

Economic Sanctions: Developments and Considerations



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U.S. sanctions policy in the first year of the Biden administration saw both change and continuity. As expected, the administration sought to cooperate with allies to impose multilateral (rather than unilateral) sanctions, focused on human rights abuses and opened the door for a new nuclear deal with Iran. At the same time, the administration continued to focus on virtual currencies and on combating illicit cyber activities relating to ransomware, and clarified (and in some respects expanded) sanctions issued under the Trump administration targeting Chinese companies deemed to be part of the Chinese military-industrial complex.¹

¹ For additional details on the Chinese military-industrial complex sanctions, see our June Alert Memo [here](#).

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Virtual Currencies

In October 2021, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued its most comprehensive virtual currency-specific advisory to date, providing guidance on interpretive questions, sanctions compliance programs and "best practices" and hints about OFAC's enforcement priorities going forward.² Boards of companies with activities relating

² For additional details on OFAC's guidance, see our October Alert Memo [here](#).

to virtual currencies should thus be aware of and consider the expectations outlined in the guidance order to ensure that compliance programs meet OFAC's expectations and mitigate enforcement risks given the strict liability nature of U.S. sanctions. Best practices highlighted in the guidance include procedures relating to geolocation screening, transaction monitoring, know-your-customer diligence, red-flags awareness and reporting and investigations of potential violations.

Along with OFAC's second-ever enforcement settlement with a virtual currency company in February 2021 (relating to transactions with persons located in sanctioned jurisdictions), the guidance confirms that, despite the novel nature of the underlying technologies, OFAC is focused on compliance with applicable U.S. sanctions by virtual currency market participants – which OFAC considers to include a wide range of actors that spans technology companies, exchangers, administrators, miners, wallet providers and users.

The guidance also highlights OFAC's expectation that parties have formal, written compliance programs that include management's commitment to sanctions compliance, risk assessments, internal controls, periodic testing and auditing and sanctions-related training.

Ransomware

Given the continued rise in ransomware attacks against companies in 2021, boards, and committees with oversight over risk, crisis response and cybersecurity in particular, should continue to monitor the sanctions risks associated with making or facilitating cyber ransom payments.

In September and November 2021, OFAC sanctioned for the first time virtual currency exchanges and certain infrastructure support providers for their role in facilitating illicit transactions related to ransomware payments.³ OFAC also released an updated advisory on the potential sanctions risks of facilitating ransomware

payments, highlighting the strength of a company's cybersecurity protections and prompt outreach to the U.S. government as two “significant mitigating factors” in determining whether to pursue an enforcement action and the amount of any penalty for sanctions violations associated with ransomware payments.⁴ Boards should thus carefully consider with sanctions counsel the advantages and implications of engaging with government authorities both before and after making a payment if a sanctioned party received the payment.

New Sanctions Regimes; Conflicts of Law

More than ever, potential deviations and conflicts in sanctions laws may arise given the implementation of new sanctions regimes around the world, creating a regulatory quagmire for multinational companies. For example, the UK now administers an autonomous sanctions regime. While UK restrictions to date remain largely similar to those of the EU, small discrepancies in the scope of persons sanctioned recently have begun to emerge and greater divergence is possible in the future.

China has also over the past year begun to implement and formalize its own sanctions regime. In June 2021, China adopted the Anti-Foreign Sanctions Law, a comprehensive framework for imposing Chinese sanctions and blocking foreign sanctions.⁵ While it remains uncertain how broadly the new law will be applied, the imposition of Chinese sanctions to date has been largely limited to U.S. and EU officials, legislators and human rights-related institutions.

These new and existing sanctions regimes will continue to raise potential conflicts of laws issues in 2022, potentially requiring boards to decide which sanctions regime to comply with. Indeed, EU, UK and Canadian blocking regulations continue to provide covered persons with a private right of action to recover damages and legal costs in relation to the application of certain

³ For additional details, see our September and November Alert Memos [here](#) and [here](#), respectively.

⁴ For additional details, see our September Alert memo [here](#).

⁵ For additional details on China's Anti-Foreign Sanctions Law, see our June Alert memo [here](#).

U.S. sanctions. Similarly, the Chinese Anti-Foreign Sanctions Law authorizes a private right of action for Chinese persons harmed by foreign sanctions laws, though there remains some uncertainty as to its scope of application.

Sanctions Outlook for 2022

While it is typical for sanctions to evolve with foreign policy priorities, boards should take particular care in the new year to prepare for the possibility of potentially significant changes in three key areas:

1. U.S. officials have warned of swift and “devastating” economic sanctions in coordination with European allies in response to a Russian invasion of Ukraine. Potential actions include expanded restrictions on Russian sovereign debt; the Russian financial, energy and defense sectors; and access to payment systems (including SWIFT), as well as travel restrictions and additional sanctions designations.
2. As the prospects for a new nuclear deal with Iran remain uncertain, boards should prepare for possibilities ranging from the lifting of U.S. secondary sanctions to increased enforcement of primary sanctions and imposition of secondary sanctions.
3. Should U.S.-China relations deteriorate, boards may also expect to see increased use of targeted sanctions by the United States, along with China’s new sanctions authorities in retaliation to U.S. or other foreign sanctions against China (including potential private litigation under the Chinese blocking regulation).