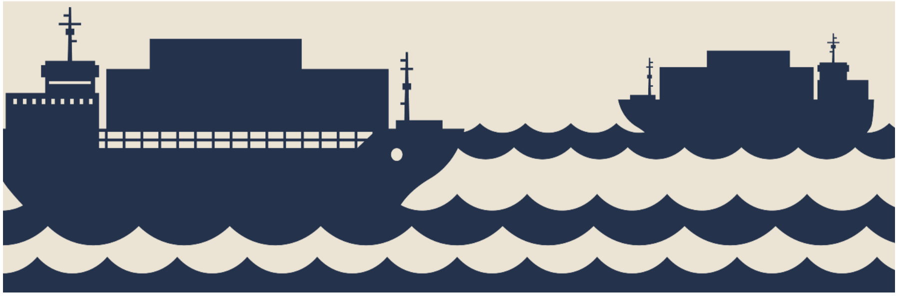

KPMG **SMART PRACTICE**

Not just for the maritime industry: OFAC's latest sanctions advisory

In May, the Office of Foreign Assets Control ("OFAC") issued an advisory alerting the maritime industry to deceptive practices shippers may use to avoid complying with US sanctions requirements and steps that can be taken to identify sanctions evasion. Although directed at the shipping industry, the advisory's guidance may be applicable to most business sectors that face the ongoing challenge of sanctions compliance. In particular, there are several recommendations that will help limit sanctions compliance risks and enhance visibility across the supply chain.

1. Institutionalize sanctions compliance programs

At the top of OFAC's list is institutionalizing a sanctions compliance program. This involves a number of steps: conducting risk assessments, developing and enforcing policies and procedures, defining escalation procedures, protecting whistleblowers, and third-party auditing of the sanctions program. Embedding sanctions into your company's culture will not only increase awareness but also the likelihood that employees will raise their hand if they see a problem.

Validating your sanctions program is an ongoing activity, but starting with a risk assessment is key. A risk assessment highlights focus areas so specific procedures can be developed to prevent violations. A plan should then be implemented to audit the sanctions program periodically to test existing procedures and identify new challenges.

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2. Know your customers and counterparties

Regardless of industry, it is imperative that multinationals know their business partners. For the shipping industry, OFAC notes that this may mean maintaining copies of passports, emails, addresses, phone number(s), and copies of photo identification of each vessel's customers' beneficial owners. For other industries, this means robust restricted-party screening processes for customers, service partners and banks. However, restricted-party screening is only effective when it is properly configured – too few hits and a restricted party could be missed. Too many hits and internal resources will spend an inordinate amount of time clearing false positives. There is a range of tools and configurations that will maximize compliance based on your company's needs and risk profiles.

3. Exercise supply chain due diligence

As sanctions evasion attempts become more widespread globally, it is important to consider that, while your immediate counterparties may not be sanctioned, not all suppliers and customers are as concerned about sanctions that may not apply to them directly. Even if they are subject to US jurisdiction, they may not have implemented the most robust compliance safeguards. Sometimes referred to as KYCC (Know Your Customer's Customer), enhanced supply chain diligence consists of taking extra steps to ensure visibility into the original sourcing of goods, as well as the ultimate destinations or uses of what you sell. For example, are you comfortable that your purchase did not involve products procured through North Korean labor? Do you know where your product is ultimately going after being sent to a trading house in the United Arab Emirates? Sometimes, assurance can be obtained from as little as adding a representation clause in your sales agreements. In other cases, you may need to ask for more documentation.

4. Contractual language

OFAC encourages incorporating "these best practices in contracts related to their commercial trade, financial, and other business relationships in the maritime industry". However, including strong contractual language requiring compliance with US sanctions regulations is a leading practice regardless of industry.

An inventory of customer and service provider contracts should be taken to validate that business partners are required to comply with sanctions requirements. Where it is not provided for, language should be added requiring general sanctions compliance as well as language tailored to mitigate specific risk. For example, if you are selling power-generating turbines into Russia, it might make sense to get specific assurances that they will not be diverted to Crimea.

5. Industry information sharing

As OFAC notes, "[S]uccessful sanctions compliance programs often rely on fostering industry-wide awareness of challenges, threats, and risk mitigation

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measures." Coordinating with industry groups about sanctions compliance issues and mitigation efforts helps enhance programs so that they can protect against evolving challenges. It is also a crucial step in identifying leading practices that can subsequently be incorporated into sanctions compliance programs. For example, the Computing Technology Industry Association (CompTIA), considered one of the IT industry's top trade associations, regularly collaborates with its members and OFAC to identify both risks and best practices associated with sanctions compliance.

Conclusion

Clearly, while OFAC was focused on the maritime industry with its most recent guidance, it is broadly applicable to many business sectors. The leading practices it suggested are centered on improving visibility, assessing and managing risk and optimizing communication. These tenets are the pillars of any successful sanctions compliance program. Multinationals are well advised to review their current programs in light of this guidance to assess where enhancements can be made to prevent sanctions violations. ■

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