

OFAC Compliance: Russia/Ukraine Sanctions Impact Everyone

A small business is a victim of a ransomware attack and pays a ransom to regain access to its information. A cryptocurrency user on a non-U.S. exchange trades with a Russian national. Both may have unwittingly violated federal law related to the enforcement of trade and economic sanctions. The reach of regulations authorized by the Office of Foreign Assets Control (OFAC) is expanding beyond large businesses with overseas interests.

In the current climate with Russia invading Ukraine, U.S. and international policymakers enacted numerous sanctions that raise many questions. Knowing the typical course of these sanctions in past scenarios (Iran, Yugoslavia, North Korea, Venezuela, etc.) helps to triage new risk assessment and update internal controls. A “Top Ten” list of considerations includes:

1. Do you have any operations, suppliers, or employees in or from Russia/Ukraine?
2. Are you owed any money from a newly sanctioned entity?
3. Do you have any ownership interests, joint-venture agreements, technology-sharing arrangements, or other business relationships with any Russian company or state-owned enterprise?
4. Are you or your employees involved in any humanitarian-relief efforts, charitable drives, fundraising, or social media outreach related to the Russia/Ukraine conflict?
5. Do you accept cryptocurrency payments or engage with digital assets in any way?
6. Are you prepared for an expected increase in cyberattacks and ransomware deployment?
7. Do you rely on any financial institutions, currency-exchange operators, payment processors, or other similar entities that could be subject to sanctions enforcement risk, cyberattack, reorganization, or other major impact in the current environment?
8. Do you have contracts or insurance coverage that address acts of war, political/economic sanctions, *force majeure*, or other issues that could have a material impact on you?
9. Are you exposed to substantial risk in the energy or precious-metals markets, both of which are expected to be profoundly impacted in both legal and business terms?
10. Do you have updated compliance policies, procedures, controls, and training programs to address economic sanctions and counterparty due diligence?

Saul Ewing Arnstein & Lehr's attorneys help clients understand how U.S. trade and economic sanctions apply to their businesses. We advise on compliance issues, conduct investigations, and assist individuals in claiming and releasing seized assets. We counsel individuals as well as organizations of all sizes in sectors such as retail goods, higher education, insurance, financial services, health care, technology, energy, manufacturing, and security. Our services include:

- **Compliance:**
 - Performing risk assessments by gathering and analyzing data on the client's business, its products or services, locations, transactions, customer base/profile, suppliers and partners to explain and mitigate points of risk
 - Drafting or updating policies and procedures to conform to sanctions regulations
 - Counseling on testing and independent audit procedures
 - Working with clients to designate appropriate compliance officers
 - Conducting individualized training for management and employees
- **Independent Investigations:** conducting due-diligence reviews, internal audits, or independent investigations to determine whether vendors, employees, agents or other parties have risks or confirmed violations of sanctions laws
- **Government Investigations:** representing clients under investigation by the Department of Justice, Department of Treasury, Department of Homeland Security, Securities and Exchange Commission, Internal Revenue Service, or Drug Enforcement Agency
- **Defense of Claims Violations:** litigating property disputes and cases of mistaken identity by applying for court orders or OFAC licenses to transact in or release frozen assets

Our team includes former federal prosecutors, a former federal counterterrorism analyst, and a former Certified Anti-Money-Laundering Specialist (CAMS), who are well-versed in geopolitical issues, accounting controls, computer programming and financial-industry best practices. We also work with attorneys in related practices, such as Cybersecurity and Privacy, Government Contracts and Higher Education.

Experience

Saul Ewing Arnstein & Lehr attorneys have handled these select matters in the representation of:

- A financial institution in advising on the effectiveness of programs and internal controls designed to detect, prevent, and report illegal activity and promote compliance with the Bank Secrecy Act (BSA), OFAC and Financial Crimes Enforcement Network (FinCEN) regulations.
- A farming equipment manufacturer in drafting an anti-money laundering and sanctions-compliance policy, including procedures for conducting business with cannabis growers in cash due to difficulties surrounding banking regulations related to cannabis.
- An insurance company based in Barbados in drafting an anti-money laundering and sanctions-compliance policy, including an analysis of third-party payment risk.
- U.S. citizens in guiding the inheritance of assets from relatives in countries where OFAC has active sanctions.
- Universities in navigating issues with international students studying remotely during the COVID-19 pandemic. Issues included the use of certain technologies and students' ability to make tuition payments from countries where OFAC has active sanctions.
- International clients in the security, financial, insurance, health care, technology, energy, chemical, and manufacturing sectors in need of anti-corruption, sanctions-compliance and/or anti-money laundering due diligence investigations of current and prospective business partners, distributors, agents, acquisition targets, investors, customers, and other payors or payees.

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