



XXIII CONGRESO HEMISFERICO PARA LA PREVENCION DEL BLANQUEO DE CAPITALES, FINANCIAMIENTO DEL TERRORISMO Y PROLIFERACION DE ARMAS DE DESTRUCCION MASIVA

OFAC

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WHY MUST A FINANCIAL INSTITUTION FOCUS ON OFAC?

- Administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals
- Sanctions are applicable against targeted foreign countries, terrorists, international narcotics traffickers and those engaged in activities involving WMDs
- Applies to all U.S. persons, not just financial institutions
 - » *With respect to certain sanctions programs, such as those imposed on Cuba, foreign-organized subsidiaries of U.S. companies are also considered to be U.S. persons*
- Applies to any transaction that touches the U.S. financial system
- Strict liability/Individual Liability
- High OFAC Risk Profile
- FFIEC BSA/AML Examination Manual and Publication of “A Framework for OFAC Compliance Commitments”
- MOU between OFAC and the federal regulators
 - » *Open communication/information sharing to ensure compliance by U.S. financial institutions*
- Greater sophistication

WHY OFAC?

Significant Challenge

- List-based sanctions
 - » *Targets those specifically identified on the List of Specially Designated Nationals and Blocked Persons (“SDN List”)*
 - » *Examples include terrorists, international narcotics traffickers, and proliferators of weapons of mass destruction*
- Country-based sanctions
 - » *Targets an entire jurisdiction and, in some cases, nationals of a jurisdiction*
 - » *Examples include Cuba, Iran, Venezuela or Crimea*
- Transaction-based sanctions
 - » *Russia/Ukraine*
- Risk Mitigation vs. Risk Elimination

WHY OFAC?, cont.

- Enforcement
 - Since 2009, over \$2 billion in fines for violations of OFAC law and regulations
 - Since 2003, over 200 enforcement actions against financial institutions for OFAC
 - deficiencies and violations
- 2009-2010: Lloyds, Credit Suisse and Barclays → approximately \$1 billion in fines
- 2011: JP Morgan Chase → \$88.3 million in fines
- 2012: ING (\$619 million), Standard Chartered Bank (\$132 million), HSBC (\$375 million), Bank of Tokyo-Mitsubishi (\$8.5 million)
- 2013: Bank of Guam (\$27,000), Wells Fargo (\$27,937), Intesa Sanpaolo SpA (\$2.9 million) and Deutsche Bank Trust Company Americas (\$18,900)
- 2014: BNP Paribas (\$964 million), Clearstream Banking (\$152 million), Citigroup (\$217,841) and Bank of America (\$16.5 million)
- 2015: Commerzbank (\$259 million) and PayPal (\$7.6 million)
- 2016: Barclays Bank (\$2,485,890)
- 2017: TD Bank (\$516,105)
- 2018: Wells Fargo (\$500 million)
- 2018: Société Générale S.A. (\$54 million)

- OFAC is applicable to:
 - » *Account opening*
 - » *Beneficial owners / signers*
 - » *Purchase of monetary instruments*
 - » *Check payments and collections*
 - » *Wire transfers*
 - » *Lending*
 - » *Trade Financing / Letters of Credit*
 - » *Credit card payments*
 - » *Securities transactions*

COMMON MISTAKES

- Relying on an outdated SDN list
- Screening only the SDN list and not OFAC's Country/Sectoral Sanctions Programs (Cuba, Iran, Russia, Ukraine, Venezuela, Crimea, etc.)
- Not screening often enough
- Believing that you can rely on another financial institution or on a third party service provider for OFAC compliance

COMMON MISTAKES, cont.

- Not having written policies and procedures for OFAC compliance
- No one Compliance Program can be prepackaged for everyone
- Trade Finance → need to scan not only parties to the trade transaction, but the documents presented
 - » *Sanctioned country*
 - » *Bills of Lading (i.e., vessels)*
- Funds Transfers → Need to scan all fields
 - » *Parties*
 - » *Addresses*
 - » *Reference lines*
- Iran/Cuba/Syria/Venezuela
- Facilitation/Indirect Activity

VENEZUELA - THE BIG PICTURE PRIOR TO AUGUST 5, 2019

- Individual Designations under Executive Order 13692
- Executive Order 13808
 - » *Prohibitions on new debt*
 - » *Prohibitions on new equity*
 - » *Bonds (Retroactive)*
 - » *Dividend payments*
 - » *Prohibitions on purchasing any securities from Government of Venezuela*
- Executive Order 13827
 - » *Prohibition on all transactions related to digital currencies*
- Executive Order 13838
 - » *Prohibition on transactions and dealings related to debts owed to the Government of Venezuela*
- Executive Order 13850
 - » *Individual designations with respect to gold industry and corruption*
 - » PdVSA (1/28/19)
- Executive Order 13857
 - » Amends prior definition of “Government of Venezuela”

VENEZUELA - THE BIG PICTURE POST AUGUST 5, 2019

- Executive Order 13884 of August 5, 2019
 - Blocking Government of Venezuela
 - Secondary Sanctions
 - General Licenses/FAQs
- FinCEN Advisory

VENEZUELA - EXECUTIVE ORDERS

The Order defines the “Government of Venezuela” as “the Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela **and PdVSA**, and any person ***owned or controlled, directly or indirectly, by the foregoing***, the Government of Venezuela, and any person who has acted or purported to act, directly or indirectly, for or on behalf of, any of the foregoing, including as a member of the **Maduro regime**.”

OFAC GUIDANCE ON ENTITIES OWNED BY BLOCKED PERSONS

- **Feb. 14, 2008:** Guidance on Entities Owned by Persons Whose Property and Interests in Property are Blocked
- **Aug. 13, 2014:** Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property are Blocked
 - » *Replaces prior guidance*
 - » *Any entity owned individually or in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person*
 - » *For certain OFAC sanctions programs (e.g., Cuba), there is a broader category of entities whose property and interests in property are blocked based on, for example, ownership or control.*
 - » *Act with caution when considering a transaction with a non-blocked entity in which one or more blocked persons has a significant ownership interest that is less than 50 percent or which one or more blocked persons may control by means other than a majority ownership interest*
- **OFAC FAQ No. 398**
 - » *Addresses treatment of entities over which one or more blocked persons exercise control, but do not own 50 percent or more*
 - » *Per FAQ No. 398, an entity that is controlled (but not owned 50 percent or more) by one or more blocked persons is not considered automatically blocked pursuant to OFAC's 50 Percent Rule*
 - » *Notwithstanding the foregoing, OFAC cautions that possibility of future designation, elevated risk and certain Sanctions programs (such as Cuba) that consider control should be carefully considered when dealing with such entities*

VENEZUELA SANCTIONS-GENERALLY

Key Concepts

➤ Ownership

The answer to Question 513 of the OFAC Frequently Asked Questions (the “FAQs”) pertaining to Venezuela sanctions states that the “prohibitions [imposed by the Order] apply to the Government of Venezuela, its property, and its interests in property, which includes ***entities owned 50 percent or more, individually or in the aggregate, by the Government of Venezuela.***”

➤ Control (from Iranian Transactions and Sanctions Regulations)

- i. Holds a 50 percent or greater equity interest by vote or value in the entity;
- ii. Holds a majority of seats on the board of directors of the entity; or
- iii. Otherwise controls the actions, policies or personnel decisions of the entity.

» VENEZUELA-THE BIG PICTURE

- » Broad definition of Government of Venezuela
- » OFAC 50% Rule
- » Control
- » Indirect PdVSA Activity & Government of Venezuela Activity
- » General Licenses
- » Secondary Sanctions (FAQ672)
- » PEPs/Individuals acting on behalf of Government of Venezuela
- » FAQs

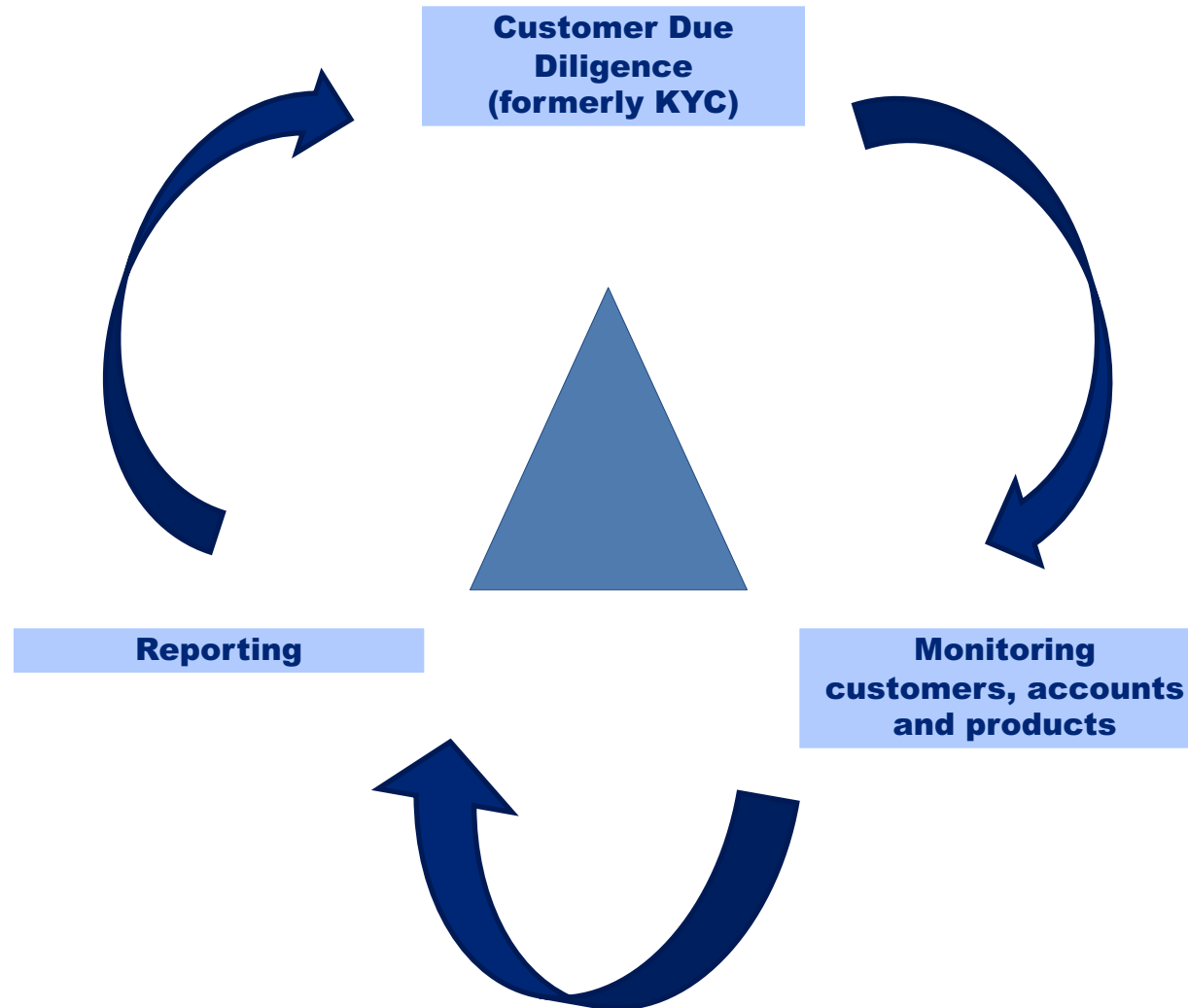
TAKE AWAYS

- Entities owned or controlled by the Government of Venezuela, including:
 - » PdVSA
 - » Central Bank of Venezuela
 - » Other state, municipal or local agencies or departments
 - » Certain “Empresas Mixtas”
- Suppliers and/or Providers of the Government of Venezuela
- Communicating with Customers/Customer Notices
- Reviewing Supporting Documentation and Relying on Customer (i.e., Final CDD Rule & General License 16B)
- Dealing in Venezuelan Bonds
- Individuals acting on behalf of the Government of Venezuela
- General Licenses → many moving parts
- AML Obligations (KYC/CDD, PEPs, SARs)

OTHER RELEVANT SANCTIONS PROGRAMS

- Cuba
- Nicaragua
- Russia/Ukraine/Crimea
- Iran

MONEY LAUNDERING PREVENTION, DETECTION AND ACTION



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