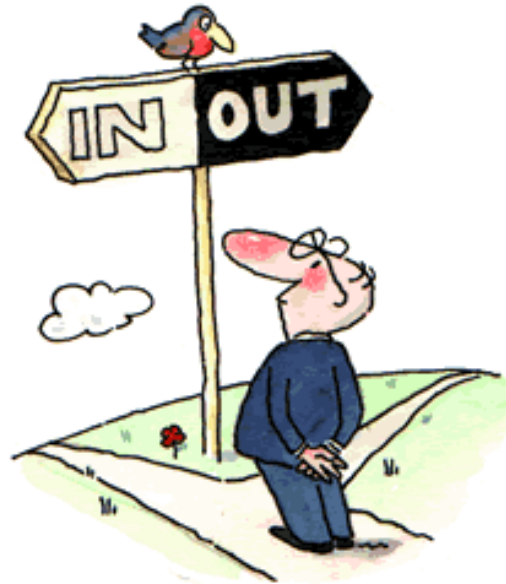
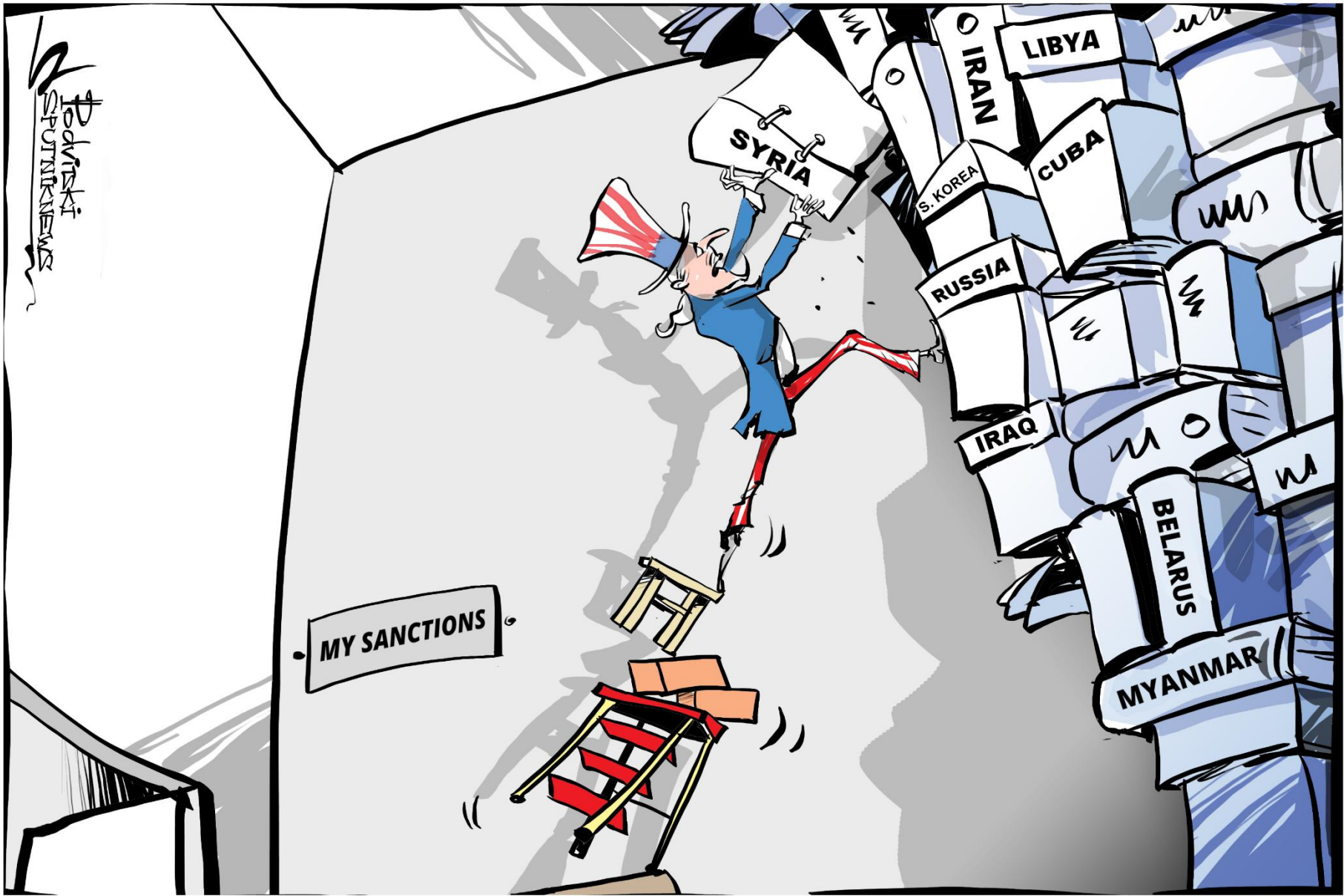


# OVERVIEW OF SANCTIONS



**K.V.RAVICHANDRA,  
GENERAL MANAGER (RISK & COMPLIANCE)  
INTERNATIONAL BANKING GROUP  
STATE BANK OF INDIA**



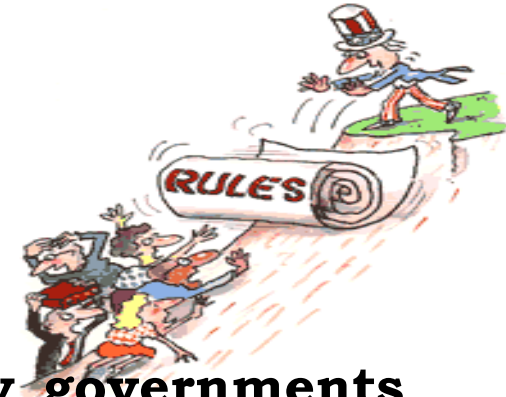
# Overview of Sanction regime impacting Bank transactions

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During this presentation, we will discuss :

- ▶ What is sanctions? Who issues sanctions?
- ▶ Why it is important to understand sanctions?
- ▶ Sanctions – Type and Scope
- ▶ OFAC and European Union (EU) Sanctions
- ▶ Sanctions against Iran/Russia/Myanmar/Sudan/North Korea
- ▶ Questions to ask when reviewing a transaction for sanctions
- ▶ Penalties for Non-compliance

# SANCTIONS



**Sanctions are laws and regulations enacted by governments (such as USA, international organisations (such as the United Nations) and supranational bodies (such as the European Union) to support national security interests and/or promote foreign policy objectives.**

# WHO ISSUES SANCTIONS?

- ❑ Any country can impose unilateral sanctions on any other territory
- ❑ They are referred to as DOMESTIC sanctions



**In the United States sanctions are issued by the Office of Foreign Asset Control (OFAC)**



**United Nations (UN) Resolutions can result in sanctions. Anyone living in a UN member state is likely to be subject to UN Sanctions**



**The European Union\* (EU) also issues sanctions which are enforced by each EU member state**

**\*EU Member States** : Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden & UK\*\*

# Why it is important to understand Sanctions ?

- Sanctions represent a significant regulatory risk that cannot be eliminated, but with implementation of the robust “Sanctions Compliance Programmes”, the risks can be mitigated substantially
- Failure to do so may result in potential problems for the bank, including Reputational damage, Regulatory sanctions, Litigation and Penalties
- Jurisdictional implications vary – e.g. EU Targeting may be different to USA and other jurisdictions



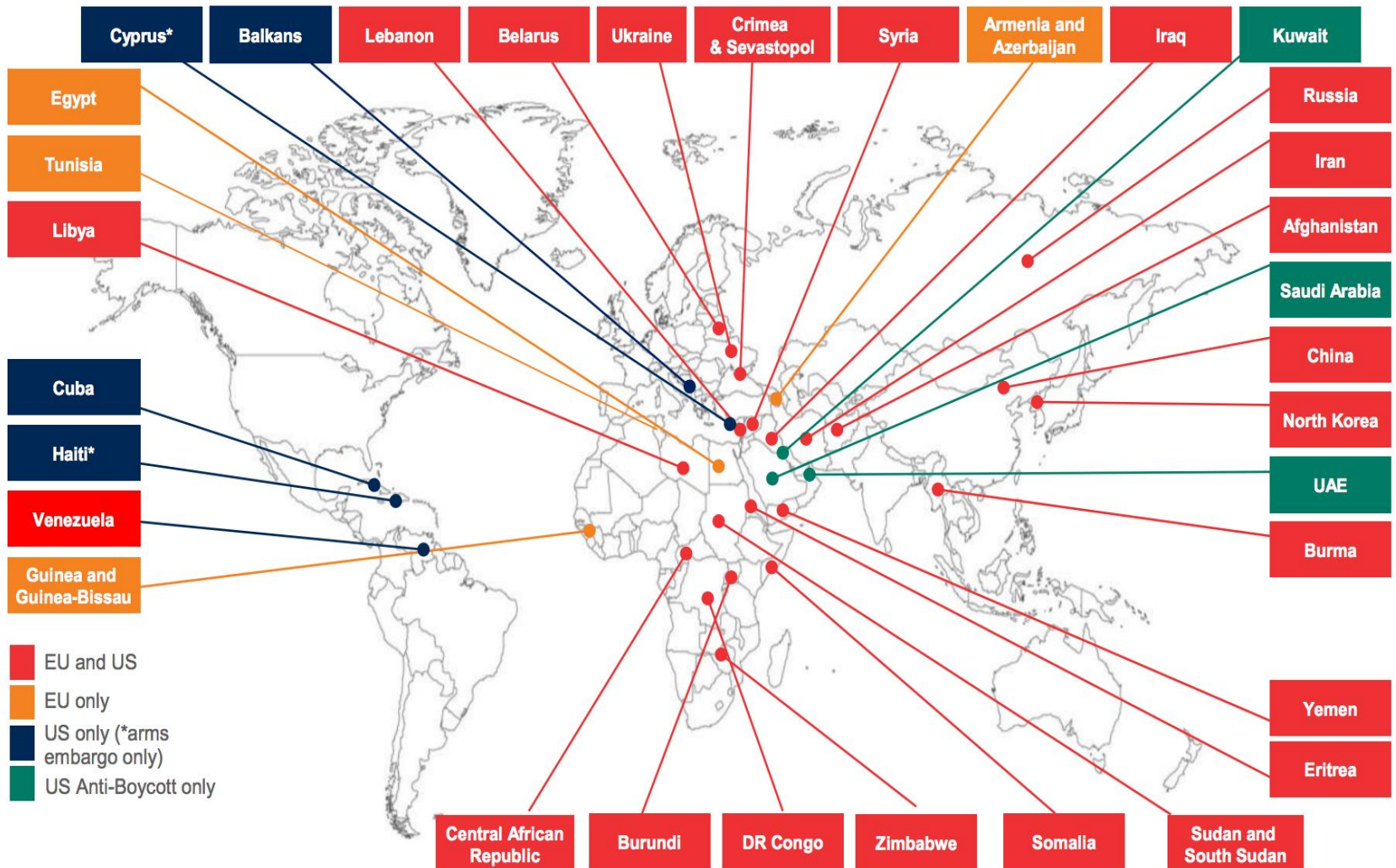
# OFAC SANCTIONS



- Created in 1950, Office of Foreign Assets Control (OFAC) operating within US Department of Treasury administers program of embargoes and sanctions for political or national security reasons by the US against countries, entities and persons
- Focus on the end-user or country rather than the technology
- Operates under national security/foreign policy authority, not subject to Administrative Procedure Act
- Not a traditional regulator, rather acts proscriptively
- Regulates all transactions abroad with prohibited parties, such as terrorists and countries subject to U.S. embargoes e.g., prohibited end-users
- Strict liability regime– intent irrelevant
- Robust enforcement, both civil and criminal



# Current U.S. and E.U. Sanctions Targets





# OFAC SANCTIONS



- Programs apply to all the “US Persons”
  - ▶ US citizen and US lawful permanent residents regardless of location or employer
  - ▶ Persons within the US (even if only on a temporary basis)
  - ▶ Any entity organized under the laws of the US (US corporations, partnerships, associations, including their non-US branches)
  - ▶ Entity organized under any jurisdiction within the US (including Foreign Branches of such an entity)
  - ▶ Also covers activities of non-US persons, e.g., causing US persons to violate OFAC sanctions
- US persons and companies prohibited from dealing directly or indirectly with targets
- Typically block assets, prohibit transactions
- Expansive concepts of “export of services” and “facilitation”

# SANCTIONS: Type & Scope

## Broad Sanctions

- Target entire countries or industries.

*For example:* Iran, Cuba, North Korea, Syria

Prohibition of export of specified products e.g. oil and gas related equipment for deep sea exploration (to Russia).

Prohibition on supply of financial assistance relating to military activities or arms dealing

Counterparties must not be related to the state or state-owned armed group

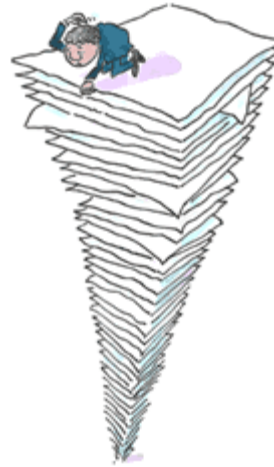


## Smart/Targeted Sanctions

- Target SDNs only

*For example:* asset freeze on the funds of Korea Mining Corp (North Korea) or Muhammad Gaddafi (son of Colonel Gaddafi) - both are SDNs.

Sectoral sanctions imposed on specified persons operating in sectors of the Russian economy.



# SANCTIONS: Type & Scope (Contd.)

## Primary Sanctions

Apply to US persons (defined as any US citizen, permanent resident, entity organised under the laws of the United States, including foreign branches, or any persons in the United States)

For example: Prohibits US persons dealing (directly or indirectly) with the government of Iran, companies and individuals in Iran, goods and services of Iranian origin, goods and services of US origin (including financial and banking services) for export to Iran and designated entities in Iran

## Secondary Sanctions

Apply to non-US persons



For example: Restrict non-US companies from trading with Iran in certain circumstances by imposing sanctions, including disqualification from US government contracts, restricting access from US credit and capital markets, US dollar clearing and asset freezing, on that company in the event that they do trade

# Specially Designated Nationals

- ▶ OFAC sanctions also cover certain **representatives** of target countries:
- **Front** organizations – Specially Designated Nationals (SDNs) – individuals, companies, vessels and banks located all over the world
- **Terrorists**, drug dealers, indicted war criminals and certain political figures dealing in weapons of mass destruction
- Specially Designated Narcotics Traffickers (**SDNTs**), Specially Designated Narcotics Traffickers/Kingpins (**SDNTKs**), Specially Designated Terrorists (**SDTs**), Specially Designated Global Terrorists (**SDGTs**) and Foreign Terrorist Organizations (**FTOs**)
- OFAC publishes a list of **SDNs and Other Blocked Persons**



# European Union (EU) Sanctions

- Sanctions are one of the EU's tools to promote the objectives of the Common Foreign and Security Policy (CFSP)
- EU sanctions are reviewed at regular intervals by the Council of the EU which decides whether sanctions should be renewed, amended or lifted
- All legal acts related to EU sanctions are published in the Official Journal of the EU
- EU sanctions apply within the jurisdiction (territory) of the EU; to EU nationals in any location; to companies and organisations incorporated under the law of a member state - including branches of EU companies in third countries; on board of aircrafts or vessels under member states' jurisdiction
- Implementation and enforcement of EU sanctions is primarily the responsibility of the EU member states. The competent authorities in the member states have to assess whether there has been a breach of the legislation and to take adequate steps
- The consolidated list of EU sanctions is available at [https://eas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions\\_en](https://eas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions_en)



# Major Sanctions Impacting India

- ▶ **Iran:** Bilateral trade was around USD 12.9 bn in 2016-17. Sanctions on Iran is likely to affect India's strategic interests in the region. Oil imports, developing the Chabahar Port and using it for trade with Afghanistan and Central Asia may get affected
- ▶ **Russia:** India has strong defence ties with Moscow, more than 70 per cent of equipment come from Russia. Defence deals worth nearly \$12 billion in the pipeline with Russia
- ▶ **Myanmar:** Bilateral trade was around USD 2.2 bn in 2016-17 with scope for significant improvement especially in infrastructure projects
- ▶ **Sudan:** India is the second largest exporter to Sudan after China. Bilateral trade was around USD 1.3 bn in 2013-14
- ▶ **North Korea:** Bilateral trade of around USD 133.43 million (allowed transactions as per OFAC) in 2016-17 (declined from USD 198.78 million in 2015-16). Sanctions may further impact the bilateral trade



# Iran Sanctions



- On May 8, 2018, US President announced his decision to cease the United States' participation in the Joint Comprehensive Plan of Action (JCPOA)
- The provisions of Executive Orders that were revoked have not yet been reinstated as of May 8, 2018. US will take steps necessary to establish a 90-day and a 180-day wind-down period for activities involving Iran that were consistent with the U.S. sanctions relief provided for under the JCPOA
- Persons engaging in activity consistent with U.S. sanctions relief as specified in JCPOA should take necessary steps to wind down those activities to avoid exposure to sanctions or an OFAC enforcement action under US law after August 6, 2018, or November 4, 2018, depending on the activity
- Furthermore, no later than November 5, 2018, the U.S. government will re-impose, as appropriate, the sanctions that applied to persons removed from the List of Specially Designated Nationals and Blocked Persons (SDN List) and/or other lists maintained by the U.S. government on January 16, 2016.

# Iran Sanctions Contd..



After the 90-day wind down period ends on August 6, 2018, the U.S. government will reimpose the following sanctions:

- (i) Sanctions on the purchase or acquisition of U.S. dollar banknotes by the Government of Iran;
- (ii) Sanctions on Iran's trade in gold or precious metals;
- (iii) Sanctions on the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;
- (iv) Sanctions on significant transactions related to the purchase or sale of Iranian Rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian Rial;
- (v) Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- (vi) Sanctions on Iran's automotive sector

# Iran Sanctions Contd..



After the 180-day wind down period ends on November 4, 2018, the U.S. government will reimpose the following sanctions:

- (i) Sanctions on Iran's port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line Iran, or their affiliates;
- (ii) Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- (iii) Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA);
- (iv) Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 (CISADA);
- (v) Sanctions on the provision of underwriting services, insurance, or reinsurance;
- (vi) Sanctions on Iran's energy sector

# EU Directives (IRAN)



- On 12 April 2018, the Council extended EU sanctions against Iran, which will now be in place **until 13 April 2019**
- The sanctions have been in place since 2011, and consist of:
  - a travel ban and an asset freeze against 82 people and 1 entity;
  - a ban on exporting to Iran equipment which might be used for internal repression and equipment for monitoring telecommunications

These sanctions relate to serious human rights violations and are separate to those relating to Iran's nuclear programme, which were lifted by the Council on 16 January 2016

# RUSSIA - Introduction



- Following developments in Ukraine, the Ukraine/Russia-related sanctions program implemented by OFAC began on March 6, 2014
- Sanctions started with the financial services and energy sectors of the Russian Federation economy and later extending itself to the defence and related materiel sector of the Russian Federation economy as well

## **Activity:**

The sanctions program fall into the following three broad categories:-

- (1) Blocking sanctions against individuals and entities designated pursuant and listed on the List of Specially Designated Nationals and Blocked Persons (SDN List)
- (2) Sectoral sanctions against entities operating in sectors of the Russian economy identified by the Secretary of the Treasury pursuant to E.O. 13662 and listed on the Sectoral Sanctions Identification List (SSI List)
- (3) A new investment ban and prohibition on the exportation or importation of goods, technology, or services to or from the Crimea region of Ukraine



# Russia: Sectoral Sanctions Identification (SSI)



- ▶ **Directive 1** targets **the financial services sector** of the Russian economy. Prohibits engaging in transactions in, providing financing for, or otherwise dealing in new debt **with a maturity of longer than 14 days**, or equity for persons identified on the SSI List.
- ▶ **Directive 2** targets **Russia's energy sector** of the Russian economy. Prohibits transactions in, provision of financing for, and other dealings in new debt **with a maturity of longer than 60 days** for persons identified on the SSI List under Directive 2 or equity for persons identified on the SSI List.
- ▶ **Directive 3** targets **the Russian defence and related material sector**. Prohibits all transactions in, provision of financing for, and other dealings in new debt of **maturity longer than 30 days** for persons identified on the SSI List.
- ▶ **Directive 4** prohibits Projects that are **initiated on or after January 29, 2018**, that have the potential to produce oil in any location, and in which any person determined to be subject to this Directive or any earlier version thereof, their property, or their interests in property has (1) 33 percent or greater ownership interest, or (2) ownership of a majority of the voting interests.
- ▶ SSI List is available at

[https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi\\_list.aspx](https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi_list.aspx)





# Russia- Latest Sanctions Update

- ▶ On 6<sup>th</sup> April 2018 the U.S. OFAC, designated 7 Russian oligarchs and 12 companies they own or control, 17 senior Russian govt. officials, a state-owned Russian weapons trading company, Rosoboroneksport and its subsidiary, a Russian bank, Russian Financial Corporation (RFC) Bank
- ▶ Rosoboroneksport, the state-owned Russian weapons trading company with longstanding and ongoing ties to the Government of Syria, is included in the list (India wants to buy S-400 long-range surface-to-air missile systems)
- ▶ The list of 12 companies owned or controlled by the sanctioned oligarchs is not exhaustive, and the regulated community remains responsible for compliance with OFAC's 50 percent rule
- ▶ United Company RUSAL PLC (one of the world's largest aluminium producers, responsible for seven percent of global aluminium production) is designated for being owned or controlled by, directly or indirectly, EN+ Group

# EU Directives (Russia)



- Embargo on arms and related materiel
- Embargo on dual-use goods and technology, if intended for military use or for a military end-user
- Ban on imports of arms and related materiel
- (arms and related materiel related) ban on provision of certain services
- (dual-use goods and technology related) ban on provision of certain services
- (deep water, Arctic and shale oil related) controls on export of certain equipment for the oil industry
- Controls on provision of certain related services
- Prohibition of procurement from Russia of arms and related materiel
- Restrictions on issuance of and trade in certain **'bonds, equity or similar financial instruments'**
- Prohibition to satisfy certain claims made by certain persons, entities and bodies

# Myanmar (formerly Burma)

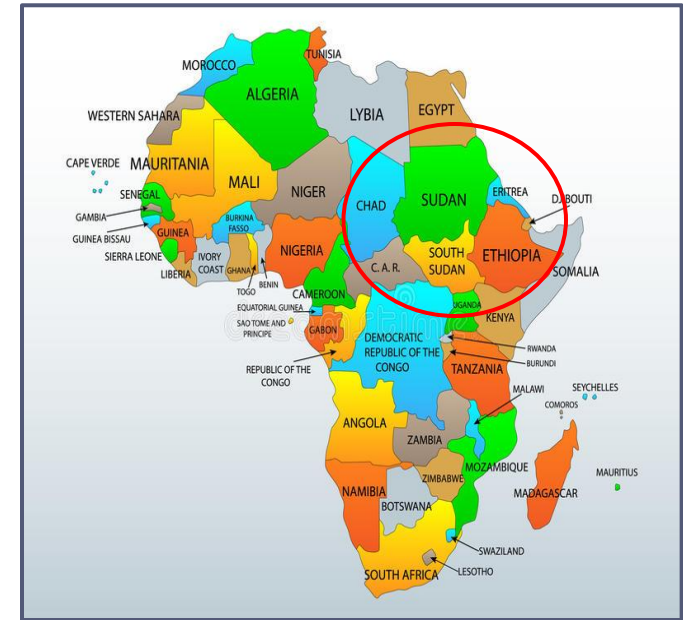


- Most of the sanctions on Myanmar have been lifted in 2016 except dealings with SDNs, trade in arms and minerals including precious stones (Jadeite, Rubies & Jewellery item containing Jadeite or Ruby)
- The remaining sanctions on Burmese individuals and entities are primarily intended to target those who obstruct political reform in Burma, commit human rights abuses in Burma, or propagate military trade with North Korea
- All OFAC-administered restrictions under the Burma sanctions program regarding banking or financial transactions with Burma are no longer in effect
- All individuals and entities blocked pursuant to the Burmese Sanctions Regulations (BSR) have been removed from OFAC's Specially Designated Nationals and Blocked Persons (SDN) List

# SUDAN



- Implemented in 1997 and expanded since by Executive Orders
- The sanctions contain many prohibitions, including: Prohibited conduct includes direct or indirect investments, trade or other conduct when a U.S. party, bank or other entity is involved.
- Certain exceptions apply – e.g., non-commercial remittances through non-Sudanese government-owned banks
- Exports to and imports from Sudan were prohibited.
- Recognizing positive actions by the Government of Sudan, majority of US Sanctions on Sudan have been revoked in January 13, 2017 and again in October 12, 2017
- General License has since been issued to undertake dollar related transactions subject to certain restrictions



# Sudan: Prohibited Transactions



- Regulatory changes will not impact Sudanese individuals or entities blocked pursuant to
  - “Blocking Property of Persons in Connection With the Conflict in Sudan’s Darfur Region” or
  - Any OFAC sanctions authorities other than the SSR (Sudanese Sanctions Regulations)
  - Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) still requires a license for the export to the Government of Sudan or any other entity in Sudan of agricultural commodities, medicine, or medical devices.

# NORTH KOREA



- New Executive order issued on 21 September 2017: Countering America's Adversaries Through Sanctions Act (CAATSA) requires SDN designation of persons engaged in North Korea related activities
- Sanction against Bank of Dandong for Money Laundering
- Designations of North Korean, Chinese, and other entities/ individuals as SDNs
- US Correspondent banking restrictions for designated parties
- Shipping sanctions
- Prohibits import into the U.S. of any "significant" goods, wares, articles, and merchandise manufactured by North Korean labour



# The 50% Rule

- ▶ Under OFAC's "50% Rule," an entity that is 50% or more owned by one or more SDNs is also deemed an SDN, even if the entity is not specifically listed on OFAC's SDN List. As a result, companies transacting with entities that may be commercially connected to the newly sanctioned SDNs should conduct diligence beyond screening against OFAC's SDN List to ensure that the counterparty to a transaction does not have a corporate ownership structure suggesting that an SDN is its beneficial owner.

# Extraterritorial Application of Sanctions

- ▶ As a norm, non-U.S. persons are not prohibited from engaging in transactions with SDNs. However, under CAATSA, U.S. sanctions related to the new Russian SDN designations apply extraterritorially.
- ▶ Section 228 of CAATSA amended the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (SSIDES) by adding a new Section 10 that requires the President to impose sanctions on:
  - ▶ “a foreign person if the President determines that the foreign person knowingly, on or after the date of the enactment of [CAATSA] — (1) materially violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition contained in or issued pursuant to any covered Executive order, [SSIDES], or the Ukraine Freedom Support Act of 2014 (22 U.S.C. 8921 et seq.); or (2) facilitates a significant transaction or transactions, including deceptive or structured transactions, for or on behalf of—(A) any person subject to sanctions imposed by the United States with respect to the Russian Federation; or (B) any child, spouse, parent, or sibling of an individual described in subparagraph (A).”

# OFAC PENALTIES

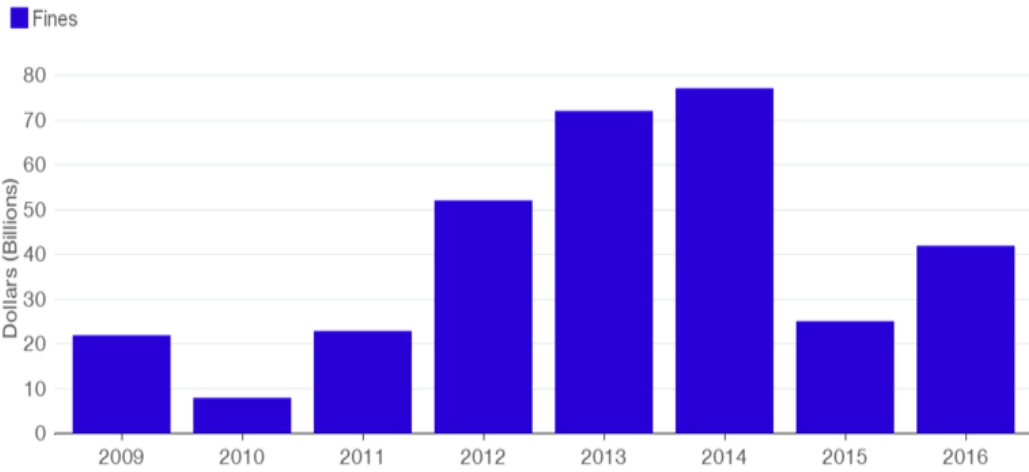


- Civil monetary penalties of up to \$250,000 or twice the amount of the underlying transaction may be imposed administratively against any person who violates, attempts to violate, conspires to violate, or causes a violation of Sanctions Regulations
- Upon conviction, criminal penalties of up to \$1,000,000, imprisonment for up to 20 years, or both, may be imposed on any person who wilfully commits or attempts to commit, wilfully conspires to commit, aids, or abets in the commission of a violation of the Executive orders or the regulations

# Recent Penalties

## Bank Penalties

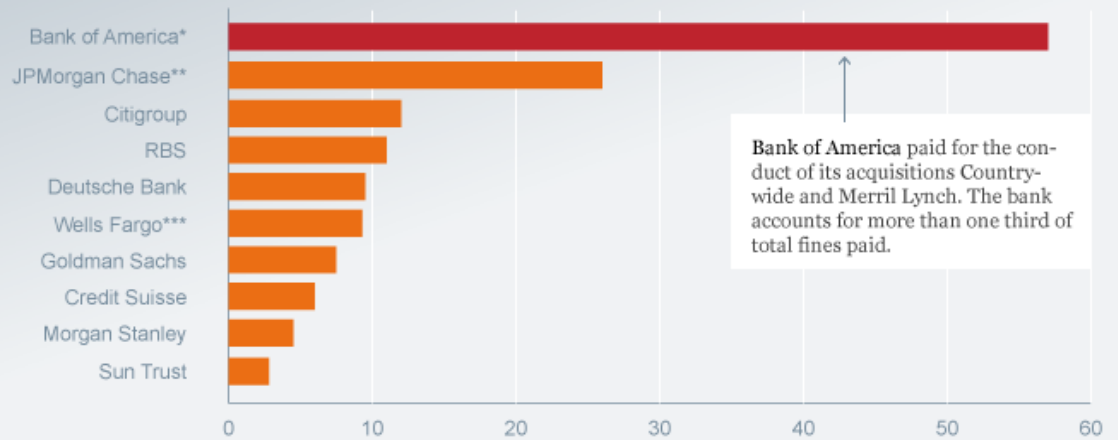
Global lenders have paid \$321 billion in charges since the financial crisis



Source: BCG

Bloomberg

## Total fines paid 2008-2017, in billions of dollars



Bank of America paid for the conduct of its acquisitions Countrywide and Merrill Lynch. The bank accounts for more than one third of total fines paid.

\* Fines include conduct related to Bank of America, Countrywide and Merrill Lynch | \*\* Fines include conduct related to JP Morgan, Bear Stearns and Washington Mutual | \*\*\* Fines include conduct related to Wells Fargo and Wachovia

Source: FT research

© DW



# The Biggest....

- ▶ ZTE, the Chinese Telecom company paid \$ 1.19 billion in March 2017... the highest ever fined for a non-financial institution...
- ▶ BNP Paribas paid \$ 9 billion, the highest for a financial institution.
- ▶ Top five countries: 2005-13
- ▶ Between 20013-15, there are over 900 enforcement action undertaken against Individuals and corporate Entities.

<b>Country</b>	<b>Target</b>
USA	647
Netherlands	7
UK	7
Canada	4
Mexico	3
UAE	3

# Questions to Ask when reviewing A Transaction for Sanctions

- Are there one or more U.S. connections (e.g., U.S. parties, U.S. parent companies, U.S. public companies, USD transactions, and U.S.-origin goods)?
- Are any of the parties SDNs or are owned or controlled by SDNs (including banks issuing letters of credit, port operators, etc.)?
- Are the goods or services being provided subject to sanction (e.g., petroleum, petrochemical products, military items, banned items etc.)?
- Is the product a “[dual-use](#)” item having both commercial and military or proliferation applications?
- Is there anything suspicious about the transaction that indicates that there may be a risk of diversion or an attempt to evade U.S. sanctions (e.g., by making payments through third country non-bank entities unrelated to the transaction)?





# Questions to Ask when reviewing A Transaction for Sanctions (Contd..)

- Does the account party, beneficiary, issuing bank, paying bank, or other third party named in a transaction or documents match to a name on the SDN list?
- Does the bill of lading indicate that the goods were shipped by a blocked shipping company or aboard a merchant vessel appearing on the SDN list?
- Does the certificate of origin reveal that the goods originated from a targeted country?
- Does the intended voyage allowed under the vessels insurance policies, ship mortgage, or bareboat charter?
- Does the request mentions proceeds of the transaction to be paid to an unrelated or unexplained third party?
- Does the invoice indicate that a blocked company supplied goods to the seller?
- Does the letter of credit state shipment/transshipment to or from a sanctioned country?
- Have you examined cargo movements by checking bill of lading details in Shipping company tracker or raising for International Maritime Bureau reports?

# Effective Compliance Strategies

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- Make sure your sanctions information is **up-to-date!**
  - Sanctions and SDN list can be updated or revised at any time
  - Updates not on a regular basis
  - Set your browser to automatically check the OFAC web site for updates
  - Subscribe to email notification service on OFAC home page
- Make sanctions compliance an **integral part** of your business
  - Don't treat OFAC compliance as an afterthought
  - Ensure that all employees are familiar with U.S. sanctions
  - Make compliance a part of training program for new hires



