

# Alert

## Sanctions Update: OFAC Regulations, Advisories and Enforcement Actions: November 2019 through July 2020

August 7, 2020

The first half of 2020 has seen unprecedented change throughout the country and the world as industries and individuals grapple with novel challenges spurred by the COVID-19 pandemic. Despite these challenges, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") has continued to remain active, issuing regulations and guidance, and reaching settlements in an array of enforcement actions. Summarized below are the key updates from November 2019 through July 31, 2020 ("Review Period").<sup>1</sup>

### Updates to Country-Specific Sanctions Programs

Turning first to country-specific sanctions programs, OFAC's attention was most focused on Venezuela, Iran and North Korea. In addition, there were some developments in the Russia/Ukraine, Syria, Mali, Nicaragua and Zimbabwe sanctions programs.

#### *Updates to the Venezuela Sanctions Program*

2019 saw a ramp-up in U.S. sanctions targeted against the Government of Venezuela ("GOV"), including Petróleos de Venezuela SA ("PdVSA"), a state-owned entity on OFAC's Specially Designated Nationals List ("SDN List").<sup>2</sup> At the end of 2019, OFAC issued several general licenses ("GLs") designed to clarify the sweeping sanctions against the GOV issued earlier in the year.<sup>3</sup> The end of 2019 also saw clarification from OFAC on the Venezuela sanctions program through the publication of FAQs addressing the ability to sue blocked or designated persons in U.S. courts and the process by which a U.S. person with a writ of attachment on shares of a GOV entity may auction or sell the shares.<sup>4</sup>

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<sup>1</sup> For a summary of other key sanctions updates in 2019, see "Sanctions Update: Iran, Venezuela, Ukraine, Nicaragua and Cuba," *SRZ Alert*, Oct. 11, 2019, available [here](#); "Sanctions Update: Venezuela and Ukraine/Russia," *SRZ Alert*, June 6, 2018, available [here](#); "Sanctions Update: Iran, Venezuela and Russia," *SRZ Alert*, Nov. 13, 2018, available [here](#); and "Sanctions Update: Venezuela," *SRZ Alert*, April 4, 2019, available [here](#).

<sup>2</sup> Read more about this critical change in "Sanctions Update: OFAC Sanctions Venezuela's State-Owned Oil Company," *SRZ Alert*, Feb. 8, 2019, available [here](#). OFAC followed this pronouncement with an amendment to the Venezuela sanctions regulations in November 2019, codifying six executive orders, adding a general license authorizing certain U.S. government activity in Venezuela, and inserting an interpretive provision regarding settlement agreements and other processes transferring, alerting or affecting property or interests in blocked property. U.S. Department of the Treasury ("Treasury"), "Publication of Amended Venezuela Sanctions Regulations," (Nov. 21, 2019), available [here](#).

<sup>3</sup> See GL 34A (Nov. 5, 2019) (permitting transactions with certain individuals that E.O. 13884 previously classified as part of the GOV), available [here](#); GL 35 (Nov. 5, 2019) (permitting U.S. persons to conduct certain administrative transactions with the GOV, such as payment of taxes, fees and import duties), available [here](#).

<sup>4</sup> See FAQ No. 808 (Dec. 9, 2019) (stating that neither a U.S. person bringing suit nor a court hearing a case involving the GOV needs a specific license but a specific license would be needed to enter into a settlement agreement, lien, judgment or other enforcement that would affect block property or property interests), available [here](#); FAQ No. 809 (Dec. 9, 2019) (clarifying that U.S. persons must obtain a specific license

Throughout the first half of 2020, OFAC also continued to refine the Venezuelan sanctions program, issuing a number of general licenses and other regulatory updates designed to clarify the scope of the sanctions program. We note, in particular, the following actions with broad applicability:<sup>5</sup>

- On March 12, 2020, OFAC issued amended GL 16C, which authorizes otherwise prohibited transactions that are ordinarily incident and necessary to maintaining, operating or closing U.S. persons' accounts in certain Venezuelan financial institutions, including Banco de Venezuela; S.A. Banco Universal (Banco de Venezuela); Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas; Banco Universal C.A. (Banco Bicentenario del Pueblo); or Banco del Tesoro, C.A. Banco Universal (Banco del Tesoro).<sup>6</sup>
- On April 10, 2020 and July 15, 2020, OFAC issued GLs 5C and 5D, which extend the effective date of earlier GLs 5A and 5B to Oct. 20, 2020, so that certain transactions related to the provision of financing for and other dealings in the PdVSA 2020 8.5% bond remain prohibited until Oct. 20, 2020 but thereafter become permissible.<sup>7</sup> In an FAQ, OFAC clarified that this GL is designed, on the effective date, to remove Executive Order (“E.O.”) 13835 as an obstacle to holders of the PdVSA 2020 8.5% bond gaining access to their collateral, including CITGO shares that serve as such collateral.<sup>8</sup> GL 5D extends the effective date of the authorization provided by GL 5C and its predecessors, meaning that transactions related to the sale or transfer of CITGO shares and other collateral in connection with the PdVSA 2020 8.5% bond remain prohibited until Oct. 20, 2020.

The first half of 2020 also saw the continuation of a campaign by the U.S. government to put economic pressure on the Maduro regime and its supporters. That pressure has intensified, resulting in imposition not only of primary sanctions, but also secondary sanctions directed at, for example, various maritime entities alleged to have provided support to the Maduro regime.<sup>9</sup>

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before holding an auction or sale or taking steps in furtherance of an auction or sale of a writ of attachment on shares of a blocked GOV entity), available [here](#).

<sup>5</sup> In addition to the actions set forth below, OFAC also issued a number of other general licenses, or amended general licenses, that (a) permit certain entities to engage in certain kinds of transactions with GOV or other entities designated pursuant to the Venezuela sanctions program, or (b) have expired or been revoked. *See, e.g.*, GL 8F, available [here](#) (authorizing certain activities involving PdVSA for the following entities to Dec. 1, 2020: Chevron Corporation, Halliburton, Schlumberger Limited, Baker Hughes and Weatherford International); GL 15C, available [here](#) (authorizing transactions between MasterCard Incorporated, Visa, American Express, Western Union and MoneyGram International, on the one hand, and certain Venezuelan financial institutions, on the other hand); GL 20B, available [here](#) (authorizing a number of nongovernmental organizations, intergovernmental agencies, development banks, and international legal bodies to engage in certain otherwise prohibited transactions and activities with the GOV); and GL 36A, available [here](#) (authorizing wind-down operations pertaining Rosneft Trading S.A. or TNK Trading International S.A. until May 20, 2020). Moreover, on May 12, 2020, OFAC revoked GL 13E and issued amended GL 3H and GL 9G, as well as two accompanying FAQs, available [here](#). These changes were in response to a corporate restructuring by Nynas AB, removing it from Petróleos de Venezuela SA's control and ownership. As a result of this restructuring, GL 13E was no longer necessary, and the reference to Nynas AB was removed as unnecessary in GL 3H and 9G. And, on July 2, 2020, OFAC revoked GL 37, relating to Delos Voyager Shipping Ltd, Romina Maritime Co Inc., and other specified vessels, available [here](#), which had been issued on June 18, 2020 and was scheduled to expire on July 21, 2020. Those entities, among others, had been added as SDNs on June 18, 2020, but were removed the same day GL 37 was revoked.

<sup>6</sup> GL 16C (March 12, 2020), available [here](#).

<sup>7</sup> GL 5C (April 10, 2020), available [here](#); GL 5D (July 15, 2020) available [here](#).

<sup>8</sup> FAQ No. 595 (April 10, 2020), available [here](#).

<sup>9</sup> *See* Treasury, “Treasury Targets Maritime Entities for Supporting Illegitimate Maduro Regime in the Venezuela Oil Trade,” (June 2, 2020), available [here](#); Treasury, “Venezuela-related Designations and Designations Removals; Issuance of Venezuela-related General License and Frequently Asked Question,” (June 18, 2020), available [here](#). OFAC also designated as SDNs, for example, various individuals for providing

While the pressure on the Maduro regime intensified in the latter part of 2019 and the first half of 2020, the State Department issued a framework that outlines an avenue through which the United States would lift certain sanctions on Venezuela. Unsurprisingly, this framework calls for Maduro to step down and permit free and fair presidential elections, among other structural changes within the government.<sup>10</sup>

#### *Updates to the North Korea Sanctions Program*

OFAC issued several amendments to regulations, designations and advisories relevant to the North Korea sanctions program in the first half of 2020. The amended regulations implement laws that broaden the scope of the sanctions program, and the designations and advisories address particular risks posed by North Korea.

Turning first to amendments, on April 9, 2020, OFAC issued amendments to the North Korea Sanctions Regulations, “to further implement the North Korea Sanctions and Policy Enhancement Act of 2016, as amended by the Countering America’s Adversaries Through Sanctions Act of 2017 and the National Defense Authorization Act for Fiscal Year 2020.” Among other things, the changes identify additional categories of persons the Secretary of Treasury is permitted to designate as SDNs and expand the applicability of the sanctions program to entities owned or controlled by U.S. financial institutions.<sup>11</sup> Under these regulations, entities owned or controlled by U.S. financial institutions that are established or maintained outside the United States may not knowingly engage in a transaction with the North Korean government nor with any person or entity currently sanctioned under the U.S. or United Nations North Korea sanctions programs.<sup>12</sup>

The early half of 2020 also saw a focus on illicit exportation of labor and cyber-related threats posed by North Korea. In January, for example, OFAC announced two North Korea-related designations targeting “a North Korean trading corporation and a China-based North Korean lodging facility that facilitate North Korea’s practice of sending laborers abroad.”<sup>13</sup> And, on March 2, 2020, OFAC sanctioned two Chinese nationals involved in laundering stolen cryptocurrency from a 2018 cyber intrusion on a North Korean state-sponsored cryptocurrency exchange. In the press release announcing the March designations, OFAC pointed to the Financial Action Task Force’s amended standards that require all countries to regulate cryptocurrency service providers and mitigate the risks of theft stemming from cryptocurrency transactions, noting that the United States is particularly concerned about “platforms that provide anonymous payment and storage functionality without transaction monitoring, suspicious activity reporting or customer due diligence, among other obligations.”<sup>14</sup>

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support to Maduro’s son and “the corrupt activities of members of the illegitimate” Maduro regime. See Treasury, “Treasury Targets Individuals Supporting Illegitimate Maduro Regime’s Corruption,” (July 23, 2020), available [here](#).

<sup>10</sup> U.S. Department of State, “Democratic Transition Framework for Venezuela,” (March 31, 2020), available [here](#).

<sup>11</sup> 31 C.F.R. § 510.214.

<sup>12</sup> *Id.* In May 2020, to assist private parties in complying with this provision, OFAC added descriptive text to 490 SDNs on the SDN List with whom transactions are prohibited for persons owned or controlled by financial institutions.

<sup>13</sup> See Treasury, “Treasury Sanctions Entities for Facilitating the Exportation of Workers from North Korea,” (Jan. 14, 2020), available [here](#).

<sup>14</sup> See Treasury, “Treasury Sanctions Individuals Laundering Cryptocurrency for Lazarus Group,” (March 2, 2020), available [here](#).

Shortly thereafter, on April 15, 2020, OFAC, in conjunction with the FBI, the State Department and the Department of Homeland Security, published an advisory outlining the cyber threat that North Korea poses, providing guidance on mitigating the risks of North Korea's malicious cyber activities to the international financial system.<sup>15</sup> This advisory outlines common tactics by North Korean state-sponsored cyber actors, such as cyber-enabled financial theft, money laundering, extortion campaigns and cryptojacking. The advisory additionally sets forth measures to counter these cyber threats: (1) raising awareness of the DPRK cyber threat; (2) sharing technical information concerning such threats; (3) implementing and promoting cybersecurity best practices; (4) notifying law enforcement; and (5) strengthening anti-money laundering, countering the financing of terrorism and counter-proliferation financing compliance.

#### *Updates to the Iran Sanctions Program*

The Iran sanctions program also underwent significant developments at the end of 2019 and beginning of 2020.

In late 2019, OFAC issued a number of Iran-related FAQs designed to clarify certain aspects of the Iran sanctions program.<sup>16</sup>

- FAQ 303 was updated on Nov. 27, 2019 to clarify that the provision of insurance, reinsurance or underwriting services to non-Iranian persons on OFAC's SDN List is generally not a sanctionable activity under section 1246(a)(1) of the Iran Freedom and Counter-Proliferation Act of 2012. The provision of these services is, however, prohibited under this section if the services are provided to an Iranian person designated as an SDN, to or for a person designated as an SDN in connection with Iran's support for international terrorism or WMD proliferation, or for any activity with respect to Iran for which sanctions have been imposed (e.g., certain activities relating to petroleum or petroleum products).<sup>17</sup>
- FAQ 804 was updated on Nov. 27, 2019 to clarify that sanctions on COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co. ("COSCO") only applied to COSCO and any entities in which it owns, directly or indirectly, a 50% or greater interest. Sanctions did not apply to its parent (COSCO Shipping Corporation Ltd.) or to its other affiliates or subsidiaries, provided such entities are not owned 50% or more by one or more blocked persons.<sup>18</sup> The sanctions against COSCO were subsequently lifted on Jan. 31, 2020.
- FAQ 805 was added on Nov. 27, 2019;<sup>19</sup> it explains that non-U.S. persons are generally not subject to sanctions if they provide goods or services to, or transact with, non-Iranian persons sanctioned under section 3 of E.O. 13846, which allows the Secretary of State to impose menu-

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<sup>15</sup> U.S. Department of State *et al.*, "DPRK Cyber Threat Advisory," (March 15, 2020), available [here](#).

<sup>16</sup> See Treasury, "Issuance of New and Amended Iran-related Frequently Asked Questions," (Nov. 27, 2019), available [here](#).

<sup>17</sup> FAQ No. 303 (Nov. 27, 2019), available [here](#).

<sup>18</sup> FAQ No. 804 (Nov. 27, 2019), available [here](#).

<sup>19</sup> FAQ No. 805 (Nov. 27, 2019), available [here](#).

based sanctions<sup>20</sup> relating to the Iranian automotive, petroleum and petrochemical sectors.<sup>21</sup> However, in the same FAQ, OFAC clarified that non-U.S. persons should make sure that their activities with respect to such non-Iranian persons do not involve (i) prohibited transactions by U.S. persons or U.S.-owned or controlled foreign entities (unless otherwise authorized by OFAC); (ii) the knowing provision of significant support to an Iranian on the SDN List; or (iii) the “knowing facilitation of a significant transaction for a person on the SDN List that has been designated in connection with Iran’s support for international terrorism or proliferation of weapons of mass destruction, including designated Iranian financial institutions or the Islamic Revolutionary Guard Corps (IRGC), or other activity for which sanctions have been imposed with respect to Iran (e.g., knowingly engaging in a significant transaction for the purchase of petroleum from Iran).”<sup>22</sup>

- FAQs 810 and 811, relating to Islamic Republic of Iran Shipping Lines (“IRISL”) and E-Sail Shipping Limited (“E-Sail”), were issued on Dec. 11, 2019. FAQ 810 explains that the State Department’s designation of IRISL and E-Sail under E.O. 13382, effective June 8, 2020, would result in those entities being subject to the prohibitions under both the Iranian Transactions and Sanctions Regulations (“ITSR”), pursuant to which those entities were previously designated, and also the prohibitions in the Weapons of Mass Destruction Proliferators Sanctions Regulations (“WMDPSR”), pursuant to which the State Department designation was made. FAQ 811 clarifies that, in light of IRISL’s and E-Sail’s designation under E.O. 13382, unless otherwise authorized, U.S. persons are prohibited from engaging in transactions involving those entities, including transactions for the sale of agricultural commodities, food, medicine or medical devices that would otherwise be authorized pursuant to the ITSR.<sup>23</sup>

In addition to the foregoing, in mid-January, President Trump took steps to expand the Iranian sanctions program by issuing E.O. 13902, which authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose blocking sanctions on anyone operating in the “construction, mining, manufacturing, or textiles sectors of the Iranian economy.”<sup>24</sup> This E.O. further allows the Secretary of the Treasury to designate any other sector of the Iranian economy as subject to these sanctions. Importantly, this E.O. also exposes non-U.S. companies to secondary sanctions if they knowingly facilitate certain transactions in the identified sectors or materially assist or support blocked entities or persons. The E.O. also specifically provides that the Secretary of Treasury is authorized to prohibit foreign financial institutions (“FFIs”) from opening correspondent accounts or payable accounts in the United States, or to impose strict conditions on the maintenance of such accounts, if the Secretary determines that the FFI knowingly conducted or facilitated any significant financial transaction that violates the sanctions prohibitions described above. Following the publication of E.O. 13902, on Jan. 16,

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<sup>20</sup> OFAC terms certain sanctions “menu-based sanctions” when the applicable authority prescribes a menu of sanctions that the U.S. government may impose in response to certain conduct specified in the authority.

<sup>21</sup> E.O. 13846, “Reimposing Certain Sanctions With Respect to Iran,” (Aug. 6, 2018), available [here](#).

<sup>22</sup> See FAQ No. 805, supra note 19.

<sup>23</sup> See FAQ No. 810 (Dec. 11, 2019), available [here](#); FAQ No. 811 (Dec. 11, 2019), available [here](#).

<sup>24</sup> E.O. 13902, “Imposing Sanctions With Respect to Additional Sectors of Iran,” (Jan. 10, 2020), available [here](#).

2020, OFAC issued an FAQ authorizing a 90-day wind-down period for activities prohibited by the E.O., which ended on April 9, 2020.<sup>25</sup>

In the wake of the expansion of the Iran sanctions program, OFAC and the Department of State made high-profile designations relating to Iran under various sanctions programs. Those designations targeted Iranian and non-Iranian companies and persons who facilitated Iran's petroleum sales, including designations relating to persons and entities in the petroleum and petrochemical industries;<sup>26</sup> provided support to or acted for or on behalf of IRGC-QF;<sup>27</sup> acted as a sales agent for Iranian SDN Mahan Air, which in turn was supporting the regime in Venezuela;<sup>28</sup> engaged in serious human rights abuses;<sup>29</sup> and engaged or attempted to engage in activities that have materially contributed to the proliferation of weapons of mass destruction<sup>30</sup> or have deprived Iranians of free and fair elections.<sup>31</sup>

In June, OFAC also designated a number of Iranian maritime-related entities and vessels.<sup>32</sup> Among the vessels that were sanctioned were vessels that were used to deliver Iranian gasoline to the Maduro regime in Venezuela.<sup>33</sup> In addition, OFAC took action against various steel, aluminum and iron companies operating within Iran's metals sector, including German and UAE-based entities and sales agents.<sup>34</sup>

Also in May, Secretary of State Pompeo announced the end of the sanctions waiver covering any remaining JCPOA-originating nuclear projects in Iran. According to the press release, the sanctions waiver ended on July 27, 2020, following a 60-day wind-down period.<sup>35</sup>

In the first half of 2020, OFAC also took a number of steps to clarify the bounds of permissible humanitarian and other activity relating to, among others, the Iran sanctions program. On Feb. 27, 2020, OFAC issued GL 8, which authorizes certain humanitarian-related transactions and activities involving the Central Bank of Iran.<sup>36</sup> OFAC issued this general license and its related FAQs in conjunction with the

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<sup>25</sup> FAQ No. 816 (Jan. 16, 2020), available [here](#).

<sup>26</sup> For example: (i) on Jan. 23, 2020, OFAC took action against international petrochemical and petroleum companies that had been involved in transferring hundreds of millions of dollars of exports from the National Iranian Oil Company ("NIOC"), see Treasury, "Treasury Targets International Network Supporting Iran's Petrochemical and Petroleum Industries," (Jan. 23, 2020), available [here](#); and (ii) on March 19, 2020, OFAC took action against five United Arab Emirates-based companies that OFAC determined had facilitated Iran's petroleum and petrochemical sales, see Treasury, "Treasury Targets Companies Facilitating Iran's Petroleum Sales," (March 19, 2020), available [here](#).

<sup>27</sup> Treasury, "Treasury Designates Vast Iranian Petroleum Shipping Network That Supports IRGC-QF and Terror Proxies," (Sept. 4, 2019), available [here](#).

<sup>28</sup> Treasury, "Treasury Designates China-based Mahan Air General Sales Agent," (May 29, 2020), available [here](#).

<sup>29</sup> Treasury, "Treasury Sanctions Iran's Interior Minister and Senior Law Enforcement Officials in Connection with Serious Human Rights Abuses," (May 20, 2020), available [here](#).

<sup>30</sup> U.S. Department of State, "Keeping the World Safe From Iran's Nuclear Program," (May 27, 2020), available [here](#).

<sup>31</sup> Treasury, "Treasury Designates Senior Iranian Regime Officials Preventing Free and Fair Elections in Iran," (Feb. 20, 2020), available [here](#).

<sup>32</sup> Treasury, "Non-Proliferation Designations; Iran-related Designations Updates," (June 8, 2020), available [here](#).

<sup>33</sup> Treasury, "Treasury Sanctions Five Iranian Captains Who Delivered Gasoline to the Maduro Regime in Venezuela," (June 24, 2020), available [here](#).

<sup>34</sup> Treasury, "Treasury Targets Major Iranian Metals Companies and Foreign Subsidiaries and Sales Agents," (June 25, 2020), available [here](#).

<sup>35</sup> U.S. Department of State, "Keeping the World Safe From Iran's Nuclear Program," (May 27, 2020), available [here](#).

<sup>36</sup> GL 8 (Feb. 27, 2020), available [here](#); see also FAQ No. 821 (Feb. 27, 2020), available [here](#).

formalization of the Swiss Humanitarian Trade Arrangement (“SHTA”), an agreement between the United States and Switzerland to allow humanitarian aid to Iranian citizens.<sup>37</sup> In addition, in April 2020, in response to the ongoing COVID-19 pandemic, OFAC issued a fact sheet clarifying that certain humanitarian efforts directed at Iran are permissible. The fact sheet, which addresses permissible humanitarian assistance and trade under OFAC sanctions relating to Iran, Venezuela, North Korea, Syria, Cuba and Ukraine/Russia, outlines that persons and entities may provide medicine and medical devices to Iran under existing exemptions, exceptions and authorizations (including general licenses).<sup>38</sup> Additionally, Iran-based persons manufacturing “medicines, medical devices, or products used for sanitation, hygiene, medical care, medical safety, and manufacturing safety, including soap, hand sanitizer, ventilators, respirators, personal hygiene products, diapers, infant and childcare items, personal protective equipment and manufacturing safety systems,” that are created to be used in Iran and not for export are excluded from E.O. 13902’s definition of operating in the manufacturing sector of the Iranian economy. Furthermore, persons transacting or facilitating transactions to provide or sell “agricultural commodities, food, medicine, or medical devices” to Iran are exempted from sanctions under the same E.O.<sup>39</sup>

#### *Updates to the Russia/Ukraine Sanctions Program*

The tail end of 2019 saw targeted action by the U.S. government focused on the Russian gas pipelines. In December 2019, the U.S. Senate passed a defense bill that imposed sanctions on companies installing pipes for particular Russian gas pipelines (Nord Stream 2 and Turkstream).<sup>40</sup> Simultaneously, OFAC issued an FAQ regarding the implementation of the wind-down period in the defense bill. OFAC clarified that parties that knowingly sold, leased or provided vessels that are engaged in pipe laying at 100 feet or below for the construction of Nord Stream 2 or Turkstream must ensure that such vessels immediately cease construction-related activity, but that good-faith wind-down exceptions may be made to avoid a risk to safety of people, property and the environment.<sup>41</sup>

OFAC was not particularly focused on Russian sanctions in the first half of 2020, especially in comparison to its focus in previous years. However, in January, OFAC made designations relating to Russia’s continued aggression toward Ukraine and attempted occupation of Crimea.<sup>42</sup> And, in mid-July, OFAC designated as SDNs various entities and persons associated with financier Yevgeny Prigozhin under, among others, Ukraine-sanctions program-related E.Os.<sup>43</sup>

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<sup>37</sup> Treasury, “United States and Switzerland Finalize the Swiss Humanitarian Trade Arrangement,” (Feb. 27, 2020), available [here](#).

<sup>38</sup> Treasury, “Fact Sheet: Provision of Humanitarian Assistance and Trade to Combat COVID-19,” (March 16, 2020), available [here](#) (“COVID Fact Sheet”); see also FAQ No. 830 (June 5, 2020), available [here](#).

<sup>39</sup> COVID Fact Sheet at 4.

<sup>40</sup> National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92 (2019).

<sup>41</sup> FAQ No. 815 (Dec. 20, 2019), available [here](#).

<sup>42</sup> Treasury, “Treasury Sanctions Illegitimate Russian-Backed Crimean Officials and Railroad Company Linking Crimea to Russia,” (Jan. 29, 2020), available [here](#).

<sup>43</sup> Treasury, “Treasury Targets Financier’s Illicit Sanctions Evasion Activity,” (July 15, 2020), available [here](#).



In addition, OFAC issued amended Ukraine-related GLs 13N and 15H on March 20, 2020 and July 16, 2020,<sup>44</sup> as well as amended FAQs<sup>45</sup> relating to those amendments. GL 13N permitted certain transactions and activities until July 22, 2020 related to (i) the divesting or transferring of debt, equity and other holdings in GAZ Group or entities owned or controlled by GAZ Group to non-U.S. persons; (ii) the facilitation of such transactions by a non-U.S. person to another non-U.S. person through July 22, 2020; (iii) the divesting or transferring of debt, equity, or other holdings of GAZ Group, or in entities in which GAZ Groups owns, directly or indirectly, a 50% or greater interest, that were issued by GAZ Auto plant; and (iv) the facilitation of transfer of such holdings by a non-U.S. person to another U.S. person. GL 130 further extended these authorizations to Jan. 22, 2021.

GL 15H and 15I authorized until July 22, 2020 and Jan. 22, 2021, respectively, certain activities necessary to the maintenance or wind-down of operations or existing contracts with GAZ Group and any entity in which GAZ Group owns a 50% or greater interest and that were in effect prior to April 6, 2018. GL 15H also authorized transactions and activities ordinarily incident and necessary to (i) specified research and development and related activities; and (ii) the installation of occupant safety systems, in vehicles owned by GAZ Group or any entities in which GAZ Group owns a 50% or greater interest.<sup>46</sup> GL 15I also (i) authorized until Jan. 22, 2021 a whole host of transactions and activities ordinarily incident and necessary to the manufacture and sale of vehicles, components and spare parts, produced by GAZ Group or any entity in which GAZ Group owns, directly or indirectly, a 50% or greater interest; and (ii) establishes reporting and certification requirements for GAZ Group, including monthly certification to OFAC that GAZ Group is not acting for or on behalf of Oleg Deripaska or any other person included in OFAC's list of SDNs.

#### *Updates to the Syria Sanctions Program*

There were several updates to the Syria sanctions program in the fall of 2019 and first half of 2020. Specifically, on Oct. 14, 2019, President Trump issued E.O. 13894, which was precipitated by the actions of the Government of Turkey in conducting a military offensive in northeast Syria.<sup>47</sup> This E.O. authorizes sanctions on persons who engage in actions or policies that further threaten Syria's peace, security, stability and territorial integrity, as well as the commission of human rights abuses relating to Syria. It also authorizes sanctions on (i) any subdivisions, agencies or instrumentalities of the Government of Turkey; (ii) current or former members of the Turkish government; (iii) persons who operate in certain sectors of the Turkish economy as determined by the Secretary of the Treasury; (iv) persons who have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, any person who is blocked pursuant to this E.O.; or (v) persons who are

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<sup>44</sup> GL 13N (March 20, 2020), available [here](#); GL 130 (July 16, 2020), available [here](#).

<sup>45</sup> See FAQ No. 570 (describing activities authorized by GL 130), FAQ No. 571 (relating to GL 130 and blocked property), FAQ No. 586 (describing activities authorized by, and requirements of, GL 15I), FAQ No. 588 (relating to GL 15I and blocked property), FAQ No. 589 (relating to effect of GL 15I on sanctions under CAATSA), FAQ No. 590 (relating to effect of GL 15I on obligation to make payments to blocked accounts), FAQ No. 591 (relating to GL 15I and exportation of goods to GAZ Group), FAQ No. 592 (relating to GL 15I and permissibility of receipt of regularly scheduled payments, accelerated payments, and voluntary prepayments), and FAQ No. 625 (defining "maintenance" as the term is used in GL 15I).

<sup>46</sup> GL 15H (March 20, 2020), available [here](#); GL 15I (July 16, 2020), available [here](#).

<sup>47</sup> E.O. 13894, "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria," (Oct. 14, 2019), available [here](#).



owned or controlled by, or to have acted or purported to act for or on behalf of, any person who is blocked pursuant to the E.O.

On June 4, 2020, OFAC issued regulations to implement this E.O., which became effective June 5, 2020.<sup>48</sup> In connection with the issuance of the regulations, OFAC noted that it intends to supplement these regulations.<sup>49</sup>

In addition to the foregoing regulatory developments, OFAC also made various designations pursuant to the Syria sanctions program, including various individuals and entities who “are actively supporting the corrupt reconstruction efforts of Syrian President Bashar al-Assad.”<sup>50</sup>

#### *Updates to Other Country-Specific Sanctions Programs*

*Mali.* On Feb. 6, 2020, OFAC issued regulations to implement E.O. 13882, which blocks the property of, and suspends entry into the United States for, persons determined by the Secretary of Treasury to be undermining democratic processes or institutions in Mali, as well as those that threaten the peace, security or stability of Mali.<sup>51</sup> These regulations incorporate E.O. 13882’s requirements by confirming the government’s ability to block property during an ongoing investigation and details the process through which persons can unblock funds or ask for reconsideration as blocked persons.<sup>52</sup>

*Nicaragua.* OFAC also made a number of designations and issued various general licenses in March 2020 and July 2020 related to the relatively new Nicaragua sanctions program, which began in 2018. Specifically:

- On March 5, 2020, OFAC designated as SDNs the Nicaraguan National Police (“NNP”), the primary law enforcement entity in Nicaragua, and three of its commissioners, on the grounds that they had committed serious human rights abuses.<sup>53</sup> Simultaneously with these designations, OFAC issued two General Licenses (GL 1 and GL 2) exempting U.S. government conduct from sanctions prohibitions and designating a wind-down period to May 6, 2020 of transactions involving the NNP (including salary payments to its employees).<sup>54</sup>

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<sup>48</sup> See 31 C.F.R. Part 569.

<sup>49</sup> See Treasury, “Publication of Syria-related Sanctions Regulations,” (June 4, 2020), available [here](#).

<sup>50</sup> See, e.g., Treasury, “Treasury Continues to Pressure Investors and Companies Supporting the Assad Regime’s Corrupt Reconstruction Efforts,” (July 29, 2020), available [here](#).

<sup>51</sup> E.O. 13882, “Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Mali,” (July 26, 2019), available [here](#).

<sup>52</sup> 31 C.F.R. Part 555. When announcing the issuance of these regulations, OFAC expressed its intent to publish a more comprehensive set of regulations. See Treasury, “Publication of Mali Sanctions Regulations,” (Feb. 6, 2020), available [here](#).

<sup>53</sup> Treasury, “Treasury Sanctions Nicaraguan National Police and Police Commissioners Involved in Human Rights Abuse,” (March 5, 2020), available [here](#).

<sup>54</sup> Treasury, “Nicaragua-related Designations; Issuance of Nicaragua-related General Licenses; Issuance of Nicaragua-related Frequently Asked Question,” (March 5, 2020), available [here](#); GL 1 (March 5, 2020), available [here](#); GL 2 (March 5, 2020), available [here](#). On March 25, 2020, OFAC issued amended Nicaragua-related General Licenses 1A and 2A, “to make certain minor technical amendments to earlier versions of such general licenses.” See Treasury, “Issuance of Amended Nicaragua-related General Licenses,” (March 25, 2020), available [here](#); GL 1A (March 25, 2020), available [here](#); GL 2A (March 25, 2020), available [here](#).

- On July 16, 2020, OFAC amended the Nicaragua sanctions regulations to incorporate the Nicaragua Human Rights and Anticorruption Act of 2018 and to add a general license authorizing transactions that are for the conduct of official business of the U.S. government.<sup>55</sup>
- On July 17, 2020, OFAC designated certain members of Nicaraguan President Ortega’s Inner Circle, including his son, and related entities who OFAC determined were used “to distribute regime propaganda and launder money.”<sup>56</sup>

*Zimbabwe.* Finally, on May 21, 2020, OFAC published amended regulations regarding sanctions on Zimbabwe, which removed a GL authorizing transactions involving the Agricultural Development Bank of Zimbabwe and Infrastructure Development Bank of Zimbabwe.<sup>57</sup> These two entities had been removed from the SDN List.

### **Additional Regulatory and Guidance Updates**

In addition to making designations under various non-country specific sanctions programs in the first half of 2020, OFAC also issued a number of advisories and FAQs, and implemented and removed regulations with broad applicability. In addition, President Trump issued two new executive orders, one relating to the International Criminal Court and one relating to “Hong Kong Normalization.”

#### *A. Issuance of Broad Advisories*

##### 1. COVID-Related Advisory

On April 20, 2020, OFAC issued a statement regarding compliance with U.S. sanctions regulatory requirements during the COVID-19 global pandemic.<sup>58</sup> The statement acknowledged that the COVID-19 pandemic can cause “technical and resource challenges” for organizations and, while it does not eliminate regulatory obligations, signaled that OFAC will be flexible in enforcing sanctions regulations. Among other things, in the statement, OFAC encouraged persons (including financial institutions and other businesses) affected by the pandemic to contact OFAC at specific numbers and email addresses in the event the person believes it will experience delays in its ability to meet regulatory deadlines.

##### 2. Shipping Advisory

On May 14, 2020, OFAC, along with the Department of State and the U.S. Coast Guard, issued a comprehensive and groundbreaking global advisory targeted to address illicit shipping and sanctions evasion practices.<sup>59</sup> This advisory provided robust guidance on common illicit shipping practices as well

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<sup>55</sup> Treasury, “Amendment of Nicaragua Sanctions Regulations; Amendment of Ukraine-related General Licenses,” (July 16, 2020), available [here](#); see 31 C.F.R. Part 582.

<sup>56</sup> Treasury, “Treasury Sanctions Members of Nicaragua President Ortega’s Inner Circle,” (July 17, 2020), available [here](#).

<sup>57</sup> Treasury, “Publication of Amended Zimbabwe Sanctions Regulations,” (May 21, 2020), available [here](#). Earlier in the year, OFAC also made certain designations pursuant to the Zimbabwe sanctions program. See Treasury, “Treasury Sanctions Two Individuals for Human Rights Abuse in Zimbabwe,” (March 11, 2020), available [here](#).

<sup>58</sup> Treasury, “The Office of Foreign Assets Control (OFAC) Encourages Persons to Communicate OFAC Compliance Concerns Related to the Coronavirus Disease 2019 (COVID-19),” (March 20, 2020), available [here](#). For a fuller discussion of this advisory, see “Sanctions Update: US Sanctions Compliance During COVID-19,” *SRZ Alert*, March 24, 2020, available [here](#).

<sup>59</sup> Treasury *et al.*, “Sanctions Advisory for the Maritime Industry, Energy and Metals Sectors, and Related Communities,” (May 14, 2020), available [here](#).

as best practices for many of the actors in the shipping industry, including annexes addressing recommendations specific to maritime insurance companies, flag registry managers, port control authorities, shipping industry associations, regional and global commodity trading, supplier and brokering companies, financial institutions, ship owners, operators and charterers, classification societies, vessel captains and crewing companies. The advisory identifies Iran, North Korea and Syria as countries with which there are heightened risks of sanctions evasion and other illicit shipping practices. Among other practices, the advisory identifies the following as common deceptive shipping practices: (1) disabling or manipulating the Automatic Identification System (“AIS”) on vessels, (2) physically altering vessel identification, (3) falsifying cargo and vessel documents, (4) ship-to-ship transfers, (5) vessel irregularities, (6) false flag and flag hopping, and (7) complex ownership or management. In addition to the guidance specific to certain actors in the shipping industry, OFAC provides general practices for effective identification of sanctions evasion. These practices include (1) institutionalizing sanctions compliance programs; (2) establishing AIS best practices and contractual requirements; (3) monitoring ships throughout the transaction lifecycle; (4) implementing know-your-customer and counterparty practices; (5) exercising supply chain due diligence; (6) incorporating best practices in contractual language; and (7) industry information sharing.

### 3. Xinjiang Supply Chain Business Advisory

On July 1, 2020, the U.S. Departments of State, Commerce, Homeland Security and the Treasury issued an advisory regarding risks for businesses with supply chain exposure to entities engaged in human rights abuses perpetrated by the People’s Republic of China in the Xinjiang Uyghur Autonomous Region (“Xinjiang”). The advisory states that businesses with such exposure “should be aware of the reputational, economic, and legal risks of involvement with entities that engage in human rights abuses, which could include Withhold Release Orders (WROs) [formal orders prohibiting importation of goods made with forced labor], civil or criminal investigations, and export controls.”<sup>60</sup> The advisory identifies three primary types of exposure and urges businesses to “apply industry human rights due diligence policies and procedures to address risks.”

#### B. Issuance of Non-Country Specific FAQs

##### 1. FAQs Relating to Reporting, Procedures and Penalties Regulations

Following the amendment in 2019 to the Reporting, Procedures and Penalties Regulations (“RPPR”), on February 20, 2020, OFAC published two FAQs designed to clarify certain aspects of the amendments.<sup>61</sup> FAQ 819 states that U.S. persons and those subject to U.S. jurisdiction (including those that are not U.S.

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<sup>60</sup> See Treasury, Xinjiang Supply Chain Business Advisory, “Risks and Considerations for Businesses with Supply Chain Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses in Xinjiang,” at 1-2 (July 1, 2020), available [here](#). Consistent with the warnings in the Advisory, on July 31, 2020, OFAC designated as SDNs various individuals and an entity, Xinjiang Production and Construction Corps (“XPCC”) pursuant to the Global Magnitsky sanctions program. See Treasury, “Global Magnitsky Designations; Issuance of Global Magnitsky General License, Issuance of Global Magnitsky Frequently Asked Question,” (July 31, 2020), available [here](#). According to an FAQ that OFAC issued on the same day, XPCC was designated for its “connection to serious human rights abuse in the Xinjian Uyghur Autonomous Region.” See FAQ No. 835 (July 31, 2020), available [here](#). Pursuant to Global Magnitsky GL 2, also issued on July 31, 2020, U.S. persons are allowed to engage in transactions that are ordinarily incident and necessary (i) to the wind-down of transactions involving any entity in which XPCC owns, directly or indirectly, a 50% or greater ownership interest (“Blocked XPCC Subsidiaries”); (ii) to divest or transfer debt equity, or other holdings in a Blocked XPCC Subsidiary to a non-US person; or (iii) to facilitate such transfers by a non-U.S. person to another U.S. person, all until Sept. 30, 2020. GL 2 does not authorize any transactions with XPCC itself. See GL 2 (July 31, 2020), available [here](#).

<sup>61</sup> Treasury, “Issuance of Reporting, Procedures and Penalties Regulations (RPPR)-related Frequently Asked Questions,” (Feb. 20, 2020), available [here](#); see FAQ No. 819 (Feb. 20, 2020), available [here](#), and FAQ No. 820 (Feb. 20, 2020), available [here](#).

financial institutions) must comply with all of the RPPR requirements, including the requirement to report rejected transactions to OFAC within 10 business days. FAQ 820 addresses what information should be included in rejected transaction reports; specifically, OFAC expects U.S. persons and those subject to U.S. jurisdiction to include all information required under Section 501.604(b) of the RPPR in the filer’s possession, as well as “information regarding the submitter of the report, the date the transaction was rejected, the legal authority or authorities under which the transaction was rejected, and any relevant documentation received in connection with the transaction.”

## 2. FAQs and Designations Relating to Counter Terrorism Sanctions Program

In late 2019, OFAC issued a series of FAQs in the Counter Terrorism sanctions program concerning artwork that is the property of, or subject to a property interest of, Specially Designated Global Terrorists (“SDGTs”).<sup>62</sup> FAQ 812 explains that U.S. persons are prohibited from transactions or dealings in the property or property interests of SDGTs, including artwork.<sup>63</sup> This FAQ additionally notes that FFIs could be subject to secondary sanctions for engaging in, or facilitating, such transactions. FAQ 813 encourages art institutions and private collectors to develop a compliance program to ensure compliance with OFAC’s guidance on avoiding transactions with SDGTs.<sup>64</sup> FAQ 814 requires that anyone in possession of artwork in which an SDGT has an interest must ensure that access to the art is denied to the SDGT and must comply with OFAC regulations (such as third-party sale or transfer restrictions) regarding blocked entities, including the requirement to file blocked property reports.<sup>65</sup>

### C. *Implementation of Federal Civil Penalties Inflation Adjustment Act*

On April 8, 2020, OFAC published amended regulations to implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. This amended regulation “adjusts for inflation the maximum amount of the civil monetary penalties that may be assessed under relevant OFAC regulations.”<sup>66</sup>

### D. *Issuance of New Executive Orders*

#### 1. Executive Order Relating to International Criminal Court

On June 11, 2020, President Trump issued a new executive order, E.O. 13928, relating to persons associated with the International Criminal Court (“ICC”). The E.O. permits the Secretary of State, in consultation with the Secretary of Treasury and the Attorney General, to block the property of (a) any foreign person who they determine has directly engaged in any effort by the ICC to investigate, arrest, detain or prosecute any U.S. personnel or any personnel of a country that is an ally of the United States without the consent of the United States or the U.S. allies; (b) any person who has materially assisted

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<sup>62</sup> Treasury, “Counter Terrorism Designations; Issuance of Counter Terrorism-related Frequently Asked Questions; Cyber-related Designations Removals,” (Dec. 13, 2019), available [here](#).

<sup>63</sup> FAQ No. 812 (Dec. 13, 2019), available [here](#).

<sup>64</sup> FAQ No. 813 (Dec. 13, 2019), available [here](#).

<sup>65</sup> FAQ No. 814 (Dec. 13, 2019), available [here](#).

<sup>66</sup> See 31 C.F.R. Part 501.

any such activity; or (c) any foreign person owned or controlled by, or purporting to act on behalf of, any person blocked under this E.O.<sup>67</sup> This E.O. was issued as a result of President Trump’s determination that the ICC had made illegitimate assertions of jurisdiction over the personnel and allies of the United States, thereby “threaten[ing] to infringe upon the sovereignty of the United States and impede the critical national security and foreign policy work of the United States Government and allied officials, and thereby threaten the national security and foreign policy of the United States.”

## 2. Executive Order on “Hong Kong Normalization”

On July 14, 2020, President Trump issued E.O. 13936 relating to Hong Kong. According to the E.O., in light of the People’s Republic of China’s (“China”) decision to unilaterally and arbitrarily impose national security legislation on Hong Kong, Hong Kong “is no longer sufficiently autonomous to justify differential” (and more favorable) treatment, as compared to the treatment given to China. The E.O. declares that going forward, it “shall be the policy of the United States to suspend or eliminate different and preferential treatment for Hong Kong to the extent permitted by law and in the national security, foreign policy, and economic interest of the United States.” The E.O. also suspends application of section 201(a) of the United States-Hong Kong Policy Act of 1992 to various specified statutes, thereby suspending differential treatment of Hong Kong with respect to various matters relating to export controls, travel and immigration, law enforcement and scientific and educational cooperation.<sup>68</sup> The E.O. further calls for the “head of agencies” to “commence all appropriate actions to further the purposes of this order.” It remains to be seen what actions the head of agencies will undertake to comply with this E.O.

### E. *Removal of Terrorism Sanctions Regulations*

Earlier in the year, OFAC removed the Terrorism Sanctions Regulations from the CFR based on the termination of the national emergency that formed the basis for the regulations.<sup>69</sup>

### **OFAC Enforcement Actions**

OFAC announced 13 settlements and findings of violation in the Review Period. Below are a few observations and takeaways from these cases:

- Failing to self-disclose generally results in substantially higher penalties and less favorable treatment by OFAC. In all but three of the 13 actions in the Review Period, the violations were self-disclosed, which OFAC noted and stated that it considered when arriving at the penalties imposed. With respect to the three actions where the companies did not self-disclose, one resulted in the highest penalty (\$7.8 million) of any other settlement during the Review Period, by a significant margin.<sup>70</sup> In another action, OFAC settled with the company for a value

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<sup>67</sup> See E.O. 13928, “Blocking Property of Certain Persons Associated With the International Criminal Court,” (June 11, 2020), available [here](#).

<sup>68</sup> See E.O. 13936, “The President’s Executive Order on Hong Kong Normalization,” (July 14, 2020), available [here](#).

<sup>69</sup> Treasury, “Removal of the Terrorism Sanctions Regulations,” (March 9, 2020), available [here](#).

<sup>70</sup> See Treasury, “Enforcement Information For February 26, 2020,” (Feb. 26, 2020) (settlement with Société Internationale de Télécommunications Aéronautiques SCRL for \$7.8 million for apparent violations of the Global Terrorism Sanctions Regulations) (“SITA Settlement”), available [here](#).

approximately double the commercial value of the apparent violation.<sup>71</sup> In the third action, the company that committed the violations had since dissolved, so financial penalties could not be imposed. Nevertheless, OFAC issued a finding of violation in which it warned that, absent the dissolution, the facts “would have justified a strong civil monetary penalty.”<sup>72</sup>

- Companies are not absolved of enforcement risk simply because the sanctions program at issue were dissolved after the alleged violations occurred. In two of the 13 enforcement actions during the Review Period, the sanctions programs had been repealed at the time the settlement was arrived at, and, in one case, the penalty imposed was more than \$1 million.<sup>73</sup>
- Continuing a trend from 2019, one of the most common country-specific sanctions programs identified in the settlements during the Review Period was the Cuban sanctions program,<sup>74</sup> with four of the 13 actions involving the Cuba sanctions program.<sup>75</sup> Companies and their subsidiaries who are at risk of Cuban sanctions violations ought, therefore, to take extra precaution to avoid running afoul of this sanctions program, which has been the subject of active enforcement in recent years.<sup>76</sup>
- While country-based sanctions programs are the frequent subject of enforcement actions, non-country specific programs were also the subject of multiple enforcement actions in the Review Period, including the Foreign Narcotics Kingpin Sanctions Regulations, the Global Terrorism Sanctions Regulations and the Weapons of Mass Destruction Proliferators Sanctions Regulations.<sup>77</sup> Accordingly, when assessing sanctions compliance, these programs ought to also be considered.

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<sup>71</sup> See Treasury, “OFAC Settles with Essentra FZE Company Limited with Respect to Potential Civil Liability for Apparent Violations of the North Korea Sanctions Regulations,” (July 16, 2020) (settlement with Essentra FZE for \$665,112 for apparent violations of the North Korea sanctions regulations) (“Essentra Settlement”), available [here](#).

<sup>72</sup> See Treasury, “Aero Sky Aircraft Maintenance, Inc. Receives a Finding of Violation Regarding Violations of the Global Terrorism Sanctions Regulations,” (Dec. 12, 2019) (finding of violations of the Global Terrorism Sanctions Regulations) (“Aero Sky Finding”), available [here](#).

<sup>73</sup> See Treasury, “Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Apollo Aviation Group, LLC,” (Nov. 7, 2019) (settlement for \$210,600 relating to 12 apparent violations of sanctions relating to Sudan) (“Apollo Settlement”), available [here](#); Treasury, “Enforcement Information For January 27, 2020,” (Jan. 27, 2020) (announcing settlement with Eagle Shipping International (USA) LLC for \$1.25 million for 36 apparent violations of the now-repealed Burmese sanctions regulations) (“Eagle Shipping Settlement”), available [here](#).

<sup>74</sup> The violations in the enforcement actions related to violations of multiple sanctions programs, including sanctions programs relating to Iran, Sudan, Burma, Cuba, North Korea, the Foreign Narcotics Kingpin Sanctions Regulations, the Global Terrorism Sanctions Regulations, and the Weapons of Mass Destruction Proliferators Sanctions Regulations, among others.

<sup>75</sup> See Treasury, “Settlements between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Allianz Global Risks U.S. Insurance Company, and, separately, Chubb Limited,” (Dec. 9, 2019), available [here](#); Treasury, “Enforcement Information For December 9, 2019,” (Dec. 9, 2019), available [here](#); U Treasury, “OFAC Settles with BIOMIN America, Inc. with Respect to Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations,” (May 6, 2020), available [here](#); Treasury, “OFAC Settles with Amazon.com, Inc. with Respect to Potential Civil Liability for Apparent Violations of Multiple Sanctions Programs,” (July 8, 2020), available [here](#).

<sup>76</sup> We also note that, on July 30, 2020, OFAC designated Havana International Bank, Ltd. pursuant to the Cuba sanctions program. See Treasury, “Cuba Designation Update,” (July 30, 2020), available [here](#).

<sup>77</sup> See Treasury, “Enforcement Information For November 25, 2019,” (Nov. 25, 2019) (\$466,912 settlement with Apple, Inc. for apparent violations of the Foreign Narcotics Kingpin Sanctions Regulations) (“Apple Settlement”), available [here](#); Aero Sky Finding, supra note 72 (violations of Global Terrorism Sanctions Regulations); Treasury, “Enforcement Information For January 21, 2020,” (Jan. 21, 2020) (settlement with Park Strategies, LLC, a New York lobbying firm, for \$12,150, as a result of negotiating and entering into a contract to provide lobbying services to, and received payments from, a Somalian SDGT, in violation of Global Terrorism Sanctions Regulations), available [here](#); SITA Settlement, supra note 70 (apparent violations of Global Terrorism Sanctions Regulations); Treasury, “OFAC Issues a Finding of Violation to American Express Travel Related Services Company for Violations of the Weapons of Mass Destruction Proliferators Sanctions Regulations,”

- OFAC expects companies to do more than rely on contractual representations when dealing with counterparties. It expects companies to implement additional controls and engage in additional diligence to provide comfort that U.S. sanctions laws are being met.<sup>78</sup>
- In at least three of the cases that resulted in settlements in the Review Period,<sup>79</sup> the sanctions compliance failure was attributed, at least in part, to automated screening system failures or deficiencies. These cases highlight the fact that companies that use automated sanctions screening tools for compliance must take steps to evaluate systemic vulnerabilities and to confirm that their compliance tools are functioning properly, in a manner that will identify, alert and/or interdict transactions that violate U.S. sanctions.
- The fact that a company has applied for and is awaiting a determination on a specific license application might not be a defense to an enforcement action where the company continues to engage in the conduct that is the subject of sanctions while awaiting a determination on such license application. That is particularly true where the license application is ultimately denied.<sup>80</sup>
- Non-U.S. persons who process financial transactions to, through or involving U.S. financial institutions that relate to commercial activity with an OFAC-sanctioned country, region or person, may be — and have been — penalized by OFAC for violating U.S. sanctions. This is true even where no entity or person subject to U.S. jurisdiction was involved in the underlying commercial activity. In short, it is OFAC’s view that “the inclusion of a U.S. financial institution in any payments associated with [...] commercial activities [that violate U.S. sanctions] can result in or cause prohibited activity.”<sup>81</sup>
- Companies that themselves operate, or who have subsidiaries who operate, in higher risk jurisdictions ought to be particularly attuned to sanctions compliance, including by keeping up to date on developments with sanctions regulations, making sure they understand the full scope of sanctions prohibitions, and dedicating sufficient resources to U.S. sanctions compliance.<sup>82</sup>

In addition to the above observations, OFAC offers its own views of the specific takeaways from each action at the end of the settlement announcements. Those takeaways offer additional insight into OFAC’s enforcement priorities and the lessons to be gained from prior enforcement actions.

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(March 30, 2020) (“American Express Settlement”), available [here](#); Treasury, “OFAC Settles with Amazon.com, Inc. with Respect to Potential Civil Liability for Apparent Violations of Multiple Sanctions Programs,” (July 8, 2020) (“Amazon Settlement”), available [here](#).

<sup>78</sup> See Apollo Settlement, *supra* note 73. In the Apollo matter, for example, Apollo had leased airplane engines to a UAE-based entity that were ultimately subleased and installed on a Sudan Airways plane, an SDN at the time the transactions took place.<sup>78</sup> The lease agreements contained provisions prohibiting the UAE entity from maintaining, operating, flying or transferring the engines to any countries subject to U.S. or UN sanctions, but OFAC nevertheless criticized Apollo for not “ensur[ing] the engines were utilized in a manner that complied with OFAC’s regulations” or taking steps to “periodically monitor or otherwise verify the lessee’s and sublessee’s adherence” to the contractual undertakings.

<sup>79</sup> See Apple Settlement, *supra* note 77; American Express Settlement, *supra* note 77; Amazon Settlement, *supra* note 75. In the Amazon matter, for example, the sanctions violations at issue apparently stemmed from the fact that Amazon’s automated sanctions screening processes “failed to fully analyze all transaction and customer data relevant to compliance with OFAC’s sanctions regulations.” By way of example, the screening processes did not pick up variations of spellings of words, failed to identify shipments to the Embassy of Iran located in third countries, and, in several hundred instances, failed to flag correctly spelled names and addresses on OFAC’s sanctions list.

<sup>80</sup> See Eagle Shipping Settlement, *supra* note 73.

<sup>81</sup> See Essentra Settlement, *supra* note 71.

<sup>82</sup> See Treasury, “Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Whitford Worldwide Company, LLC,” (July 28, 2020), available [here](#).



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