



## CLIENTTOPICS

October 23, 2008

### OFAC Sanctions Targets

*Targets of Economic Sanctions Administered by  
the U.S. Treasury's Office of Foreign Assets Control ("OFAC")*

#### **The Universe of OFAC Sanctions Targets**

There are currently **18 separate sanctions programs** administered by OFAC. Each of these sanctions programs varies from the other -- each is premised on different U.S. foreign policy grounds and administered according to constantly changing U.S. foreign policy goals.

Prohibitions on transactions and trade, the blocking of property or assets, or a combination of both are the main features of OFAC sanctions programs. Sanctions administered by OFAC also entail exceptions and exemptions from prohibitions and requirements.

OFAC makes adjustments to sanctions by issuing licenses where doing so would be consistent with U.S. policy, and in cases where the application of prohibitions or requirements would have unintended consequences.

Although the number and complexity of OFAC's sanctions programs makes it difficult to readily determine the universe of OFAC sanctions programs and what the prohibitions and requirements of each program are, the division of the **18 different sanctions programs** currently administered by OFAC into **three general categories** simplifies understanding.

The sanctions administered by OFAC, given their common, shared or similar characteristics may be grouped into the following **three categories**:

**(1)** country-wide sanctions;

**(2)** sanctions against certain designated persons (entities and individuals appearing on OFAC's SDN and Blocked Persons List (the "SDN List")); and

**(3)** sanctions involving certain subject matter, *e.g.*, rough diamonds, Iraqi cultural property, round logs from Liberia.

The current array of **18 different sanctions programs**, denominated by the names that OFAC has assigned to them can be distributed into the following **three general categories**:

**1. Country-Wide Sanctions**

**Sanctions targets** include the entire territory and persons based in the territory.

Iran  
Burma  
Cuba  
Sudan

**2. Designated Persons (Entities, Groups, Individuals -- SDN List) Sanctions**

**Sanctions targets:** limited to persons on the SDN List, their agents, and persons the listed persons own/control.

Balkans

Belarus  
Democratic Republic of the Congo  
Cote d'Ivoire (Ivory Coast)  
Iraq <sup>1</sup>  
Liberia- Charles Taylor <sup>2</sup>  
Narcotics Traffickers  
Nonproliferation  
North Korea <sup>3</sup>  
Syria <sup>4</sup>  
Terrorists/Anti-Terrorism  
Zimbabwe  
Persons Undermining Lebanon

### **3. Subject Matter Sanctions**

**Sanctions targets:** the subject matter itself.

Rough diamonds  
Cultural property – Iraq <sup>5</sup>  
Round logs – Liberia<sup>6</sup>  
Exports of U.S. products – Syria <sup>7</sup>  
Transactions involving North Korean vessels <sup>8</sup>

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<sup>1</sup> Under the sanctions against Iraq, sanctions targets include certain designated persons (individuals and entities), not the country or territory of Iraq as a whole. However, these sanctions also cover trade in certain subject matter, Iraqi cultural property. Hence the inclusion of Iraq under this category as it relates to persons on the SDN List and also in the category below as it relates to subject matter sanctions.

<sup>2</sup> The principle articulated in the footnote above also applies to the sanctions against North Korea, Liberia and Syria. Hence the listing of these countries or sanctions under SDN List sanctions and also under the heading of subject matter sanctions.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Subject matter aspect of one of the 18 sanctions programs.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

## **DISCUSSION**

### **1. Country-Wide Sanctions**

The country-wide sanctions against Iran, Burma, Sudan and Cuba require the blocking or restriction of property and assets, including accounts, and/or entail comprehensive trade (exports, imports of goods and services) prohibitions.

Location within the territory of Iran, Burma and Sudan, and in the case of Cuba, location in Cuba and Cuban citizenship; persons falling within the definition of "Government of Iran," "Government of Burma," "Government of Sudan," and "Government of Burma;" and certain designated persons (who also appear on the SDN List (see below)) determine the universe of OFAC sanctions targets under these programs.

The country-wide sanctions, unless authorized by OFAC, generally prohibit the provision of, among other things, financial services to, and from engaging in transactions with or involving persons in the foregoing four countries, the governments of these countries, and with or involving certain Cuban citizens.

The sanctions against Burma, Sudan and Cuba, among other things, also prohibit investments in, trade with, and block the property and the property interests of sanctions targets. The sanctions against Iran prohibit trade with and investment in Iran, but do not block property or freeze assets, except for the assets (or property) of certain Iranian banks. Certain transactions and activities under these sanctions may be authorized pursuant to general and specific licenses issued by OFAC. Below is a summary of the country-wide sanctions as they apply to, for example, the activities of a U.S. bank or broker-dealer.

#### **Iran**

Under the sanctions against Iran, U.S. banks and broker-dealers and other U.S. persons are prohibited from, among other things, operating accounts for persons located in Iran. Unlike the sanctions against Cuba, discussed below, Iranian citizenship alone does not implicate the prohibitions of the sanctions against Iran.

For example, a U.S. broker-dealer is not prohibited under the sanctions against Iran from operating an account for an Iranian citizen located in the United States or in Switzerland where the only nexus to Iran is the accountholder's citizenship. Personal,

non-commercial funds transfers to and from Iran are authorized by an OFAC general license.

### **Burma**

The sanctions against Burma, unless authorized by OFAC, generally, among other things, prohibit the provision of financial services (*e.g.*, funds transfers, insurance) to Burma or to persons located in Burma. The prohibited financial services include the account services and products that U.S. banks and financial services companies typically provide to their customers. Certain licenses exist for the transfer of funds to Burma.

### **Sudan**

The sanctions against Sudan, unless authorized by OFAC, generally, among other things, prohibit the operation of accounts for persons located in Sudan and from providing other financial services to Sudan or to persons located in Sudan and dealing with the Government of Sudan or its entities. However, with respect to Sudan, a general license issued by OFAC contained in the relevant regulations permits the operation of accounts for individuals (not on the SDN List) and the transfer of funds to or from Sudan for personal, non-commercial purposes. Certain areas of Sudan and the Regional Government of Sudan have been carved out of the sanctions and thus are not sanctions targets.

### **Cuba**

In the case of Cuba, the sanctions, among other things, in the absence of an OFAC license, require U.S. banks and U.S. broker-dealers to block or freeze the accounts and assets of certain Cuban citizens and to refrain from other transactions involving Cuba and certain Cuban citizens. The Cuba sanctions are the only sanctions under which citizenship alone serves as a basis for implicating relevant prohibitions and requirements. Transactions involving Cuban citizens who have gained the status to be in the United States permanently or those Cuban citizens who are otherwise “unblocked” by OFAC do not implicate relevant prohibitions and requirements.

## **2. Designated Persons (SDN List) Sanctions**

Under the sanctions falling within this category, the universe of sanctions targets includes those persons (individuals, entities, groups) whose names appear on the

OFAC SDN List (and their agents, and their owned or controlled entities). Under OFAC rules, “control” means “control in fact” and is determined by a facts and circumstances test. Control is generally presumed at 50% or more. Where “ownership” is the sole consideration, a sanctions target’s ownership stake of 50% or more in an entity makes the owned entity a sanctions target.

Targets under these sanctions include, among other persons, designated terrorists and terrorist organizations; designated narcotics traffickers and their associated entities; nuclear proliferators; and persons designated as undermining the sovereignty of Lebanon; and the controlled or owned entities of the foregoing.<sup>9</sup>

Unless authorized by OFAC, the relevant regulations governing these sanctions block the property of and prohibit or restrict transactions with or involving persons on the SDN List (sanctions targets). Under these sanctions, transactions involving persons on the SDN List are prohibited and the property and interests in property of such persons (*e.g.*, accounts, funds, etc.) must be blocked.

Under the sanctions falling within this category, only persons on the SDN List (and their agents and their owned and/or controlled entities) are sanctions targets notwithstanding the fact that these sanctions may be denominated as “Belarus Sanctions,” “Balkans Sanctions,” “Zimbabwe Sanctions,” or the past “Libya Sanctions,” etc. For example, with respect to Zimbabwe, transactions are not prohibited with all persons in Zimbabwe, just those on the SDN List. The same holds true for the sanctions labeled using the words “Belarus,” “the Congo,” and the names of other countries. The use of the names of countries with respect to these sanctions simply reflects the concentration of designated and certain sanctions targets within these countries or geographic areas, *e.g.*, Balkans, and it does not mean that there are comprehensive country-wide sanctions against these countries/areas.

Under the sanctions against Iraq, Syria, Liberia, and North Korea, prohibitions and requirements apply with respect to sanctions targets on the SDN List as well as to trade in certain subject matter and specified transactions. For example, under the sanctions denominated as Iraq, there are persons on the SDN List, but these sanctions also prohibit transactions in subject matter -- Iraqi cultural property. Under the sanctions against Syria, there are persons on the SDN List, but these sanctions are otherwise limited to prohibiting certain exports of U.S. products to Syria (prohibitions administered by the U.S. Commerce Department, not OFAC). Under the sanctions

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<sup>9</sup> The SDN List also includes the names of some persons whose property is blocked or with whom transactions are prohibited under the country-wide sanctions.

involving North Korea, there are persons on the SDN List,<sup>10</sup> but these sanctions also prohibit transactions involving North Korean vessels and they regulate imports from and exports to North Korea. In the case of Liberia, there are persons on the SDN list. These sanctions, however, also regulate trade in round logs and rough diamonds.

Although it is highly unlikely that most vigilant and diligent U.S. banks and U.S. broker-dealers maintain, or that they would accept, accounts for persons on the SDN List, transactions by permissible accountholders or customers may nevertheless involve an OFAC sanctions target and thus implicate OFAC prohibitions and requirements. For example, an accountholder whose accounts are not prohibited or restricted by OFAC sanctions may seek to transfer funds to a person on the SDN List. In such a case, the U.S. bank would be required to block the transfer (but not the account from which it originates) and report the transfer (or blocking of it) to OFAC because of the beneficiary's appearance on the SDN List. Accordingly, in such a setting, account as well as transaction due diligence is necessary.

Caution: The SDN List is not an exhaustive list of OFAC sanctions targets!

### **3. Subject Matter Sanctions**

Under the sanctions (and the aspects of other sanctions) falling under this category, most transactions with or involving or related to certain subject matter are prohibited. These sanctions may be implicated in transactions, among others, with or involving North Korean vessels, the exportation U.S. products to Syria, or the importation or dealing in round logs from Liberia, rough diamonds, or in Iraqi cultural property.

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Most U.S. banks and financial services companies achieve compliance with the prohibitions and requirements of the sanctions administered by OFAC through the exercise of due diligence, which in part, includes screening data and information regarding new and existing accounts for OFAC purposes, and screening data and information regarding transactions such as incoming and outgoing funds transfers. OFAC compliance also involves monitoring accounts operated, and transactions

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<sup>10</sup> North Korean persons and entities appear on the SDN List only for the purpose of maintaining, in blocked status, certain North Korean assets blocked prior to the lifting of the comprehensive trade and asset freeze sanctions imposed against that country, but not for the purpose of blocking assets prospectively since the lifting of comprehensive sanctions.

conducted, under OFAC licenses to ensure that accounts are not abused by accountholders and that transactions conducted are within the scope of relevant granted authorizations or licenses.

### **Expansion of Sanctions Targets: Ownership and Control**

As mentioned above, an entity owned and/or controlled by a sanctions target may itself be or become a sanctions target under sanctions administered by OFAC. Persons acting for or on behalf of sanctions targets may also become or be treated as OFAC sanctions targets. In such cases, questions often arise with respect to what constitutes “control,” and the kind and level of “ownership” which compels the treatment of an entity as a sanctions target. Publicly available past correspondence from OFAC, and more recently, guidance published by OFAC in February 2008, shed some light on OFAC’s thinking/position on the matter.

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The Eren Law Firm is an economic sanctions, anti-money laundering, bank regulation, and international trade regulation boutique serving U.S. and non-U.S. financial institutions, U.S. and non-U.S. companies, and sovereign governments.

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