KILPATRICK TOWNSEND

6 KEY TAKEAWAYS

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC)

"A Framework for OFAC Compliance Commitments"

On May 2, 2019, OFAC released a detailed statement of its views on the best practices that companies should follow to ensure compliance with U.S. sanctions laws and regulations. The document is called "A Framework for OFAC Compliance Commitments" (OFAC Framework), and serves as a roadmap for not only preventing sanctions violations but also, when violations do occur, providing transparency as to how OFAC will assess the adequacy of a company's existing compliance program in determining what penalty to impose.

The following are 6 key takeaways from the OFAC Framework:

1

OFAC sets out the five essential components of any strong sanctions compliance program: (1) management commitment; (2) risk assessment; (3) internal controls; (4) testing and auditing; and (5) training. These components line up with the U.S. Department of Justice compliance focus areas and loosely follow the compliance elements articulated by the Financial Crimes Enforcement Network with respect to financial institutions and compliance with anti-money laundering laws and regulations. As a starting point, companies should have a formal OFAC sanctions compliance program.

2

Senior management should ensure that the compliance unit has adequate resources in the form of human capital, expertise, information technology (e.g., software) and other resources as are appropriate to the company's breath of operations, target and secondary markets, and other factors affecting its risk profile. The personnel tasked with compliance should have knowledge and expertise with respect to OFAC's regulations, and be able to understand complex financial and commercial activities and identify OFAC related issues, risks and prohibited activities.

3

The company should conduct a thorough risk assessment of, among other things, its customers, supply chain, intermediaries, counterparties, products, services and geographic locations to identify potential sources of sanctions-related risks. The company should develop an onboarding process for new customers and accounts that includes a sanctions risk rating based on both know-your-customer information provided by the counterparty and independent research conducted by the company. Risk assessments and due diligence should be conducted during mergers and acquisitions, particularly in scenarios involving non-U.S. companies.

4

A comprehensive and objective testing and audit function within the compliance program will ensure that the company identifies program weaknesses and deficiencies. The testing and auditing function should be independent of the audited activities, and should have sufficient authority, skills, expertise, resources, and authority within the company.

5

An OFAC-related training program should be developed and provided on a periodic basis. According to OFAC, training frequency should be, at a minimum, annually. The training program should provide adequate information and instruction to employees, should be further tailored to high-risk employees within the company, and should be appropriate for the products and services it offers, as well as the customer, client, and partner relationships the company maintains.

6

A company's OFAC compliance program cannot merely rely on screening a counterparty or a customer—there is more to it. And where screening fails to identify OFAC-prohibited locations, parties, or dealings, the company may find itself in the middle of an OFAC investigation for failing to identify violations of sanctions regulations. The company should ensure that the sanctions screening software it utilizes does not possess deficiencies and is capable of identifying and flagging, among other things, potential matches to persons with close name variations to parties identified on OFAC's Specially Designated Nationals and Blocked Persons List (SDN list), and persons known to be owned by parties identified on the SDN list.

For more information, please contact
Mauricio Escobar mescobar@kilpatricktownsend.com
Adria Perez aperez@kilpatricktownsend.com