

# OFAC Sanction Regulations: The Underestimated Risk for Insurance Companies

An insurance company with incorporated entities in the US issues a health insurance policy to a citizen of Cuba and a policy to cover an international hotel chain's properties in Tehran, Iran. In addition, a marine cargo or "goods in transit" policy has been issued insuring a shipment of Iranian crude oil shipped from Egyptian ports to a Spanish buyer. Are these OFAC violations or not? The answer is yes, the policies are violating OFAC sanctions, and they may not be executed and need to be cancelled. But who is OFAC and what is their mission? Who must comply with these OFAC regulations? What are the requirements imposed on financial institutions through the OFAC regulations and what is the impact of those regulations? What kind of compliance program is required?

By Dr. Michael Faske, Partner  
Ernst & Young Switzerland

## OFAC

The Office of Foreign Assets Control<sup>1</sup> ("OFAC") of the United States of America administers and enforces economic sanction programs primarily against countries and groups of individuals, such as terrorists and narcotic traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

## WHO MUST COMPLY WITH OFAC REGULATIONS?

US financial institutions and insurances (located in the United States and abroad) must comply with specific actions detailed in all OFAC sanctions or embargo programs. These regulations apply to:

- All US persons, including all US citizens and permanent resident aliens regardless of where they are located;
- All persons and entities within the US;
- All US incorporated entities and their foreign branches.

In the case of certain programs, such as those regarding Cuba and North Korea, all foreign subsidiaries owned or controlled by US companies must also comply. Certain programs also require foreign persons in possession of goods of US origin to comply.

### SANCTION PROGRAMS

The regulations of the OFAC consist of various Sanction Programs. The OFAC administers a number of US economic

sanctions and embargoes that target geographic regions and governments (Country Sanctions Programs), as well as programs targeting individuals or entities that could be anywhere (List-Based Sanctions Programs). It also publishes a list of Specially Designated Nationals and Blocked Persons (“SDN list”). The SDN list includes over 3,500 names of companies and individuals who are connected with the sanctions targets and are located throughout the world.

US underwriters, brokers, agents, primary insurers, and reinsurers and US citizen employees of foreign firms in the insurance industry are prohibited from engaging in transactions not licensed by OFAC that in any way involve individuals, entities, or vessels appearing on OFAC’s Specially Designated Nationals and Blocked Persons list. All property, including insurance contracts, in which there is a direct or indirect interest of any of the above listed

OFAC is a division of the US Department of Treasury, <http://www.ustreas.gov/offices/enforcement/ofac/>

OFAC Country Sanctions Programs
Balkans Sanctions
Belarus Sanctions
Burma Sanctions
Cote d’Ivoire (Ivory Coast)
Cuba Sanctions
Democratic Republic of the Congo Sanctions
Iran sanctions
Iran sanctions
Liberia Sanctions
Libya
North Korea Sanctions
Sudan Sanctions
Syria Sanctions
Zimbabwe Sanctions

OFAC List-Based Sanctions Programs
Anti-Terrorism Sanctions
Counter Narcotics Trafficking Sanctions
Non-proliferation Sanctions
Diamond Trading Sanctions
Persons Undermining The Sovereignty Of Lebanon Or Its Democratic Processes And Institutions

Specially Designated Nationals (SDN’s)	Abbreviation
Specially Designated Terrorists	SDTs
Specially Designated Global Terrorists	SDGTs
Specially Designated Narcotics Traffickers	SDNTs
Specially Designated Kingpins	SDNTKs
Foreign Terrorist Organizations	FTOs

persons, is considered blocked or “frozen”. Premium payments, policy loan interest payments, and repayments of policy loans related to blocked insurance contracts must be credited to an interest-bearing blocked account established on the books of a US financial institution. Proceeds due under blocked policies may not be set-off against past due policy receivables or other claims and must also be paid into an interest-bearing blocked account. Rights in blocked policies may not be transferred without authorization from OFAC – changing a beneficiary or assigning

or pleading an insured’s interest under a blocked policy would be considered illegal transfers involving blocked property under OFAC jurisdiction.

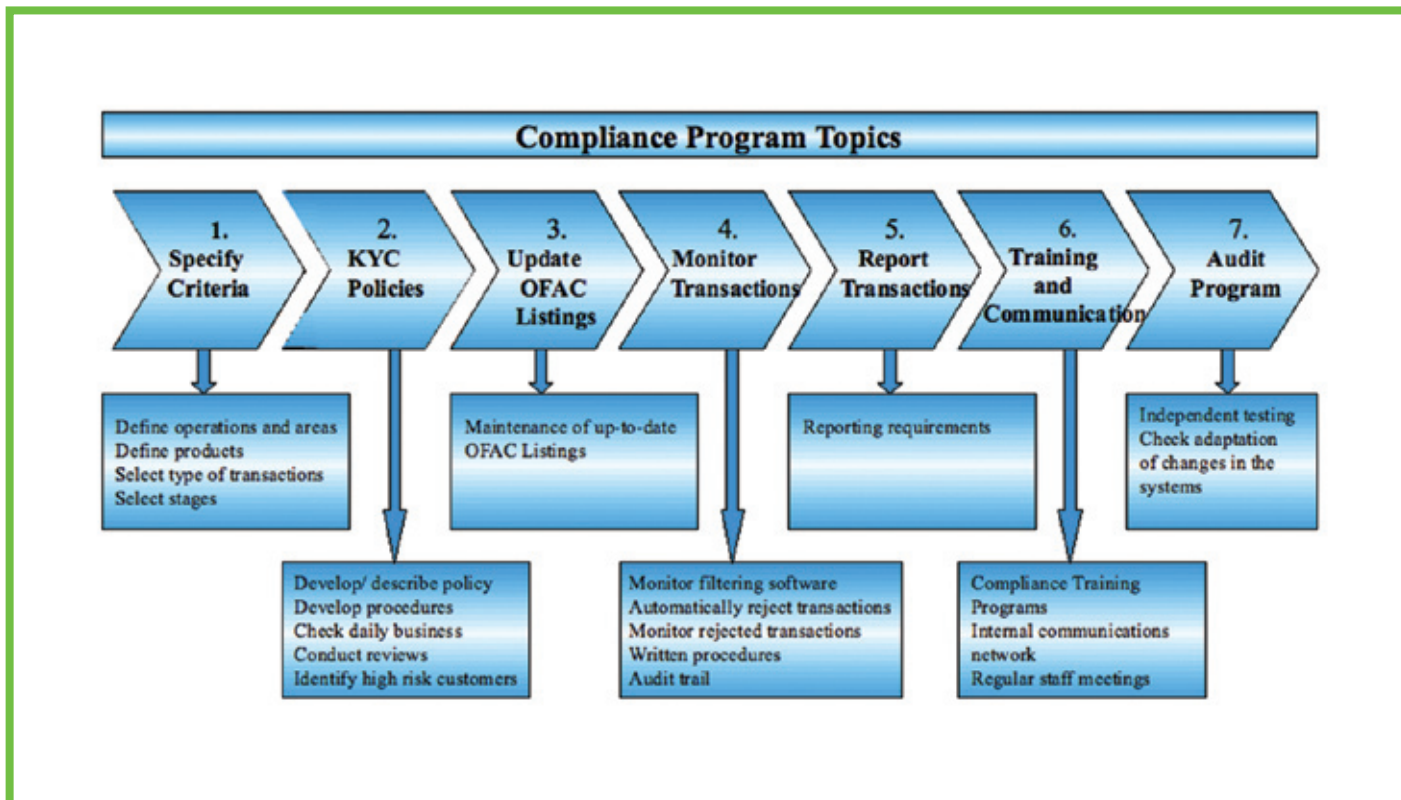
### IMPLICATIONS

Whether or not a blocked person is involved, US persons may not be involved in insurance transactions that would in any way facilitate unlicensed services to and from listed countries.

Insurance companies should not engage in transactions that cover or

facilitate an unlicensed prohibited commercial activity or otherwise constitute an illegal export of a service, whether or not the policy involves a blocked property interest. In no way should a US insurance company pay a claim under or otherwise service such a policy without contacting OFAC for a specific license, which based on the circumstances may or may not be granted.

Note that even though a policy may have passed scrutiny for possible OFAC blocked interests or OFAC violations, insurance companies should not forward



premiums for claims settlements to accounts at foreign banks without checking the bank's name against the OFAC lists. A funds transfer initiated by a US insurance company in favor of an unblocked foreign broker's account at the Bank of Khartoum, for example, would likely be frozen before it leaves the US banking system, and the funds may not be returned to the insurance company.

### COMPLIANCE PROGRAMS & INTERNAL CONTROL PROCEDURES

Insurance companies can meet these regulations by setting up comprehensive Compliance Programs that are tailored to their individual needs and structures.

### CONCLUSION

The key to complying with the OFAC regulations is to understand the sanctions and how they apply to your operations. Before committing your company to insurance risk, it is essential you examine applications, proposals and other documents from prospective clients

## “MAKE SURE YOUR FOREIGN ASSOCIATES FULLY UNDERSTAND THE RESTRICTIONS UNDER WHICH YOU MUST OPERATE”

and their brokers for clues of possible sanctions exposure. Make sure your foreign associates fully understand the restrictions under which you must operate, and US underwriters should communicate their constraints to the foreign brokers with whom they regularly deal.

Before entering into a syndicate or pooling agreement, make it clear to the foreign members that you will not be able to participate in risks that would expose your firm to sanctions violations. Underwriters in the international reinsurance market face even

greater compliance challenges, since they often enter into complex arrangements that may place them many contractual layers away from primary insurance contracts. Even greater caution should be exercised before entering into a reinsurance treaty, under which a US reinsurer agrees to automatically cover a predetermined portion of all risks written by the ceding insurer. If such treaties do not include geographical-limit clauses and other exclusions isolating the reinsurer from obligations violating US sanctions law, the insurer could be subject to penalties. ■