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ONE-ON-ONE INTERVIEW

EVOLVING US SANCTIONS: MAINTAINING COMPLIANCE

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Nick Parfitt is responsible for determining Acuris Risk Intelligence's approach to the market and building subject-matter expertise. He has 18 years' experience in project and programme management, business process change and in implementing technology and business solutions at financial services, telecoms and public sector organisations. His experience in the financial crime sector spans seven years helping tier 1 financial institutions assess and improve AML, KYC and sanctions operations. Mr Parfitt has worked for several tier 1 banks in the UK and holds an MBA (Distinction) from Cardiff University, and a BA (Hons) in Biochemistry from Imperial College.



R&C: Could you provide an overview of the main trends and developments across the US sanctions landscape over the past 12 to 18 months? How would you characterise the scope of sanctions activity under the Trump administration?

Parfitt: It was never going to be easy to predict how the arrival of president Trump would affect sanctions policy. And in the light of recent decisions, the future still looks uncertain. But has very much changed since the Obama administration? Despite swings between bellicose rhetoric and encouraging moves toward dialogue with North Korea, for example, realistically nothing has changed there in the last year. US sanctions continue to bite and continue to be issued. The biggest potential development in the US sanctions landscape in recent months is undoubtedly president Trump's decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA), a move that could potentially have far-reaching consequences not just for the US and Iran, but also for the rest of the world. In a tweet posted 7 August 2018 Trump said: "These are the most biting sanctions ever imposed, and in November they ratchet up to yet another level. Anyone doing business with Iran will NOT be doing business with the United States. I am asking for WORLD PEACE, nothing less!" However, with global powers including the European Union condemning the US withdrawal from the JCPOA and actively

encouraging their members to ignore US threats, there is a danger that the president's desire to go it alone and appear strong at all costs has to some extent devalued the power of the US sanction.

R&C: What are the main challenges a company faces when developing a sanctions compliance programme? With only a small fraction of all sanctioned companies listed by official sources, what steps does a company need to take to determine which types of sanctions apply, to whom and where?

Parfitt: The key challenge is the fact that sanctions are no longer 'binary'. It takes skilled legal experts with appropriate resources to conduct detailed legal analysis of the ever-increasing complexity and volume of sanctions-related legislation. This is compounded by several factors. First, the international operations and the different approaches taken in different jurisdictions around the world. Some offer a simple prescriptive regime, but many are imposing increasingly objective-led programmes that require interpretation and analysis to implement. Second, the increasing use of sanctions to influence behaviour on a political level rather than as a core focus on terrorist financing, war crimes and national asset misappropriation. Third, the conflicting regulatory advice and the increasing divergence in the targets and objectives of the key

sanctions regimes. For example, the current position of the US and EU on Iranian sanctions, and the Russian development of counter-sanctions. Fourth, the increased interest in the use of sanctions by jurisdictions that have traditionally not been a focus for sanctions departments – for example, Middle East actions against Qatar. Finally, the unpredictability of future political developments, exacerbated by issues such as Brexit and the rise of far-right politics in some key sanctioning jurisdictions. Ultimately, it is about effectiveness at combating sanctions evasion, rather than simple compliance. Organisations must analyse each sanctions regime applicable to their areas of operation, and each piece of legislation that makes up the regime in each jurisdiction. Applicability of legislation is at the heart of compliance: organisations should align resources accordingly in order to assess and provide clear guidance on this complex aspect.

R&C: To what extent are US sanctions becoming more targeted? How successfully have sectoral sanctions – introduced in July 2014 following the crisis in Ukraine – been aligned with those of the US Department of the Treasury’s Office of Foreign Assets Control (OFAC)?

Parfitt: In our view, US sanctions are becoming broader rather than more targeted. The Specially Designated Nationals (SDN) lists contain individuals

and companies from targeted countries as well as groups and persons that are not country-specific. These lists aim to impose restrictions on individuals – often high-ranking political and economic figures or known criminals – and entities that are involved in activities that the US views as posing direct threats to its interests and security. The assets of these individuals and companies are blocked and US persons are generally prohibited from dealing with them. When the Ukrainian crisis unfolded in 2014 in a way that was unfavourable for the US, Russian and Ukrainian subjects were added to the SDN List. In December 2014, as with other comprehensive sanctions programmes, the US president prohibited US investment in, or trade with, the Crimean region. In addition to ‘traditional’ sanctions, new sectoral sanctions were introduced in July 2014. Created by the Office of Foreign Assets Control (OFAC), the Sectoral Sanctions Identifications (SSI) List targeted whole sectors of the economy of the Russian Federation, including financial services, energy, mining, defence and other related sectors. That is why US sanctions can be considered broader. Although the SSI list is not part of the SDN List, companies and individuals can appear on both. Sectoral sanctions are aligned with the other types of sanctions, as their objective is the same. In the case of the Ukrainian crisis, it is to impose as many restrictions as possible on the Russian Federation and its economy because of its actions in Ukraine and its annexation of the Crimean peninsula, which

is questionable in international law and against US interests in the region.

R&C: As the sanctions landscape becomes ever more complex and far reaching, to what extent is the attitude of regulatory authorities becoming more severe toward compliance?

Parfitt: I am not sure I would characterise the approach as becoming more severe – that was true maybe five or 10 years ago. What is different today is that legislators are giving regulators more extensive and complex restrictions to enforce, but the severity of enforcement does not appear to be increasing. Regulators are also being given more resources, including outsourcing monitoring relationships to large consulting firms, and are becoming more skilled in their approach, so a more competent enforcement is leading to increased prosecutions. Perhaps this could be viewed as a more severe approach? That said, in some jurisdictions, there is increasing political pressure to raise the profile of instances when large corporations are the subject of regulatory breaches, and this can impact the size of the fines and other penalties applied. As part of this political drive, new enforcement bodies are being set up and regulators, such as the UK Office of Financial Sanctions Implementation (OFSI), are being given more powers to investigate, which is also leading to increased enforcement action. So overall, perhaps not so much

an increase in severity, but an increase in the scope of legislation, the competence of regulators and the extent of investigatory powers. The growth of RegTech providers has also not escaped the regulators' attention. These firms make extensive promises for the effectiveness of compliance operations. While these claims are largely unproven, they help raise regulators' expectations of financial institutions' governance programmes and lower their tolerance for weaknesses attributed to legacy technology.

R&C: What criminal penalties do companies face for wilful violations of US sanctions? How costly might these be as far as reputation, loss of revenue and destruction of shareholder value is concerned?

Parfitt: OFAC considers violations of its sanctions to be a serious threat to US national security and foreign policy. Under certain circumstances, companies are exempt from complying with OFAC sanctions but nonetheless need to receive proper licences. If firms fail to do so and still do not abide by OFAC's restrictions, they face serious legal consequences, the most serious being civil and criminal penalties. The OFAC legal framework consists of a list of US acts that envisage different criminal penalties, depending on the offence committed. For example, for wilful violations, the Foreign Narcotics Kingpin Designation Act provides

for criminal penalties of \$10m per count against corporations, and 30 years imprisonment and/or \$5m per count for individuals. The Trading with the Enemy Act provides for 10 years of imprisonment, \$1m fines for corporations, and \$100,000 fines for individuals, as well as forfeiture of funds or other property involved in violations. The International Emergency Economic Powers Act provides for up to 20 years imprisonment, \$500,000 in fines for corporations and \$250,000 for individuals. An interesting case involves US and Bulgarian nationals who were charged in 2017 for exporting prohibited articles to Syria and “for their alleged participation in a conspiracy to violate the International Emergency Economic Powers Act (IEEPA), the Export Administration Regulations (EAR), and the Global Terrorism Sanctions Regulations by exporting dual-use goods”. The group of 11 and one company were part of a team that exported the items to Syrian Arab Airlines, which was designated and blocked by OFAC at the time. Some of the individuals who were based in the US were arrested in 2017 and sentenced to up to 24 months of imprisonment. Those in Bulgaria were never detained because it turned out that they were working at a call centre and were never aware that they were selling parts to a blacklisted company. Nevertheless, they were still wanted by the US authorities. As far as companies are concerned, they may incur additional losses because their violations

are exposed publicly. The case of BNP Paribas is illustrative. According to information provided by the

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*Nick Parfitt,
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Financial Times, the French banking group lost over €4bn in the second quarter of 2014 after it admitted having processed billions of dollars of transactions for US-designated individuals in Sudan, Iran and Cuba.

R&C: What final piece of advice would you give to companies in terms of developing an effective sanctions compliance programme that is able to manage multiple pieces of legislation and avoid penalties for non-compliance?

Parfitt: The specifics of sanctions change very frequently because of the instability of the international security environment and the

unpredictability of major political leaders. Ultimately, unilateral sanctions are foreign policy and national security tools that have a direct impact on national and international business. It is crucial for companies to stay up to date by using a system for timely detection of any new designations, in addition to having highly trained personnel and skilled teams responsible for complying with the constantly changing restrictions. This enables companies to ensure that they do not commit violations or unnecessarily limit their business activities by adhering to sanctions that are no longer in force. Another key point to note is that an enterprise-wide risk assessment is fundamental to understanding, articulating and managing sanctions exposure. It should cover products and services offered, jurisdictional operations and the technology used to manage ongoing sanctions risk. A sanction risk framework starts by understanding where the inherent risks reside and looks at the controls available to manage residual risk, so that a gap analysis can indicate whether the sanctions programme is effective.

R&C: How do you expect the US sanctions regime to evolve in the months and years ahead? Do you expect activity to be escalated, maintained or reduced?

Parfitt: The US sanctioned two Turkish officials in response to the detention of an American pastor

at the beginning of August 2018 and roughly two weeks later, it threatened further economic sanctions if the pastor was not released. At the time of writing, the pastor remains in Turkey, and with relations between the two countries growing more strained it is likely that president Trump will impose further sanctions. There are ongoing and increasing sanctions involving Russia, particularly given the accusations over the Skripal poisonings, and a further deterioration in relations with Iran and Syria, so it is highly likely that the US sanctions regime will escalate further as the geopolitical landscape becomes increasingly unstable. Given Russia and China's interests in Iran and their refusal to bow to US edicts, the strengthening of sanctions on the country in November 2018 is likely to have unpredictable outcomes. Together with the fact that the US administration has threatened to sanction any country that trades with Iran, which includes supposed friends and allies such as EU member states, and Canada and Australia, this paints a worrying near-term future for stability. One other aspect is the increased focus on enforcement activity outside the US and outside the financial sector, which is seeing an increasing number of non-financial firms subject to prosecution. Regardless of changes in administration, I would expect this to continue as authorities recognise the increasing number of ways that value can be transferred outside the financial system. **RC**