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ASIAN BANKERS ASSOCIATION

Webinar 6: **Sanctions**

May 6, 2020

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Speakers

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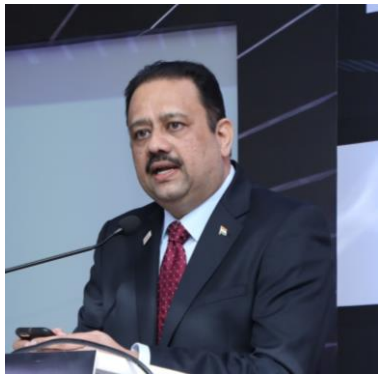


Shirish Pathak
Managing Director, Fintelekt Advisory Services

Nicholas Turner
Of Counsel, Steptoe & Johnson

Vincent Gaudel
Compliance Expert, Accuity

Suren Thapa
President & Founder, Global Intelligence Analysis Corporation, New York

Hala Bou Alwan
Founder & CEO, HBA Consultancy

OFAC sanctions have been increasingly complex and rigorous over the last few years. Penalties have increased manifold and tolerance to violations seems to be going down. The impression many banks in Asia have is that sanctions risks apply only to large, multinational banks that have significant US dollar transactions. Can you comment on this? What would be your advice to banks?

Question 1

Hala Bou Alwan
Founder & CEO,
HBA Consultancy

Impact of Sanctions

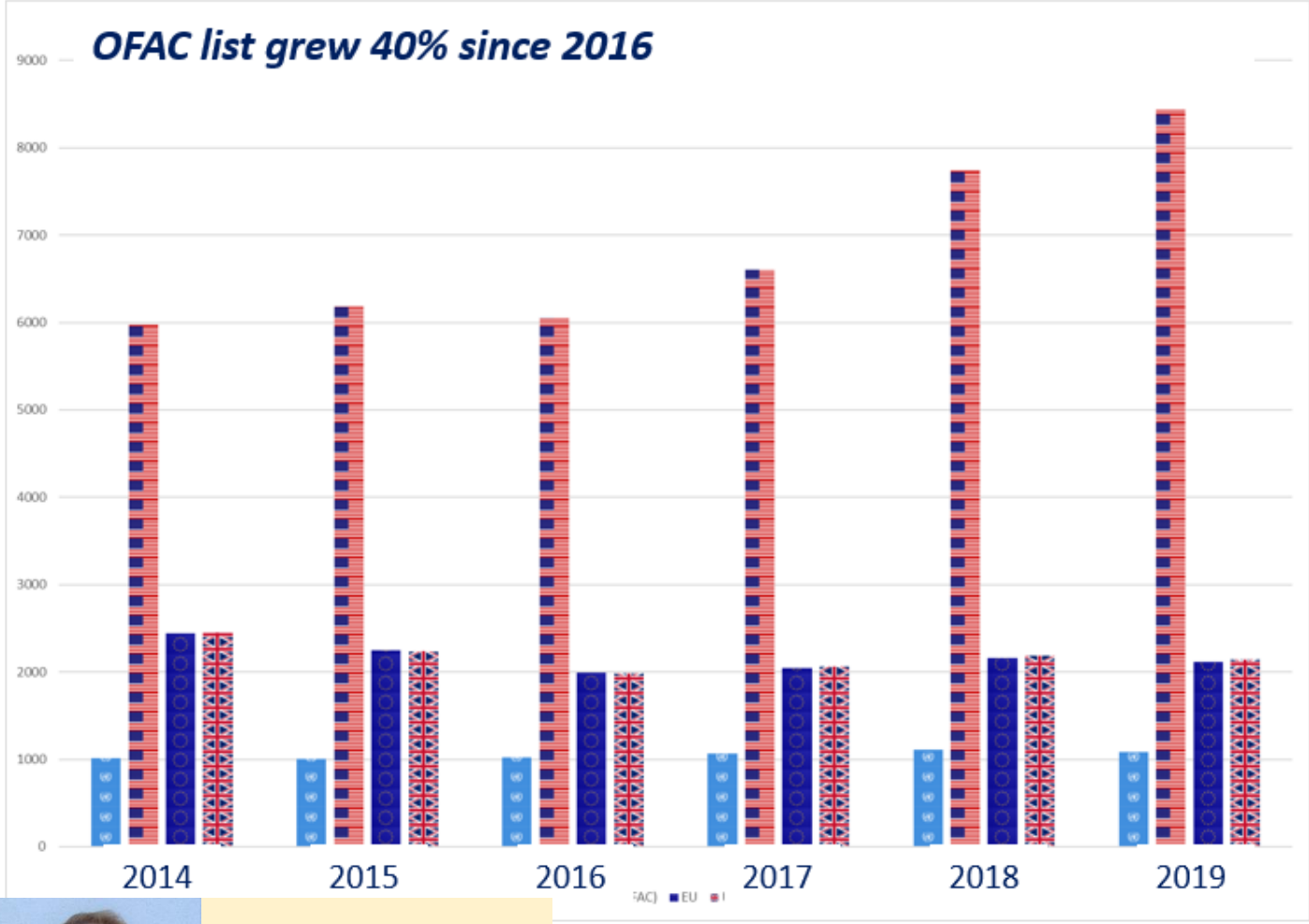
- The Office of Foreign Assets Control (OFAC) of the US Department of Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes.
- Impact of US sanctions is not restricted only to large banks.
- Small banks equally prone to layering of illicit funds by criminals, or structuring cash deposits below threshold requirements.
- Smaller banks and financial institutions are often more vulnerable than larger banks.

Nicholas Turner
Of Counsel,
Steptoe & Johnson

OFAC Sanctions Compliance Obligations for Banks

- Banks with significant exposure to the US financial system have elevated OFAC risk and should ensure that their transactions comply with relevant sanctions regulations.
- Rejected transactions could become the basis for future OFAC investigations or enforcement action for participating banks.
- Banks may need to comply with OFAC sanctions despite lack of OFAC jurisdiction because of:
  - Expectations from correspondent banks or counterparties.
  - The likelihood of reputational, commercial and legal impact, including from potential secondary sanctions

OFAC sanctions have been increasingly complex and rigorous over the last few years.



Sanctions also apply to entities not captured in the Official List:

- To entities owned 50% + or more, directly or indirectly, by sanctioned entities
- To broad and generic categories of entities: “Government of Venezuela”, “Russian Sovereign entities”.

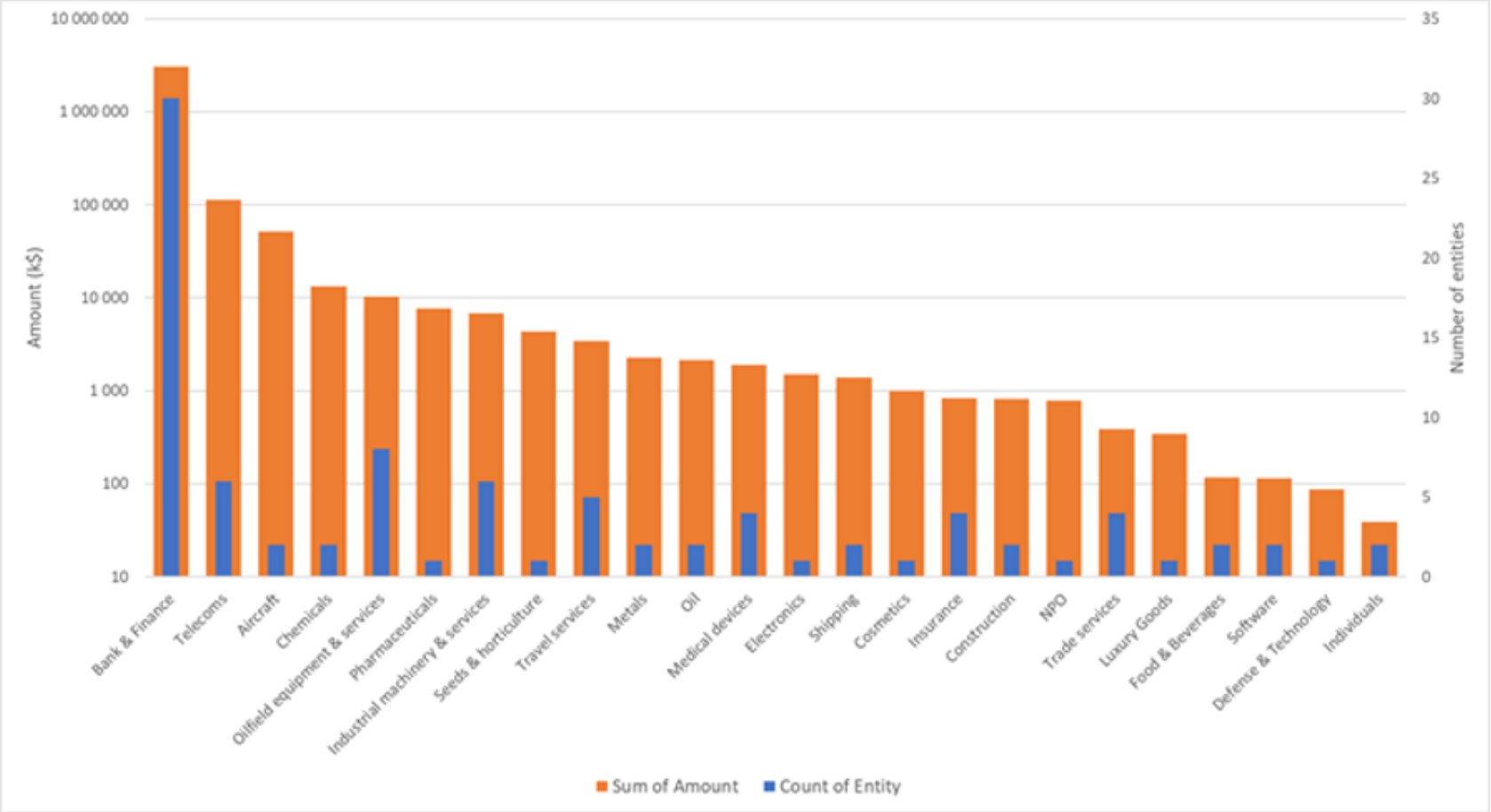
Sanctions also differ in scope:

- Sectoral sanctions only restrict some activities,
- Exceptions, authorizations & licenses may apply

Beyond simple screening of Official lists, enhanced data and sound internal expertise are required for sanctions compliance.

Vincent Gaudel,
Compliance Expert,
Accuity

OFAC Penalties have been aggressively targeting numerous economic sectors, beyond banks



Enforcement actions target all economic sectors:

- 2/3 of fines issues by OFAC since 2014 are against non-financial institutions
- Fines against financial institutions represent 90%+ of the total amount ($3,3bn)

Beyond US persons, OFAC claims jurisdiction on activities involving USD, US-Origin goods & technology.

Secondary sanctions subject non-US persons to US sanctions law

Vincent Gaudel,
Compliance Expert,
Accuity

Sanctions regimes have been very dynamic - just in the last year the Iran, Russia and Venezuela regimes underwent significant changes, sanctions were imposed on Turkey, then revoked. Can you give us an overview of these challenges?

Question 2

Hala Bou Alwan
Founder & CEO,
HBA Consultancy

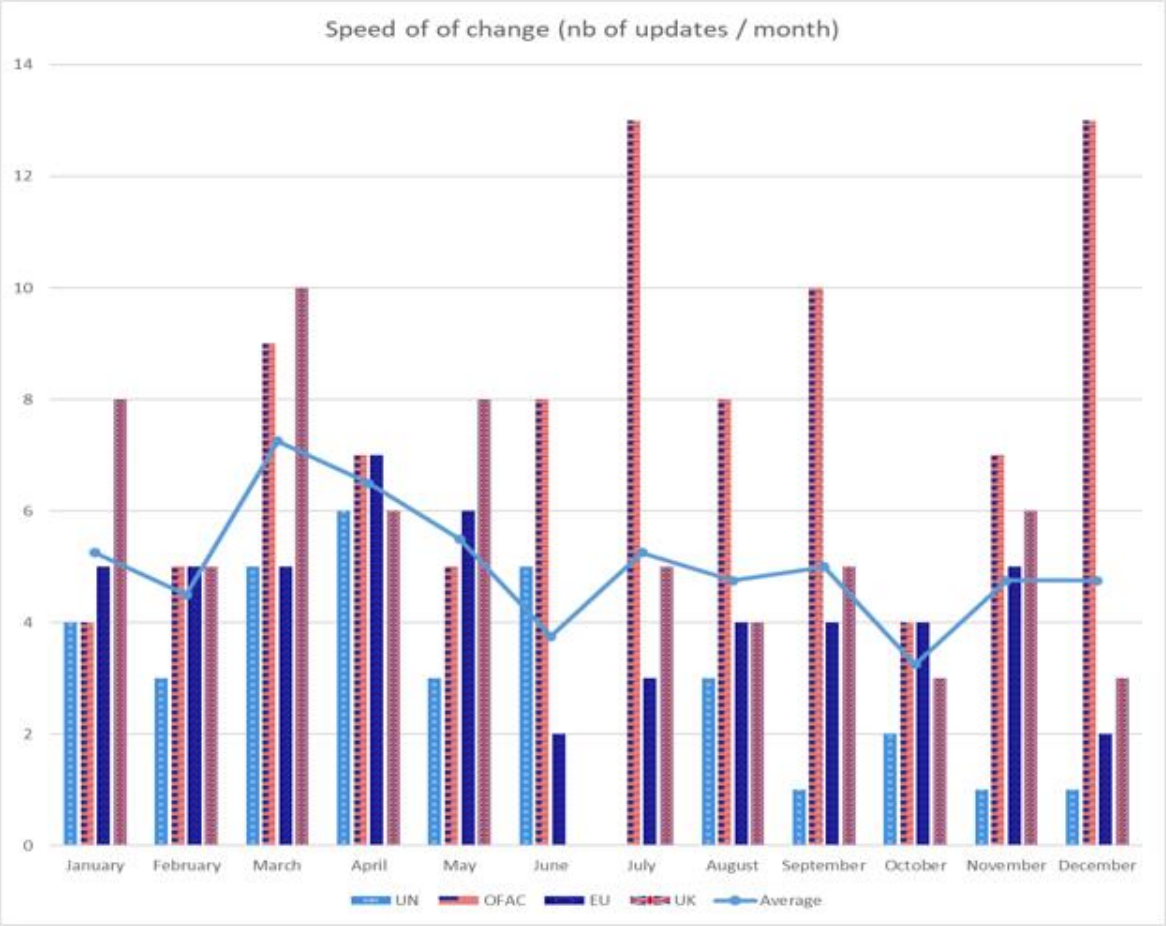
Sanctions Challenges

- Last few years have been characterized by increasing sanctions related activities as well as divergent sanctions regimes
  - The US is introducing and enforcing sanctions more frequently.
  - Divergence between the US and EU over sanctions is increasing
  - Rise in sanctions by many other countries/regions.
- Significant 62 per cent increase across sanctions programmes issued internationally from 2017 to 2020.
- For banks and financial institutions, the sanctions landscape is complex, inconsistent and challenging, however regulatory scrutiny continues to rise.

How can banks effectively deal with the large number of changes?

Question 3

How can banks effectively deal with the large number of changes?



Notable changes:

- Increasing pressure on Iran, Venezuela and Russia
- Significant focus on illicit shipping activities, translated in specific designations (shipping companies, vessels)
- New sanctions imposed, then removed, on Turkish Officials, amid Turkey's intervention in Northern Syria
- Doubling in the number of designated entities for serious Human Rights violations and corruption (under the Global Magnitsky Act)

Timely sanctions implementation is critical and calls for robust processes and technology. List management processes and sound regulatory watch are key for ongoing compliance.

Vincent Gaudel,
Compliance Expert,
Accuity

What are the challenges with the way banks are screening for SDN matches - and how can technology help banks improve the efficiency in doing this? And apart from using the best in class technology solutions, what are the elements that banks must include in their sanctions programmes?

Question 4

Key Components for productive sanctions screening

Data

Data quality is key to generate productive alerts:

- **Screened data** must be accurate, complete and structured
- **Watchlist data** must be current: regulatory updates need to be implemented without delay.

Technology

Screening technology must be fit for purpose:

- Capabilities to detect partial matches
- Capabilities to handle different linguistics
- Rules & exceptions to adjust screening results

Expertise

Different skillset required to run screening controls:

- **Compliance** for designing rules & thresholds, providing analysis
- **Operations** for ongoing controls and testing
- IT for security, architecture and resilience

Vincent Gaudel,
Compliance Expert,
Accuity

To mitigate these diverse ever-changing sanctions challenges and stay ahead of the game what are the elements that banks must include in their sanctions programmes? And do you see similarity with the AML /KYC processes?

Question 5

Suren Thapa
President & Founder,
Global Intelligence Analysis
Corporation, New York

AML vs. Sanctions

Similarities

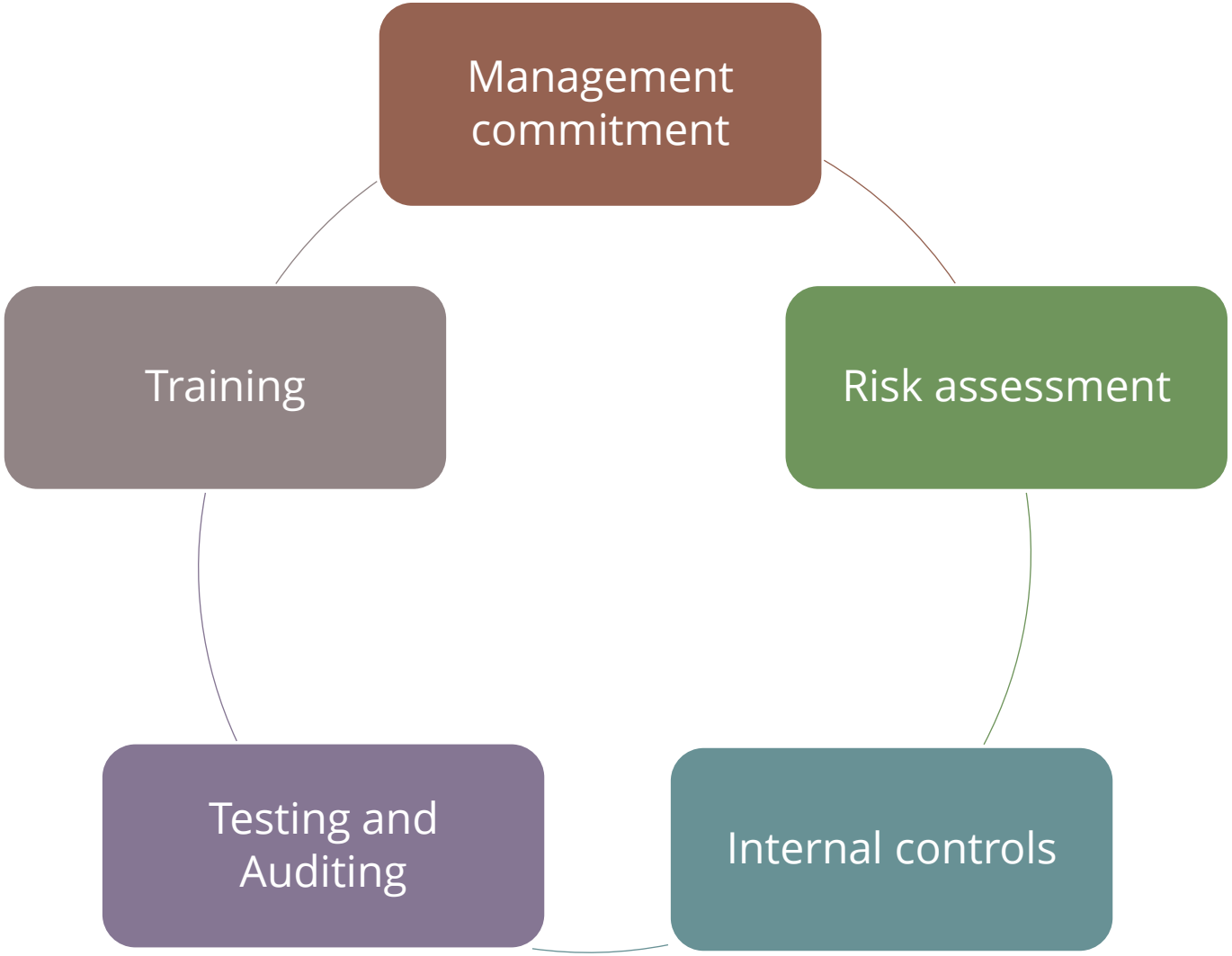
- Both AML and sanctions are typically part of a bank's Anti-FCC programme.
- Sanctions evasions tactics are similar to money laundering tactics – disguising source of funds, hiding originator, beneficiary or purpose underlying the transaction.
- Robust KYC/due diligence programme as well as screening (for matches against sanctions lists, PEPs) should be conducted at on-boarding for the purposes of both AML and sanctions monitoring.

Differences

- The purpose of flagging a transaction for AML is to determine whether it is suspicious or not.
- The purpose of flagging a transactions for sanctions is to determine whether it falls in a broader sanctions programme.
- If the AML/KYC Compliance and the Sanctions Compliance programs are consolidated to take advantage of the overlaps between the two, it is critical to remember that there are crucial differences in the end-level analysis in each of the two programmes.

Suren Thapa
President & Founder,
Global Intelligence Analysis
Corporation, New York

OFAC recommends that all banks should have an agile and responsive **sanctions compliance programme** in place, which is updated and applied enterprise-wide



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Hala Bou Alwan
Founder & CEO,
HBA Consultancy

Measures for Banks

- Manual sanctions screening is challenging and inefficient, prone to inaccuracies, human error and risk of penalties.
- After screening, banks must be conduct enhanced due diligence on any individual or entity flagged off as suspicious.
- Sanctions lists must be accurate, updated and validated for all relevant jurisdictions that bank is present/operates in.
- It is important to understand how sanctions violations occur, and how regulators interpret the banks' processes.

Standard Chartered Bank was recently levied a huge sanctions penalty in the UK. What in your opinion are the differences between US and UK (or any of the other major) sanctions regimes, and how should banks put in place a comprehensive programme to deal with all sanctions regimes?

Question 6

Nicholas Turner
Of Counsel,
Steptoe & Johnson

Other Sanctions Regimes Rising in Focus

- Following Brexit, the Office of Financial Sanctions Implementation (OFSI) in the UK, in particular, is likely to set high expectations for banks and other companies to have detailed understanding and implementation of the UK sanctions regulations.
- The Standard Chartered case shows that the UK regulator will not be afraid to use enforcement power or engage in detailed review of banks' activities.
- Regulators in the EU and Australia, among other jurisdictions, may be similarly looking at increased enforcement in the area of sanctions.

5. A Comprehensive Program to protect your organization from Sanctions risk

Regulatory Watch

- OFAC, OFSI or other enforcement decisions provide great background to grasp Regulatory expectations
- Extensive guidance is available to identify high risk areas and promote compliance best practices:
  - OFAC Framework for Compliance Commitments,
  - Wolfsberg Guidance on Sanctions Screening

Risk Assessment

- Critical step to design sound controls
- Methodology to assess sanctions risks must be comprehensive:
  - Countries of operations
  - Counterparties
  - Types of products or services
- Must be kept up-to-date

Policies & Procedures

- Policies clarify the overall objectives
- Procedures implement controls
- Procedures are critical for mitigating:
  - **Operational risks:** stable process delivery, reduces risk of errors or fraud.
  - **Regulatory risks:** compliance controls embedded in operating procedures.

Vincent Gaudel,
Compliance Expert,
Accuity

Secondary sanctions continue to be levied against companies dealing with Iranian oil. Do you think that a global sanctions 'ceasefire' is required under humanitarian grounds to allow sanctioned nations to tackle the pandemic?

Question 7

Nicholas Turner
Of Counsel,
Steptoe & Johnson

Sanctions Relief during Covid-19

- Differing rhetoric from the US State Department and the US Treasury Department.
- The State department has made aggressive statements, especially accusing the Iranian govt of using the pandemic as an opportunity to gain access to cash and funds which could be diverted for other uses.
- The Treasury department has been more focused on encouraging companies to use the existing humanitarian exceptions and general licenses.
- OFAC is also willing to prioritize the issue of specific licenses for humanitarian trade.

Suren Thapa
President & Founder,
Global Intelligence Analysis
Corporation, New York

OFAC Reaction to Covid-19

- Practically, OFAC's response is likely to be that humanitarian relief exceptions are already built into sanctions orders.
- Recently OFAC publicized Covid-19 related guidance which was followed by FAQs for what sort of relief activities can be conducted for sanctions programmes like Iran, Venezuela, Syria.
- More arrangements such as the Swiss Humanitarian Trade Arrangement (joint effort with Swiss government for humanitarian trade with Iran) are likely to be introduced for humanitarian or relief activities.

How should sanctioned and other countries be protected from unintended economic damage caused by sanctions amidst the ongoing pandemic, and do you see opportunistic deals happening on a quid pro quo basis between the US / EU and other countries? In other words, would the US / EU lift sanctions for their own needs, and likewise, would they impose harsher trade barriers to prevent the export of material they need to tackle the pandemic?

Question 8

Suren Thapa
President & Founder,
Global Intelligence Analysis
Corporation, New York

Shifts in Trade Arrangements

- Shift in trading rules and evolution in global trade arrangements are expected due to Covid-19.
- EU has Blocking Statutes which seek to protect EU companies from trading with sanctioned nations (like Iran) from the impact of secondary sanctions.
- Special purpose vehicles (SPVs) are being designed to trade with another SPV with the intent that SPVs are outside the traditional financial system and in theory secondary sanctions will not apply to these deals .
- However, there is not much that a sanctions target nation can do to protect themselves from OFAC sanctions.

Nicholas Turner
Of Counsel,
Steptoe & Johnson

Trade Trends during the Pandemic

- The Covid-19 pandemic provides an opportunity for countries to work together to meet humanitarian needs of the people world over.
- Two distinct trends emerging and are likely to continue in future:
  - More humanitarian trade and loosening of sanctions to allow countries to provide more humanitarian relief to certain countries.
    E.g. EU trading platform INSTEX and the Swiss Humanitarian Trade Arrangement
  - Continuing tightening of trade restrictions in a way that might further destabilize some of these regions or heighten geopolitical tensions. Some evidence of this happening with respect to Iran and Venezuela.

Questions?

Please type your questions in the chat box.

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- Asian Bankers Association will share with all participants:
  - the slides
  - link to a recording of the webinar
  - link to a short assessment.
- Participants who pass the assessment will be eligible to purchase a Fintelekt-ABA webinar participation certificate.
- For your queries, suggestions or feedback – please email us at contact@fintelekt.com

Thank You!