

# ABA – Fintelekt webinar on “Sanctions”

## Questions & Answers (as of 05/15)

This is the list of questions issued by the participants during the webinar held on May 6 2020. Please visit this list during the week of May 11<sup>th</sup> when the speakers will be answering the questions.

### (1) Manager, Bangko Sentral ng Pilipinas, Philippines

Did I get it right that OFAC sanctions are also imposed on other industries, apart from Banks/FIs?

**Nick Turner:** *Yes, OFAC sanctions apply to all individuals and entities that are subject to U.S. jurisdiction.*

**Vincent Gaudel:** *Yes. OFAC is not a bank regulator, there are even fines issued against individuals...*

*About 2/3 of the fines issued by OFAC since 2014 were against regular corporations. However banks have paid the highest price (about 90% of the dollar amount of OFAC fines since 2014).*

### (2) Head of Compliance, BPI, Iran

If a bank does not run any activity in the United States, why should that bank comply with OFAC sanctions?

**Nick Turner:** *Non-U.S. banks make decisions to comply with OFAC sanctions for reputational reasons, to reduce their risk of secondary sanctions, and because of expectations from their counterparties (e.g. correspondent banks), among other reasons.*

**Vincent Gaudel:** A short answer would be that most if not all banks need to transact in or access to USD. This means 2 things:

- Those activities involving USD require to be in compliance of US Sanctions;
- Access to USD typically requires correspondent banking relationships, which include requirements on sanctions compliance.

### **(3) Assistant Vice President, Utkarsh Small Finance Bank Limited, India**

There are some large economies which do not follow the OFAC or other sanction regimes. For instance, recently China started Government Backed Digital Currency for trading. If there is no transaction in US Dollar, then how these sanctions will actually work?

**Nick Turner:** If a transaction takes place outside of the United States, and there are no U.S. persons involved, then OFAC does not have "enforcement jurisdiction" over the transaction. This means OFAC cannot impose a financial penalty on the parties involved in the transaction. For example, OFAC would not have jurisdiction over a transaction (in any currency) that takes place entirely inside China. In these cases, it is up to the local government to decide what policy to impose according to its local laws. Nevertheless, OFAC may use "secondary sanctions" in order to discourage non-U.S. companies from engaging in some activities. This means that OFAC would add a company to the SDN List.

### **(4) Compliance, Sharekhan, India**

What is the Global Magnitsky Act about? Could you provide us a brief idea about the act?

**Nick Turner:** The Global Magnitsky Sanctions program allows OFAC to add non-U.S. government officials to the SDN List if they are found to be involved in corruption or significant human rights abuses. Once an individual is on the SDN List, their assets are frozen when in the United States (or in a U.S. bank) and U.S. persons are not allowed to transact with them.

**Vincent Gaudel:** *The Global Magnitsky Act enables U.S. Authorities to impose sanctions on entities that have been determined to engage in serious human rights violations as well as corruption.*

#### **(5) Regional Manager Trade Operations, Habib Bank Limited, Pakistan**

What will be implications on a bank whose customers export goods to country X (non sanction country), and that while the goods are in transit, the country X is suddenly subject to sanctions? What will be repercussions for bank under such condition?

**Nick Turner:** *It depends on whether there is a "wind-down period" or a "general license" that allows for finishing up transactions that are already in process. For example, sometimes, OFAC will grant such a wind-down period, usually 30 days or more. However, in other cases, OFAC does not grant such a wind-down period, and parties have to request a "specific license" to complete their transactions.*

**Vincent Gaudel:** *Implications would depend on the actual restrictive measures that are imposed. In some cases, sanctions regulations include provisions for winding down transactions that were initiated prior to the imposition of sanctions. When facing such situations, I would advise to liaise with regulators and/or specialized lawyers to determine the best course of action.*

#### **(6) Sr.Officer, Global IME Bank Ltd., Nepal**

Is there a need to carry swift sanction screening for inward remittance as they are routed through correspondent banks?

**Nick Turner:** *Most banks apply screening to both inward and outward remittances. This is because, in most jurisdictions, a bank cannot rely on another bank to perform sanctions screening on its behalf.*

**Hala Bou Alwan:** *Yes, regardless what is the source - every bank should screen their inward transfers.*

**Vincent Gaudel:** Yes you should not rely on correspondent banks' due diligences. They may not be screening against the same set of watchlists as your institutions, they may not have the latest lists, they may have calibrated their screening software differently from your firm and they may have cleared an alert that would be deemed relevant by your institution.

## **(7) Compliance, Sharekhan, India**

What does fuzzy matching capabilities mean?

**Nick Turner:** Fuzzy matching refers to a screening software's ability to identify potential matches that are not 100% matches. For example, a fuzzy logic system would identify "John Smith" and "Joan Smith" as potential matches because the first names are similar.

**Hala Bou Alwan:** Fuzzy means False positives & not accurate - features of the system should have the right criteria combination to make the results accurate as possible and avoid so many false positives.

**Vincent Gaudel:** Fuzzy matching should be understood as the opposite of exact matching. Matching 2 names requires a certain level of flexibility, as spellings of names can significantly differ. It is therefore required that screening tools have good tolerance over these spelling variations, so they have able to generate all relevant matches.

## **(8) Chief Manager, Export Import Bank of India, India**

The definition of PEP as per Reserve Bank of India is different than the standard definition followed internationally. How can an Indian bank comply with the PEP verification?

**Nick Turner:** The definition of a PEP varies from jurisdiction to jurisdiction. If a bank is subject to Indian AML regulations, then the bank should follow the standard of the Reserve Bank of India at a minimum.

**Hala Bou Alwan:** *In case your bank have dealings in the US dollar or branches there or correspondent banking - which ever is the PEP strongest definition with more coverage, it should be followed.*

**Vincent Gaudel:** *It is difficult to refer to a standard set of prominent public functions that would fit for all political organizations in the world. So I would suggest the RBI's PEP typologies should be a baseline definition for your organization and you may also want to consider additional typologies of PEPs captured in the regulations of the foreign countries you are dealing with.*

### **(9) Bank Officer V, Bangko Sentral ng Pilipinas, Philippines**

In your view, how developments in global sanctions affect correspondent banking relationships worldwide?

**Suren Thapa:** *It makes the relationship costly due to the fact that correspondent banks are not willing to assume potential risks and when they do, they require additional compliance obligations.*

**Nick Turner:** *My observation is that it has reduced the overall number of correspondent relationships in some parts of the world.*

**Hala Bou Alwan:** *Global sanctions are always evolving - and always were - I see banks should be more proactive and continue doing their due diligence.*

**Vincent Gaudel:** *There was a recent BIS study emphasizing cost of AML/CFT compliance as a factor explaining the reduction in correspondent banking relationship. See doc here: [https://www.bis.org/publ/qtrpdf/r\\_qt2003g.htm](https://www.bis.org/publ/qtrpdf/r_qt2003g.htm)*

### **(10) Consultant, ABS, Malaysia**

How US snapback on JCPOA will affect sanctions on Iran further?

**Nick Turner:** *The United States is currently trying to persuade other countries to apply greater sanctions against Iran, including in the United Nations. However, it is too soon to tell whether this will lead to additional changes.*

**(11) Associate Director, EY Global Delivery Services India LLP, India**

Could you share some thoughts on how technology is making advancements in enhancing controls for banks?

**Hala Bou Alwan:** *There are many models out there - and not every model fits all- you have to take into consideration the size of your bank and volume of transactions and exposure - technology can help in screening - onboarding - transaction monitoring - detecting suspicious transactions - sanctions detection, suspicious behavior detection and many other areas.*

**Vincent Gaudel:** *For sanctions screening, technology has become a critical component to compliance. At first, technology was primarily perceived as enhancing the controls efficiency.*

*Now for larger companies, technology and screening automation quickly becomes necessary for effective compliance as well... you cannot screen millions of transactions and/or accounts accurately in a few minutes without advanced screening technology...*

*Finally, technology should also bring enhancements to screening controls' traceability by keeping a full audit trail of screening results & actions taken.*

**(12) Bank Officer V, Bangko Sentral ng Pilipinas, Philippines**

How is effective sanctions screening applied to cross-border fast or instant payments. For example, it is done within a certain region? Are there jurisdictions that require the screening to be done in real time as well?

**Vincent Gaudel:** *From a general standpoint, sanctions regulations that include asset freezing measures aim to avoid that funds are made available to or transferred by the sanctioned entity. Those regulations apply regardless of the payment scheme is used. Therefore, when instant payment schemes are used, instant screening is required...*

*In practice, whether actual screening can be performed in real time, the potential alerts cannot be cleared without some investigative delay, most likely disqualifying that alerted transaction from being processed in real time...*

**(13) Assistant Vice President, IndusInd Bank Ltd., India**

How are the tools being updated? Since the sanctions are very dynamic.

**Hala Bou Alwan:** *Many providers are in the market. They update it twice a day.*

**Vincent Gaudel:** *Updated versions of the lists need to be processed and pushed to the screening engine. This may include heavy operational steps to verify the new list versions, simulate its impacts on a data sample (i.e. to anticipate new sanctioned entities that would generate large number of alerts...)*

**(14) Manager Global Sanctions Compliance, ANZ, Australia**

Can you please send link to the United Nations document that Ms. Hala Bou Alwan referred to?

<http://www.hlr-unsanctions.org/main/background>

**(15) Compliance officer, Bank Pasargad, Iran**

Could you discuss about sanctioned goods? Are there any sanctioned goods which are not dual use? If so, please provide an example?

**Nick Turner:** *The types of goods that are subject to export controls differ from country to country. Usually the reason is because the goods are dual use or because the goods are important for "national security."*

**Vincent Gaudel:** *There are trade & export restrictions on several types of items beyond dual use good or lists of Military Equipment. A good example are sectoral sanctions on*

*Russia, which include prohibitions on the provision of certain goods & services in relation to the oil industry: equipment for the prospection, extraction and transportation of oil products.*

### **(16) Compliance officer, BPI, Iran**

In the process of screening, which one has more priority: (1) Screening by using code?  
(2) Screening by the name of the commodity?

**Vincent Gaudel:** *Generally speaking, identifiers such as HS Codes allow for exact matching (as opposed to fuzzy matching). Hence they allow generating good quality alerts, to the extent that they are systematically and consistently referenced in both the transaction data and the sanctions data. Name of the commodity is relevant to compensate for potential lack / consistency issues with primary identifiers, and should be used to confirm or decide on alerts.*

### **(17) Head of Trade Compliance, Meezan Banj, Singapore**

How to deal or detect ship to ship coverage sanction as DPRK or Iranian shipments are switch in b/w sea, ships are changed, and tracking could not identify the sanction vessel or flag due to switch of BL or shipment?

**Suren Thapa:** *You need to research marine/shipping databases to track flag changes of vessels. B/L or L/Cs need to be examined to identify port of calls, routes etc. for suspicious patterns, changes, omissions etc. to detect efforts to mislead or disguise sanctioned activities.*

**Nick Turner:** *This is a difficult thing to detect. When a bank has a suspicion that a transaction may relate to prohibited activity (e.g. North Korea sanctions evasion), the bank should seek more information from the customer to understand the activity. If the bank believes that a transaction is suspicious, it may be required to file an STR under local law or take other actions. There are numerous vendors that help banks try to identify high risk vessel's activity.*

**Vincent Gaudel:** *You should take into account the red flags that are referenced in recent guidance from the UN and US authorities (see, for example: Guidance on*

*Addressing North Korea's Illicit Shipping Practices). Some red flags can be identified through initial due diligences, and some specialized watch lists can provide important indications (vessels involved in suspect STS transactions, history of travel, ports visited...)*

*Some other red flags may only be raised in the course of the transaction (AIS alteration, route deviation...)*

**(18) Assistant Vice President, Utkarsh Small Finance Bank Limited, India**

Are we looking at a relaxed sanction regime since COVID has impacted all trades adversely? Especially now that crude and energy demands are on the lower side and crude is actually trading in the negative?

**Nick Turner:** *I agree that if there is less international economic activity, then there are fewer transactions that could present risk. However, companies must still ensure that they have a risk-based compliance program because the U.S. government continues to investigate and enforce its regulations.*

**(19) Compliance officer, Bank Pasargad, Iran**

Should non EU members should comply to EU sanctions?

**Nick Turner:** *This is a decision for a financial institution to make based on its risk tolerance and the expectations of its counterparties (e.g. correspondent banks).*

**Vincent Gaudel:** *The EU does not use the same criteria than the US to claim jurisdiction on a transaction. So the short answer would be "no" as EU Sanctions apply to EU persons, wherever located (that includes EU entities owned by non-EU entities)*

**(20) Compliance officer, Global IME Bank, Nepal**

Can you describe the process to be adopted if a sanctioned party is identified while screening. Should we treat all the sanction list equally. Is there a standard procedure?

**Nick Turner:** *The responsibilities depend on which list is involved. For example, if the match is against the UN List, then there may be requirements under local law (e.g. Indian law). Usually the requirement is to freeze the account and to avoid making any transactions in the account. On the other hand, if the match is against the OFAC SDN List, then the bank has to determine if they are subject to U.S. jurisdiction. If the bank is not subject to U.S. jurisdiction, then the property usually does not need to be frozen. However, the bank must avoid making transactions through the U.S. financial system that involve the SDN customer. Usually, a bank will temporarily suspend an account when it has a suspected match in order to perform an investigation, collect additional information, etc. Then once it has determined if the match is true or false, the bank will take action -- for example, unfreeze the account (if a false match) or freeze the account (if sanctioned under an applicable law).*

**Hala Bou Alwan:** *Some lists are stricter than others - you have to understand the sanction your identified party is categorized under - usually those sanctions explain their nature - and guide you through the process.*

**Vincent Gaudel:** *Part of the alert investigation process is indeed to understand the nature of restrictions applicable. When the sanctioned party is a SDN or otherwise a "blocked persons", restrictions are pretty straightforward: transactions need to be blocked / rejected. When sectoral sanctions are imposed, some transactions may be permissible but it requires due diligence to ascertain.*

*In short, the standard procedure is to have good understanding of what each sanctions program provides for in terms of restrictive measures, and implement them accordingly.*

**(21) Head, Risk Management and Compliance officer, Bank of Bhutan Limited, Bhutan**

Is sanction screening necessary for those banks that do not have foreign branches but have correspondent banks?

**Nick Turner:** *In most jurisdictions, it is expected that transactions which are processed internationally through correspondent accounts will be screened against relevant sanctions lists. Furthermore, OFAC expects that transactions processed through U.S.-based correspondent accounts will be screened against the OFAC SDN List, at a minimum.*

**Hala Bou Alwan:** Yes, absolutely.

**Vincent Gaudel:** Sanctions screening is not only required for transactions, but also for counterparties (i.e. "Account screening" also known as "reference data screening"). At the transaction level, potential screening controls performed by counterparties overseas should not be taken as an exemption for a bank to perform its own transaction screening. The reason for that is that there might be different watch lists relevant for each bank. Also, you cannot assume your counterparties have been screening in a satisfactory manner.

## **(22) Bank Officer II, Bangko Sentral ng Pilipinas, Philippines**

Is there any international rule that requires an independent government body in every country to set and implement sanctions list? Or is there a minimum sanction list that FFIs should maintain?

**Suren Thapa:** FATF/OFAC recommends that especially in conjunction with AML/CFT requirements. For example Financial Intelligence Units are delegated with that responsibility.

**Nick Turner:** Yes, all UN Member States are required under the UN Charter to implement UN Security Council resolutions, including implementing the UN Sanctions List. FATF Recommendations 6 and 7 also address countries' implementation of UN sanctions.

**Vincent Gaudel:** UN Sanctions, as they are passed through UN Resolutions should be implemented in all UN member states. It is also the purpose of FATF Recommendations 5&6 to ensure sound implementation of UN sanctions against terrorism & proliferation financing.

## **(23) Compliance, Sharekhan, India**

If we find a sanctioned person on a customer list, and we remain suspicious; what should be our next action? Who should we report it to? Should such accounts be locked, suspended or closed or...?

**Nick Turner:** *The responsibilities depend on which list is involved. For example, if the match is against the UN List, then there may be requirements under local law (e.g. Indian law). Usually the requirement is to freeze the account and to avoid making any transactions in the account. On the other hand, if the match is against the OFAC SDN List, then the bank has to determine if they are subject to U.S. jurisdiction. If the bank is not subject to U.S. jurisdiction, then the property usually does not need to be frozen. However, the bank must avoid making transactions through the U.S. financial system that involve the SDN customer. Usually, a bank will temporarily suspend an account when it has a suspected match in order to perform an investigation, collect additional information, etc. Then once it has determined if the match is true or false, the bank will take action -- for example, unfreeze the account (if a false match) or freeze the account (if sanctioned under an applicable law).*

**Hala Bou Alwan:** *If it is on the list - it should be reported internally to your MLRO who in return will report it the respective FIU in your country- You should also follow your local and international regulations which apply to your country - sometimes immediate freezing of assets is required. Sometimes it is not to track the chain of the crime, etc.*

**Vincent Gaudel:** *In general, when in doubt of what to do for any specific alert, it's advisable to refer the situation to the regulator. Some of them have set up mailboxes or phone contacts for such enquiries. Another option would be to require specialized legal advice. In such cases, accounts & transactions should be suspended until a final decision is reached.*

#### **(24) Head of Internal Audit, Al Meezan Investment Management Limited, Pakistan**

With respect to secondary sanctions, how can we deal with a party who comes from Pakistan, which is not subject to OFAC sanctions, but the party derives its revenue exceeding 5% from customers in a sanctioned country, let's say Iran?

**Nick Turner:** *It depends on the nature of the party's activities with Iran. Usually, a bank would not face secondary sanctions risks for providing financing to a company that has a small amount of business in Iran, unless that activity were subject to secondary sanctions and the financing bank facilitated the activity directly.*

#### **(25) Compliance officer, Bank Pasargad, Iran**

Which sanction regimes have secondary sanctions, aside from OFAC?

**Nick Turner:** *To my knowledge, the United States is the only country that regularly utilizes secondary sanctions.*

### **(26) Compliance, Sharekhan, India**

Are there countries that have refused to take cognizance of the US OFAC Sanctions list and do not bother to comply with it and work on its own blacklist only?

**Nick Turner:** *The OFAC SDN List is only applicable to persons over which the United States has jurisdiction. It also applies to transactions processed through the U.S. financial system. Outside of the United States and outside of the U.S. financial system, there is flexibility to decide whether to use the SDN List. Most international banks screen against the SDN List in order to lower their risk. However, it may not be "legally required." Of course, there are non-U.S. banks and companies that choose not to screen against the SDN List. If they process transactions through the U.S. financial system, that may expose them to some risk.*

**Vincent Gaudel:** *Secondary sanctions is particular to US sanctions.*

### **(27) Compliance officer, Bank Pasargad, Iran**

Could you explain about EU dual use and other lists for goods?

**Nick Turner:** *This question is a bit too broad -- it would require a lengthy response.*

**Vincent Gaudel:** *There are trade & export restrictions on several types of items. These sanctions typically consist of prohibitions or conditions for exporting restricted items to certain countries.*

*Most often, the trade restrictions are imposed on military equipment or dual use goods, but there are other examples such as restrictions on the export of oil drilling equipment in scope of sectoral sanctions against Russia.*

**(28) Senior Soft Skills Trainer, Canadia Bank, Cambodia**

If there are sanctions related to the epidemic, what kinds of impacts that country or large company should manage? What is the first importance?

***Nick Turner:** The first step is usually to perform a risk assessment to identify whether the sanctions apply to a country, entity, individual, or activity that is relevant to the company. If the company has such exposure, the next step is to decide whether to stop the activity or to take other actions to manage the potential risk.*

**(29) Chief Manager, Export-Import Bank of India, India**

Do the sanction screening of any transactions has to be on real time basis?

***Nick Turner:** OFAC expects that transactions that are processed through the U.S. financial system will be screened against the SDN List (at a minimum) before they are sent to a U.S. bank for processing. In most cases, this means that real-time screening is necessary.*

***Vincent Gaudel:** Transactions should indeed be screened and any sanctions risk be cleared prior to making the funds available to an account owner.*

**(30) Officer, Sanima Bank Ltd., Nepal**

What does the future of trade sanctions look like? Especially, with respect to Asian countries?

***Nick Turner:** It appears that more countries will be adopting sanctions and export controls as a tool of foreign policy and law enforcement. This includes countries like China, Japan, Australia, and others.*

**(31) Manager, Cummins, India**

The US Commerce Department also has secondary sanctions. They apply to goods originated in the US or goods which are having more than the minimum content or are made out of US technology. Could you elaborate on this issue?

**Nick Turner:** *Correct, the Export Administration Regulations (EAR), which are administered by the Commerce Department's Bureau of Industry and Security (BIS) apply to both U.S. and non-U.S. persons when they deal in "items subject to the EAR," regardless of their location.*

### **(32) Head of Compliance, BPI, Iran**

Which sanction regimes have good sanctions, too?

*The question needed further elaboration to be addressed properly.*

### **(33) Head of Projects & Group Compliance, Habib Metropolitan Bank Limited, Pakistan**

What are the requirements related to the timing in updating the banks' screening system. Is there a grace period mentioned? Apparently, there are time differences between countries. How can we deal with this issue? Please elaborate.

**Vincent Gaudel:** *I'm not aware of clear unequivocal implementation delay fixed by regulators. It is typically stated that an update should be processed "without delay"; but in practice, as long as you can demonstrate active monitoring of the updates and that you engage in the list update process within 24h of their publication, you should be fine. You can take a look at FATF Guidance on Targeted Financial Sanctions.*