

Practice Update

Increased Enforcement of Evolving Russia Sanctions Pose Compliance Challenges to U.S. Companies

May 3, 2022

The renewed focus on the vigorous use of sanctions by the U.S. government has increased risks for both U.S. and international companies and individuals. After the unfathomable Russian invasion of Ukraine, a deluge of new sanctions has caused companies around the globe to rethink their business strategy. And it is a good thing – the U.S. Department of Justice (DOJ) has made it clear that its white-collar enforcement program will be focused on sanctions evasion and export violations (the “New FCPA”).

In remarks made at a New York City Bar Association event, Deputy Attorney General Lisa Monaco said that the new “focus should have a profound effect on businesses and their efforts to comply with U.S. laws.” While it should come as no surprise that the Russia sanctions program is getting significant attention, the practical effect is clear: companies big and small must act now to make sure that they are compliant in ways they may have previously found unnecessary.

U.S. Signals Increased Enforcement

Sanctions have long been used as a national security tool. Administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC), U.S. economic sanctions use financial tools to curb and penalize bad behavior. In the weeks since Russia

Related Work

Government Affairs
and Public Policy
Litigation
White Collar Crime and
Government
Investigations

Related Offices

New York

invaded Ukraine, the U.S. and its allies have imposed rounds of coordinated sanctions against Russia, Belarus, and individuals linked to those governments, making Russia the most sanctioned country in the world.

Earlier this month, National Security Advisor Jake Sullivan spoke at The Economic Club of Washington, D.C. and emphasized that the Biden Administration is focusing on “evasion” of the “unprecedented” financial sanctions already levied against Russia, Russian entities, Kremlin government officials, and other prominent Russian individuals. Coupled with DAG Monaco’s comments, Sullivan’s statement makes it clear that if companies want to avoid scrutiny from U.S. government agencies, they need to reevaluate and strengthen compliance functions, including supply chain KYC and due diligence.

Based on statements by Attorney General Merrick Garland, we understand that the government has already established an interagency task force focused on enforcing U.S. sanctions, export restrictions, and economic countermeasures imposed on Russia. The so-called Task Force KleptoCapture is also targeting efforts to use cryptocurrency to circumvent sanctions or launder proceeds of foreign corruption.

In addition, KleptoCapture is focused on the “undermining” of sanctions by seizing assets “belonging to sanctioned individuals or assets identified as the proceeds of unlawful conduct.” Attorney General Garland noted that the DOJ “will use all of its authorities to seize the assets of individuals and entities who violate these sanctions.”

KleptoCapture and the DOJ are already taking actions that back up U.S. officials’ public statements. On April 6, the DOJ charged a Russian oligarch for sanctions violations, and inter-agency efforts have resulted in the seizure of property around the world. Moreover, recent OFAC and DOJ enforcement

actions demonstrate that the government is more willing than ever to bring charges against small companies and individuals.

Complying with the Evolving Sanctions Regime

The best course of action in any circumstance is to make the utmost effort to comply with the changing landscape of the U.S. sanctions regime. That can include revamping or updating your current compliance program, implementing a compliance program if you don't already have one, and in instances where a suspected violation has occurred, conducting a thorough investigation and determining the best course of action.

In certain circumstances, voluntarily disclosing potential violations is prudent, as failure to self-report can result in increased penalties. OFAC and the DOJ have issued guidelines for compliance programs that are intended to meaningfully reduce penalties for companies who violate sanctions regulations. Those benefits often range from no action being taken to significantly reduced fines and minimized penalties.

If mistakes and violations are mishandled, companies face an increased likelihood of enforcement action and an elevated risk of serious reputational and financial damage. When evaluating violations, OFAC and the DOJ will determine whether any violation involving Russia is "egregious" by considering a company's existing compliance programs and policies, along with other factors that can be implemented before the company comes under scrutiny.

OFAC and the DOJ will consider mitigating and aggravating factors in their assessment. The actions companies take now to minimize risk will ultimately lead to a more favorable view of their conduct and will result in less severe outcomes.

An effective and comprehensive compliance program will be considered a mitigating factor. Aggravating factors can include, for example, deliberately evading or avoiding sanctions, the value of transactions involved, a lack of an appropriate compliance program for the size and sophistication of the business, neglect or failure to take reasonable care, failure to apply for a license, or failure to cooperate.

In addition to tracking the ever-increasing sanctions against Russia, we recommend companies review existing compliance programs, policies, and procedures to ensure that they are appropriate for the new sanctions environment. We would also recommend that companies review all existing customers and their supply chain (including third-party contractors) to ensure that no sanctioned or high-risk entities remain.

Conclusion

If you are concerned that your company has violated or is at risk of violating recently imposed sanctions, and if your company determines that an investigation is warranted, your company should consider hiring outside counsel. It is prudent to engage outside counsel even if your company has a robust legal or compliance department, both to emphasize the independence of any investigation as well as to maintain confidentiality and legal privilege.

In short, in addition to using best efforts to comply with current and future sanctions, we strongly recommend that firms review their existing compliance programs and seek legal advice when dealing with suspected violations in order to mitigate potential risks.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and

administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.