

Why UAE Firms should be aware of OFAC sanctions

Clare Curtis, January 2024

Recent OFAC sanctions target Russia's International Supply Chain

Recent sanctions by the US Treasury's Office of Foreign Assets Control (OFAC) target the sources and channels that Russia relies on to support its military in its war against Ukraine. These actions focus on individuals and entities that help Russia acquire technology and equipment from third countries and also Russia's domestic industrial base. OFAC has published its list of Sectorial Sanctions Identifications ("SSI") including producers, exporters, and importers in order to cut off Russia's access to critical items that the international coalition has imposed sanctions and export controls on.

Recently, OFAC sanction announcement pertains to two Irish Citizens, occupying senior positions at ARX Financial Engineering Limited ("ARX"), a financial firm based in the Dubai International Financial Centre ("DIFC"), which has been suspended by the Dubai Financial Services Authority (DFSA). Mr. Fraher and Mr. O'Reilly have been newly designated as Specially Designated Nationals (SDN), and ARX Financial Engineering Limited has been added to the list of sanctioned business entities.

The firm based in the DIFC was established to provide brokerage and investment services to institutional and professional clients. According to OFAC, ARX has allegedly facilitated investment services for Russian investors, enabling the transfer of Russian financial assets and the establishment of brokerage and bank accounts in the UAE to enhance these specific investors access to the global financial system. Additionally, ARX has actively explored methods for the transfer of Russian rubles from the sanctioned VTB Bank Public Joint Stock Company (VTB) and their conversion into U.S. dollars and has also been engaged in devising strategies to mitigate the risk of identifying a client's assets in the event of sanctions exposure. The most recent update discloses the addition of several UAE entities to the OFAC SDN list. Presently, there is a total of 330 UAE entities/individuals listed on the OFAC SDN, with 36 entities and 19 individuals specifically associated with Russia.

Operating in the grey

The recent OFAC enforcement actions reinforced the need for firms, including those in the DIFC and ADGM, to re-evaluation current business practice and the potential repercussions when dealing in high risk/grey areas. The enforcement shows that firms need to enhance their due diligence on vendor and third-party providers as exposure to sanctioned parties can have huge financial and reputational impact on the firm. The industry is significantly influenced by reputation and perception, underscoring the importance of firms being fully aware of their associations to avoid falling foul of sanctions. Understanding the nature of these relationships is essential to mitigate potential risks and safeguard the firm's standing in the industry.

Role of the MLRO

Money Laundering Reporting Officer (MLRO) is a critical role in a firm and is responsible for overseeing and managing anti-money laundering (AML) and counter-terrorist financing (CTF) compliance. Independence and objectivity represent fundamental characteristics of MLROs. They are required to uphold independence and objectivity in their role, safeguarding against undue influence from internal or external pressures to maintain the integrity of compliance decisions.



The Regulators

The emergence of a trend in the increasing number of sanctioned parties within a jurisdiction can significantly influence the perspective toward that jurisdiction. Presently, the UAE finds itself on the FATF grey list, with the anticipation of its removal after the upcoming FATF follow-up review and as such there is a clear call for heightened regulatory attention directed at businesses of this nature. Enforcement actions are imperative for entities lacking adequate oversight or controls and engaging in dealings with sanctioned parties or countries.

Utilizing sanctioned lists is beneficial for monitoring; however, it often proves insufficient when dealing with sanctioned parties or countries, leading to potential issues. The crucial aspect lies in comprehending the regulatory requirements governing sanctions. It is imperative to proactively incorporate enhancements into your monitoring and screening processes. If necessary, seek guidance from independent professional services to conduct a thorough review, identifying weaknesses or gaps, and subsequently implementing the requisite improvements. These services not only pinpoint areas for enhancement but also offer education and training to ensure staff awareness and compliance with the established requirements.

What firms need to do: Be proactive, not reactive

Here are 10 top tips to reduce the risk relating to breaching sanctions regulations:

1. Firms need to conduct more robust and detailed due diligence on customers, business partners, and transactions to ensure compliance with sanctions. This involves screening against various sanctions lists to identify any restricted individuals, entities, or countries. This process should be documented and signed off by the Board.
2. AML teams must stay informed about changes in sanctions lists and regulations. Regular updates and training/education sessions are essential to ensure that staff is aware of the latest developments and can effectively implement compliance measures.
3. The risk assessment process needs to be comprehensive, considering the specific risks associated with dealing with sanctioned entities. Firms may need to reassess their risk appetite and adjust their risk management strategies accordingly.
4. Increased scrutiny is necessary in transaction monitoring to detect any patterns or anomalies that may indicate potential dealings with sanctioned parties. This involves continuously monitoring and analysing transactions for unusual behaviour.
5. Firms must maintain meticulous and detailed records of their due diligence processes, screening results, and any actions taken to address potential sanctions violations. Comprehensive documentation is essential for audits and regulatory examinations.
6. Sanctions often target specific countries or regions. Firms need to adjust their compliance monitoring strategies to focus on areas affected by sanctions, ensuring a more targeted approach to risk management.
7. AML Compliance must be integrated seamlessly with customer onboarding procedures. This ensures that potential risks are identified and addressed from the outset of a business relationship.
8. Seek expert advice and guidance from qualified professionals on the intricacies and implications of the various sanction programs, and on the best practices and standards for sanctions compliance.
9. The implementation of automated screening systems to monitor transactions and entities will accelerate and enhance the identification of sanctioned firms/individuals/parties. Automated screening systems reduces the likelihood of human errors in the identification of sanctioned firms/individuals/parties.





10. It is imperative for board of directors to review and assess the firms capability and efficacy in detecting sanctions and identifying violations. AML Compliance teams should deliver regular reports to the board and include pertinent findings in these reports. These evaluations can serve to refresh the organization's compliance framework and pinpoint areas requiring additional training and awareness.

In summary, sanctions significantly influence how firms approach reviewing and monitoring business and clients or other relevant third parties. It requires a proactive and adaptive approach to stay in line with evolving regulations and to prevent dealings with sanctioned parties. The effective integration of technology, ongoing training, and a commitment to a culture of compliance are essential components of a robust compliance monitoring program.

Cost of getting it wrong

The repercussion of non-compliance can be severe and costly.

Fines and penalties: Firms who are non-compliant with the sanction can face fines ranging in the thousands to billions., this all depends on the severity and the frequency of the violations. Noncompliance may also result in breach of contractual obligations. Entities may face legal challenges from partners, clients, or other stakeholders seeking compensation for damages caused by the violation.

Asset Freezing: Firms that engage with sanctioned parties can have their assets frozen, which can disrupt their operations and cash flow.

Reputation damage: Firms who are non-compliant with sanctions can suffer reputational damage which can eradicate their client base, investor confidence and market share. For example, in 2014, BNP Paribas agreed to pay a record \$8.9 billion fine for violating U.S. sanctions against Sudan, Iran, and Cuba. BNP also received a one-year suspension for USD clearing operations, resulting in their inability to service their clients.

Opinion:

Sanctions and their outcomes provide vital feedback to the firms compliance programme. This information can be used to refine and enhance the programme over time. Sanctions updates show that compliance programmes need to be robust but also need to be flexible to adapt to ever changing environment within the financial services industry.

The effectiveness of compliance programmes is dependent on the individuals in the firm who use and adhere to the standards. Firms need to promote a culture of compliance, communication, invest in training/education and continuously implement the programme to ensure its effectiveness.

Due Diligence/screening has undoubtedly become more cumbersome, especially for firms who may not have the experience or expertise in house to detect potential violations. Outsourcing the AML functions out to experienced professionals is a route many firms take in order to access these specialised skills, financial crime professionals helps mitigate the risk of non-compliance and ensures that regulatory requirements are met, reducing the likelihood of fines and legal issues.





How Effecta can help:

At Effecta, we can help businesses and organizations comply with the various sanctions and regulations that apply to their activities. We can assist MLRO's in analysing the risks they are exposed to in relation to sanctions regulations, review the firms risk assessment against its risk appetite as well as undertake a review of the internal systems and controls. In addition firms are required to undertake regular AML training and at Effecta we can undertake this training and provide practical examples and discuss industry best practice with all levels of the firm including the Board, the MLRO as well as the front office.

