KPMG SMART PRACTICE

Evolving compliance programs for trading with Russia

The situation in Ukraine has prompted economic sanctions and new export restrictions that could affect a range of companies. These measures include sanctions targeting Russian and Belarusian individuals and entities; additional end-use requirements for dual-use items and technology; and additional country-specific export control requirements.

Between 22 February 22 and 6 April 2022, The Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued 733 new specially designated national ("SDN") listings against Russian and Belarusian individuals and entities. Several Russian banks have been removed from SWIFT, the mechanism that allows banks to communicate with each other. KPMG foresees that there could be additional sanctions to come.

For dual-use items and technology, the Bureau of Industry and Security has issued broad prohibitions on the export of items controlled under the Export Administration Regulations' Commerce Control List ("CCL") categories 3-9. The restrictions also add new Foreign Direct Product Rules specific to Russia and Russian "military end users", and Belarus and Belarusian "military end users". This rule applies to foreign-produced items that are: (i) the direct product of any software or technology on the CCL; or (ii) produced by certain plants or major components thereof which are themselves the direct product of any US-origin software or technology on the CCL.

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While these sweeping measures seem daunting for compliance professionals, the key is understanding what activities are regulated and how they impact your company. This article outlines how companies can keep abreast of the situation.

Supporting executive leadership

Top leaders of corporations everywhere are undoubtedly meeting to discuss the implications of the Ukraine war. Ensuring that sanctions and export compliance teams are in these discussions will help leaders identify the full scope of the impact to the business.

These new regulatory measures are intentionally broad, targeting almost every aspect of Russian business. It takes an expert to provide the proper context for measure. Among other things, sanctions and export compliance professionals can highlight how supply chain operations are impacted, how sales are affected through new export control and sanctions requirements, and how sanctions might even impact paying employees or even lead to moving operations.

Know the facts

Systemic, long-term compliance with new regulations requires regular data analysis. Sanctions and export compliance professionals must start by identifying the data needed to assess and analyze the company's risk posture and suggest risk-mitigation measures. Relevant data for assessing risks include information about products, sales opportunities, payment platforms, and export authorizations.

With the required data in hand, the sanctions and export compliance team can determine where mitigation efforts should be directed. It can also provide the business with specific information about the ramifications of new sanctions and export control requirements. Mitigation measures can be highly targeted to prevent unauthorized activities while limiting the impact to other business groups or operations.

Communicating the message

The company should communicate its ongoing commitment to compliance. However, stakeholders should carefully consider how the information will be presented to internal and external parties.

Employees should understand that the company may impose more stringent compliance measures immediately, while the organization assesses its unique risk factors. This may include a review of every transaction involving a Russian entity, regardless of the nature of the relationship. However, employees should also know that these measures may be modified once the company has a more thorough understanding of its risk posture. Additionally, companies will also need to communicate with potentially impacted third parties, such as distributors, suppliers, banks, and logistics providers.

Validating automated tools

Once the universe of at-risk activities has been established, a thorough system review should be conducted. The compliance team should evaluate the automated restricted party screening ("RPS") system to confirm that it is

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calibrated to flag potentially prohibited transactions and parties. This review should include a deep dive into customers but must also include non-customer relationships that could be subject to sanctions or export controls.

Screening master data is an additional step to fortify compliance. This will include screening for newly sanctioned parties as well as the more complicated task of identifying the cities in the Donetsk People's Republic ("DNR") and the Luhansk People's Republic ("LNR") regions that are now sanctioned.

Looking ahead

It is impossible to predict how the trade environment will change in the coming months. Given this uncertainty, export compliance teams should elevate their visibility across the organization. This includes contributing to senior stakeholder meetings, gathering and analyzing export data, developing targeted mitigation strategies, and effectively communicating with internal and external stakeholders. While the sanctions and export controls are sweeping, a methodical approach to managing them will help preserve compliance. ■

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