, with its last renewal occurring on November 18, 2019, and remaining in effect until February 16, 2020.

H. UniCredit Bank

On April 15, 2019, OFAC announced three global settlements against three UniCredit Bank entities.[23] The settlements were made with the US Department of Justice, the New York County District Attorney's Office, the Federal Reserve, and New York's Department of Financial Services. Payment to OFAC for each settlement was deemed satisfied up to the amount paid to these other agencies. The first settlement, amounting to $553,380,759, was with the German UniCredit Bank, AG in connection with apparent violations of multiple sanctions programs arising from its operation of accounts on behalf of US sanctions-designated Islamic Republic of Iran Shipping Lines and affiliate companies. The second settlement, against the Austrian UniCredit Bank Austria AG, was for $20,326,340. The third settlement, against UniCredit S.p.A., the Italian parent company of the UniCredit Group, amounted to $72,741,368. OFAC determined that UniCredit Austria and UniCredit S.p.A. used US financial institutions to process hundreds of transactions that involved countries, entities, and/or individuals subject to the Iran, Sudan, Burma, Syria, and/or Cuba sanctions programs.

I. Haverly Systems

On April 25, 2019, OFAC announced a $75,375 settlement with Haverly Systems, Inc. (Haverly) for apparent violations of the sectoral sanctions targeting Russia—the first such enforcement action made public.[24] According to OFAC, Haverly dealt in new debt greater than 90 days maturity of Rosneft, an entity which was (and remains) subject to US sectoral sanctions. The original maturity of the debt was not to exceed 70 days, but Rosneft requested multiple extensions on repayment and ultimately did not attempt to repay the debt until approximately nine months later. When Rosneft attempted to make this payment, the financial institutions involved refused to process it. Instead of seeking a license or guidance from OFAC, Haverly re-dated the invoice to make it appear as though the payment was within the 90-day window.

J. MID-SHIP Group

On May 2, 2019, MID-SHIP Group LLC (MID-SHIP) reached an $871,737 settlement with OFAC. According to OFAC, MID-SHIP apparently violated Weapons of Mass Destruction Proliferators Sanctions Regulations by processing payments involving vessels belonging to the US-sanctioned Islamic Republic of Iran Shipping Lines (IRISL). MID-SHIP subsidiaries in China and Turkey negotiated several charter party agreements between third parties to transport goods between and among non-US ports. These parties nominated certain IRISL vessels as the performing vessels under the charter party agreements. According to OFAC, MID-SHIP had information connecting the vessels to Iran, and the vessels were publicly identified by name and IMO number at the time MID-SHIP processed the payments constituting the apparent violations.

K. International remittance company

On June 7, 2019, an international remittance company (Company) reached a $401,697 settlement with OFAC regarding apparent violations of the Global Terrorism Sanctions Regulations (GTSR). The Company maintained an agency relationship with a bank in The Gambia, which in turn utilized Kairaba Shopping Center (KSC), an SDN, as its sub-agent. The Company's screening processes did not identify KSC as a sub-agent and when it did, the Company mistakenly believed the sub-agent had been inactive.

---

23 US Dep't the Treas., *UniCredit Bank AG Settles Potential Civil Liability for Apparent Violations of Multiple Sanctions Programs* (Apr. 15, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190415_uni_webpost.pdf.

24 US Dep't the Treas., *Haverly Systems, Inc. Settles Potential Civil Liability for Apparent Violations of the Ukraine Related Sanctions Regulations* (Apr. 25, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190425_haverly.pdf.

L. Hotelbeds

On June 13, 2019, OFAC announced that Hotelbeds USA, Inc. (Hotelbeds) agreed to pay $222,705 to settle apparent violations of the Cuba sanctions in connection with booking travel for non-US persons to Cuba.[25] According to OFAC, Hotelbeds apparently believed that non-US persons could make payments to non-US accounts for Cuba travel, and these payments could then be credited to Hotelbeds in the United States.

M. Expedia

On June 13, 2019, OFAC reached a $325,406 settlement with Expedia Group, Inc. (Expedia), on behalf of itself and its subsidiaries worldwide, in connection with apparent violations of the Cuba sanctions. According to OFAC, Expedia and its subsidiaries provided travel and travel-related services to 2,221 persons for travel within Cuba and between Cuba and locations other than the United States. OFAC said that these apparent violations occurred because, among other things, Expedia's non-US subsidiaries "lacked an understanding of and familiarity with" US sanctions, and that, in one case, "Expedia was slow to integrate" a company it acquired into Expedia's compliance program.

N. Cubasphere

On June 13, 2019, OFAC announced a $40,320 settlement with an unnamed individual and a company acting on their behalf, Cubasphere Inc.[26] According to OFAC, the individual and Cubasphere apparently violated the travel restrictions of the Cuba sanctions. The individual and Cubasphere acted as full-service tour operators, including procuring Cuban visas and cover letters from US religious organizations citing the general license for religious travel to Cuba. However, the itineraries from the religious organizations did not match the itineraries provided by the individual and Cubasphere, which focused primarily on sightseeing and tourism activities—not religious or humanitarian activities.

25 US Dep't the Treas., *Hotelbeds USA, Inc. Settles Potential Civil Liability for Apparent Violations of the Cuba Assets Control Regulations, 31 C.F.R. part 515* (June 13, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190612_hotelbeds.pdf.

26 US Dep't the Treas., *An Individual and Cubasphere Inc. Settle Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations* (June 13, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190612_cubasphere.pdf.

On September 17, 2019, **OFAC announced a settlement with British Arab Commercial Bank** plc (BACB) for **apparent violations** of the Sudan sanctions resulting from BACB's processing of approximately **$190,700,000 in payments** on behalf of several Sudanese financial institutions.[1] Although BACB had "no offices, business or presence under US jurisdiction," OFAC claimed jurisdiction over the bank for purposes of sanctions enforcement because a **non-US financial institution had transferred USD-denominated funds into BACB's accounts** via banks in the United States. This settlement underscores OFAC's broad reach upstream and downstream of US-cleared flows of funds, including over non-US persons. This matter also highlights OFAC's **willingness to consider an entity's ability to pay** in establishing a settlement amount, and OFAC's cooperation with non-US prudential bank regulators. After considering BACB's operating capacity and consulting with BACB's home country regulator, OFAC **concluded that the bank would face a disproportionate impact** if it was required to pay the proposed penalty of $228,840,000. Accordingly, OFAC agreed to suspend all but $4,000,000, marking a 98 percent reduction in the amount initially proposed.

1 US Dep't the Treas., British Arab Commercial Bank plc Settles Potential Liability for Apparent Violations of the Sudanese Sanctions Regulations (Sept. 17, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190917_bacb.pdf.

O. PACCAR Inc

On August 6, 2019, OFAC announced a settlement with PACCAR Inc (PACCAR) for apparent violations of the Iran sanctions.[27] The conduct underlying the apparent violations involved a wholly-owned foreign subsidiary of PACCAR selling trucks to buyers it knew or had reason to know were located in Iran. In one instance, the subsidiary sold trucks to a buyer purporting to be in Russia on a purchase request that had the same specifications, order quantity, and point of delivery as a request the subsidiary received—and declined—earlier the same day because of its connection to Iran. The subsidiary had also sold trucks on draft invoices referencing buyers in Iran and had introduced a third-party seller to Iranian buyers.

P. Atradius Trade Credit Insurance, Inc.

On August 16, 2019, OFAC announced a settlement with Atradius Trade Credit Insurance, Inc. (Atradius) for apparent violations of the Foreign Narcotics Kingpin Sanctions Regulations.[28] According to OFAC, this matter centered around certain debts owed to a US company by Grupo Wisa, a Panama-based SDN. Atradius accepted the assignment of this debt from the US company, filed a claim in Panama as a creditor in the liquidation of Grupo Wisa, and then received a payment on this claim. OFAC contended that the acceptance of the assignment and the receipt of the payment were apparent violations of US sanctions.

Q. The General Electric Company

On October 1, 2019, OFAC announced a settlement with the General Electric Company (GE) for apparent violations of the Cuba sanctions.[29] Several subsidiaries of GE received payments from a third party—in this case, a SDN—for goods and services they provided to a Canadian customer. GE's sanctions screening program reviewed only an abbreviation of the third-party payor's name and, therefore, did not detect that the third-party payor was a SDN and had been since 1995.

R. Apollo Aviation Group, LLC

On November 7, 2019, OFAC announced a $210,600 settlement with Apollo Aviation Group, LLC (Apollo) in connection with apparent violations of the Sudan sanctions (a program that was eliminated in June 2018). Apollo leased certain aircraft engines to an Emirati company, which then subleased them to a Ukrainian airline, which installed the engines on an aircraft wet-leased to Sudan Airways, a SDN. Although Apollo's lease agreements contained a prohibition on operating, flying, or transferring the engines to any US or UN-sanctioned jurisdiction, "Apollo did not ensure the aircraft engines were utilized in a manner that complied with OFAC's regulations," failed to obtain export compliance certificates from lessees and sublessees, and failed to periodically monitor or otherwise verify compliance with contractual commitments during the life of the lease.

S. Apple, Inc.

On November 25, 2019, OFAC announced a $466,912 settlement with Apple, Inc. (Apple) for apparent violations of the Foreign Narcotics Kingpin Sanctions Regulations. OFAC alleged that Apple had hosted, sold, and facilitated the transfer of software produced by a Slovenian SDN app developer. According to OFAC, Apple's sanctions screening tool did not identify the SDN because it rendered the corporate form naming convention of the SDN (i.e., "d.o.o.") in uppercase letters, while the SDN list used lowercase letters. According to OFAC, Apple's screening tool did not check the names of account administrators in addition to app developers.

---

27 US Dep't the Treas., *PACCAR Inc Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations* (Aug. 6, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190806_paccar.pdf.

28 US Dep't the Treas., *Atradius Trade Credit Insurance, Inc. Settles Potential Liability for Apparent Violations of the Foreign Narcotics Kingpin Sanctions Regulations* (Aug. 16, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190816_atci.pdf.

29 US Dep't the Treas., *The General Electric Company Settles Potential Civil Liability for Alleged Violations of the Cuban Assets Control Regulations* (Oct. 1, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20191001_ge.pdf.

T. ACE Limited

On December 9, 2019, OFAC announced a $66,212 settlement with Chubb Limited, as a successor legal entity of the former ACE Limited, in connection with apparent violations of the Cuba sanctions.[30] ACE Europe had provided travel-related insurance, received premiums, and paid claims on insurance to individuals traveling to Cuba. ACE Europe's global policies did not contain a sanctions exclusion because ACE Europe believed that if the risk of violating US sanctions involved a *de minimis* portion of the portfolio, it could undertake the transactions, and that the EU Blocking Statute prevented enforcement in Europe of US sanctions targeting Cuba.

U. Allianz Global Risks US Insurance Company

On December 9, 2019, OFAC announced a $170,535 settlement with Allianz Global Risks US Insurance Company (AGR US) for apparent violations of the Cuba sanctions.[31] AGR Canada had "fronted" (i.e., pursuant to an agreement with another insurance company, issued an insurance policy in a jurisdiction where it was not licensed) travel insurance policies that included occasional coverage of Canadian residents' travel to Cuba. In issuing such policies, AGR Canada failed to obtain information regarding the travel destination, and "despite learning on at least one occasion . . . that AGR Canada was issuing [such] insurance policies," the practice continued for several years.

30 US Dep't the Treas., *Chubb Limited (as Successor Legal Entity of the Former ACE Limited) Settles Potential Liability for Apparent Violations of the Cuban Assets Control Regulations* (Dec. 9, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20191209_ace.pdf.

31 US Dep't the Treas., *Allianz Global Risks US Insurance Company Settles Potential Liability for Apparent Violations of the Cuban Assets Control Regulations* (Dec. 9, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20191209_agr.pdf.

Findings of violation

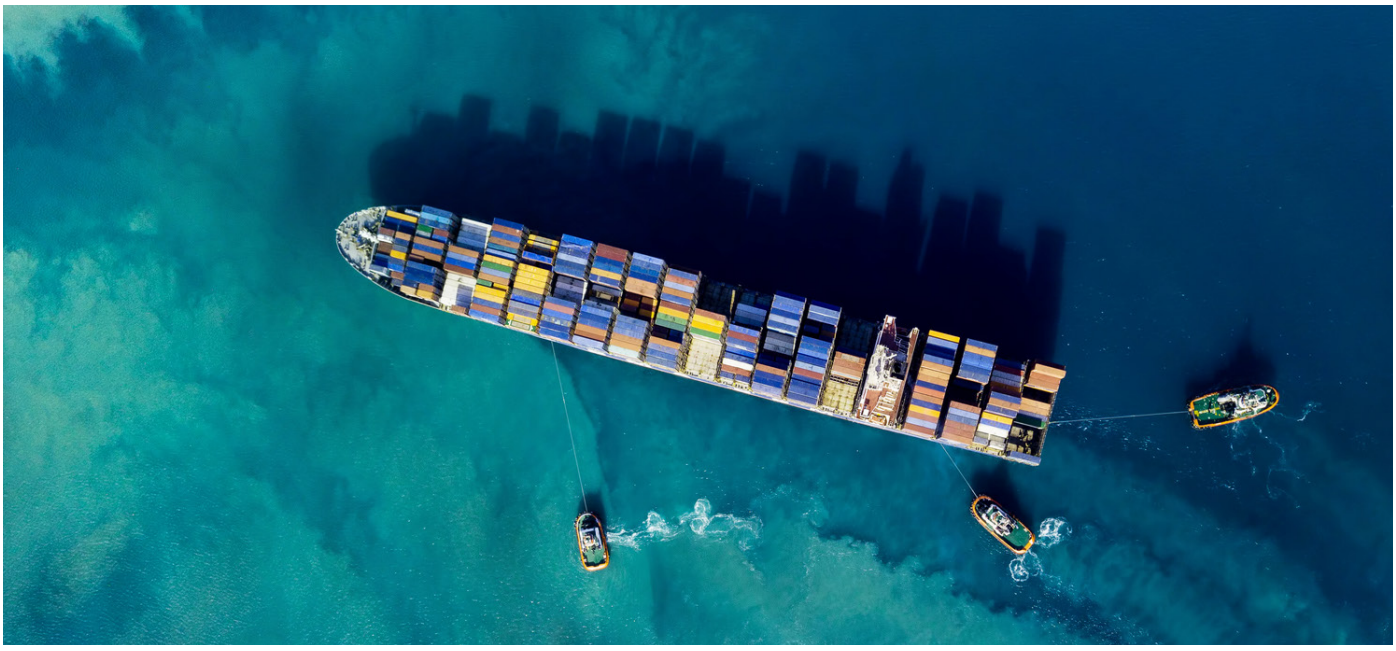
In 2019, OFAC also issued four findings of violation. Two of the violations involved conduct related to Iran, including sanctions imposed on the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) and the Iranian Transactions and Sanctions Regulations (ITSR), highlighting OFAC's continued maximum pressure campaign against Iran. The other two involved violations of the Reporting, Procedures and Penalties Regulations (RPPR) and particularly the failure to provide complete information in the first responses to administrative subpoenas from OFAC. Below is a high-level summary of these four determinations in chronological order.

A. State Street Bank and Trust Co.

On May 28, 2019, OFAC issued a finding of violation to State Street Bank and Trust Co. (State Street) for violations of the ITSR. State Street, acting as a trustee, processed 45 pension payments for a US citizen resident in Iran in violation of the ITSR's prohibition on "the exportation, reexportation, sale or supply of services . . . performed on behalf of a person in Iran." OFAC found that State Street had knowledge that it was processing transactions on behalf of an individual in Iran, but did not escalate each instance for review by its central sanctions compliance unit.

B. Southern Cross Aviation, LLC

On August 8, 2019, OFAC issued a finding of violation to Southern Cross Aviation, LLC (Southern Cross) for a violation of the RPPR. OFAC determined that Southern Cross violated the RPPR by failing to provide complete information in response to a subpoena issued by OFAC. OFAC issued two subpoenas to Southern Cross for information relating to a potential sale of helicopters to an Iranian businessman. Southern Cross's response to the first subpoena failed to disclose documents that were ultimately produced in response to the second subpoena, despite the information being available to Southern Cross both times.



C. DNI Express Shipping Company

On August 8, 2019, OFAC issued a finding of violation to DNI Express Shipping Company (DNI), a Virginia company, for violating the RPPR. OFAC found that DNI had provided contradictory, false, materially inaccurate, incomplete, and misleading information in response to an administrative subpoena. Though OFAC provided DNI an opportunity to clarify these inadequacies, OFAC found that the clarifying responses were also inadequate for, among other things, including new information that was responsive to the original administrative subpoena but not provided in DNI's first response.

D. Aero Sky Aircraft Maintenance, Inc.

On December 12, 2019, OFAC issued a finding of violation to Aero Sky Aircraft Maintenance, Inc. (Aero Sky) for violations of global terrorism sanctions. Aero Sky, a Texas company, negotiated and entered into a contract and a contingent contract with Mahan Air, an entity designated pursuant to EO 13224 for providing financial, material, and technological support to the IRGC-QF. OFAC determined that Aero Sky's entry into a memorandum of understanding (MOU) with Mahan Air calling for the parties to, among other things, enter into a joint venture agreement contingent on Mahan Air's removal from the SDN List, rested on an incorrect reading of General License (GL) I. GL I only authorized certain transactions related to the negotiation of and entry into contingent contracts with persons designated pursuant to authorities other than the Iranian Transactions and Sanctions Regulations, which persons did not include Mahan Air.

Key Contacts

Daren Allen
Partner
London
D+44 20 7246 7651
daren.allen@dentons.com

Samuel Berneman
Associate
Brussels
D +32 2 552 29 38
samuel.berneman@dentons.com

Peter G. Feldman
Partner
Washington, DC
D +1 202 408 9226
peter.feldman@dentons.com

Isabel Fressynet
Associate
Brussels
D +32 25 52 2978
isabel.fressynet@dentons.com

Maria Krestiyanova
Brussels
D +32 2 552 29 06
maria.krestiyanova@dentons.com

Paul M. Lalonde
Partner
Toronto
D +1 416 361 2372
paul.lalonde@dentons.com

Roger Matthews
Partner
London
D +44 20 7246 7469
roger.matthews@dentons.com

Shahrzad Noorbaloochi
Associate
Washington, DC
D +1 202 496 7224
shahrzad.noorbaloochi
@dentons.com

Nadiya Nychay
Partner
Brussels
D +32 2 552 29 00
nadiya.nychay@dentons.com

Jason M. Silverman
Partner
Washington, DC
D +1 202 496 7423
jason.silverman@dentons.com

Anastasia Stankova
Associate
London
D+44 20 7246 7456
anastasia.stankova@dentons.com

Sean Stephenson
Senior Associate
Toronto
D +1 416 863 4519
sean.stephenson@dentons.com

Nicoleta Tuominen
Counsel
Brussels
D +32 2 552 29 16
nicoleta.tuominen@dentons.com

Cody Wood
Associate
Kansas City
D +1 816 460 2544
cody.n.wood@dentons.com

Michael E. Zolandz
Partner
Washington, DC
D +1 202 408 9204
michael.zolandz@dentons.com

ABOUT DENTONS

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Enterprise, Dentons' wholly owned subsidiary of innovation, advisory and technology operating units. Dentons' polycentric approach, commitment to inclusion and diversity and world-class talent challenge the status quo to advance client interests in the communities in which we live and work.

dentons.com

CSBRAND-21506 Sanctions Report 2020 05 — 17/01/2020