

US Sanctions Year-in-Review

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Contents

2018 in brief 1

2019 outlook 3

Country programs 4

List-based sanctions programs 12

Published civil penalty settlements..... 15

US Sanctions Year-in-Review

We are pleased to present our inaugural US Sanctions Year-in-Review, covering highlights in sanctions policy and enforcement from 2018 and the emerging trends and issues that will shape the compliance landscape in 2019.

A. 2018 IN BRIEF

2018 saw an extraordinary number of highly consequential sanctions developments, both in terms of their immediate impact and their significance for the sanctions policy outlook.

Changes and developments in the **Iran** and **Russia** sanctions programs likely had the greatest impact last year, although they were by no means the only events of note. US sanctions targeting both **North Korea** and **Venezuela** escalated, while the year saw the inception of a new program targeting specified individuals in **Nicaragua**. The US continued to use its authority under the **Global Magnitsky** sanctions to target alleged human rights abuses and corruption worldwide, in several instances in a manner closely tied to specific current events and foreign policy objectives. The US Treasury Department's Office of Foreign Assets Control (OFAC) also took action to address emerging technological challenges, including **cybersecurity** and **digital currency**.

The US imposed sanctions on approximately 350 individuals, 300 entities, 49 vessels and 32 aircraft—in addition to approximately 700 Iran-related individuals and entities that were designated when the US left the Joint Comprehensive Plan of Action (JCPOA or, colloquially, the Iran Deal). OFAC's published enforcement actions, while fewer in number than recent years, provided some useful insights into sanctions compliance and the potential direction of future enforcement matters.

Here are some highlights, which we explore further in this report:

The **Iran** sanctions program largely returned to its state prior to the implementation of the multilateral JCPOA. Secondary sanctions—the authority to penalize non-US Persons for engaging in certain transactions involving Iran, which were largely suspended under the JCPOA—returned to full force in 2018. Predictably, this “maximum pressure” approach appears to have caused a pullback from the commercial activity with Iran that some non-US Persons pursued under the sanctions relief of the JCPOA.

Several of the **Russia** sanctions authorities adopted in the 2017 Countering America's Adversaries Through Sanctions Act (CAATSA) were implemented in 2018, often with significant media attention. This included high-impact sanctions against certain “oligarchs” and businesses linked to them, and secondary sanctions targeting significant transactions with certain Russian individuals and entities. The US also implemented sanctions under a 1991 statute targeting use of chemical or biological weapons.

While **North Korea** has already been heavily sanctioned by the United States and the international community, in 2018, the US adopted measures targeting trade with the country by non-US Persons. These sanctions primarily target North Korea's supply lines, designating shipping and trading companies and vessels and issuing guidance aimed at identifying and curtailing illicit trade with that country.



Published civil penalty information provides valuable insight into OFAC's enforcement approaches and compliance expectations.

Most of the civil penalties publicly announced in 2018 resulted from a multi-agency settlement with Société Générale S.A. (Société Générale), which agreed to pay the second-largest penalty ever levied against a financial institution for sanctions violations. However, less eye-catching resolutions reflect interesting developments and possible directions in enforcement. A penalty was assessed against Cobham Holdings, Inc. (Cobham), a US subsidiary of a global technology and services provider headquartered in the United Kingdom, in connection with a former subsidiary that it sold off, while the acquirer of that subsidiary was not publicly part of the resolution. In addition, the settlement agreement between OFAC and Zoltek Companies, Inc. (Zoltek), contained significant detail regarding the company's "compliance commitments," providing further insight into OFAC's expectations regarding corporate sanctions compliance programs.

B. 2019 OUTLOOK

Sanctions have become a favorite tool for the US in recent years, and this trend appears unlikely to diminish in the new year. Compliance with US sanctions is likely to remain a challenge—and a growing one at that. This is not only because of the expansion of US sanctions programs and secondary sanctions, but also because of increasingly sophisticated efforts by countries like Iran, Russia and North Korea to disguise sanctionable activities. Further complicating efforts, at least with respect to Iran, are the continued commercial ties between the European Union and Iran, and the EU's efforts to block compliance with restored US secondary sanctions.

The US did not significantly expand trade restrictions with **Venezuela** (including with sanctions targeting Venezuelan oil), but that may change in 2019 as the situation in that country continues to show little improvement while remaining a focus of US foreign policy. In addition, the expanded designation authorities under Executive Order 13850 may begin to see use this year.

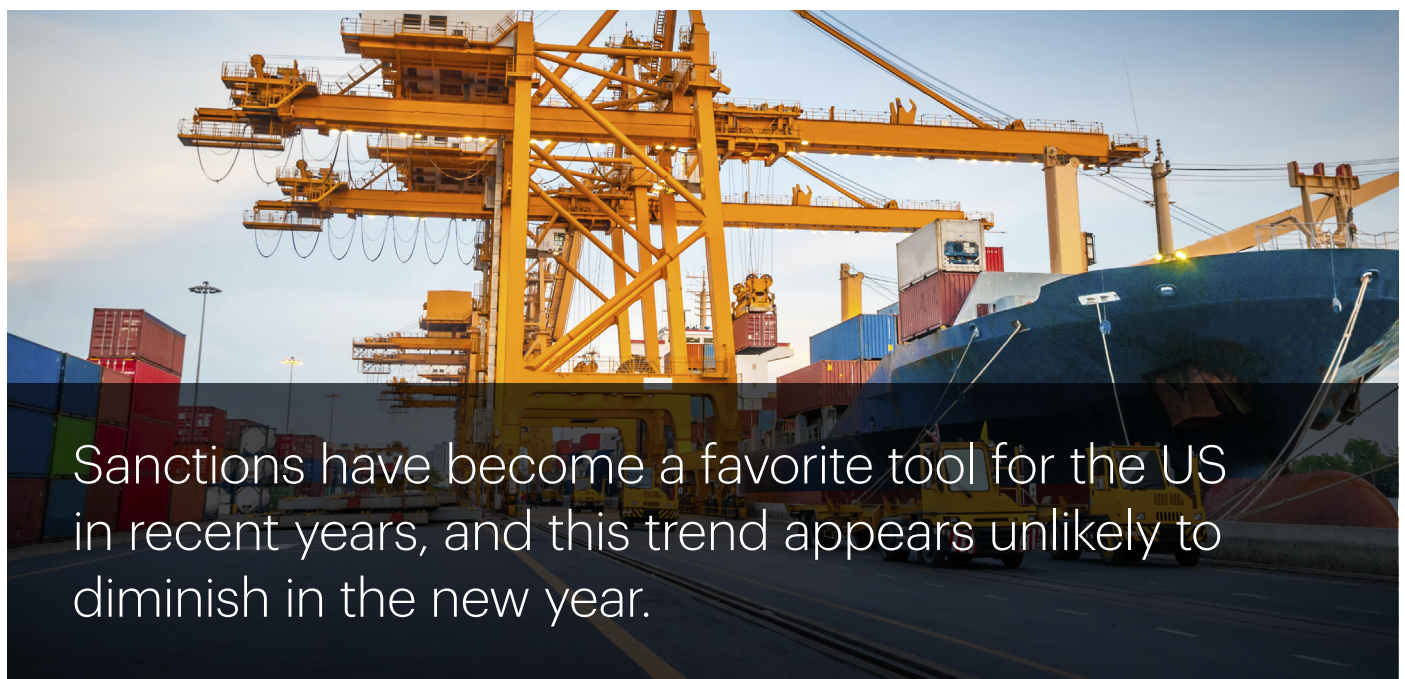
A number of bills seeking to ratchet up sanctions pressure on **Russia** were introduced in Congress in 2018, but were ultimately not enacted. Whether any of these efforts will see greater progress in

2019 remains uncertain at this point, but a real possibility—especially as the special counsel, Robert Mueller, continues to investigate foreign interference in the 2016 elections. In addition, by the end of 2018, the US had not yet implemented the anticipated second tranche of sanctions under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act) against Russia. That tranche is expected in 2019.

As **malicious cyber activity** continues and escalates—whether it is state-directed or not—OFAC has shown itself to be poised to meet those challenges by using existing sanctions authorities and adopting new sanctions tools.

Cryptocurrency has been an increasing focus for OFAC, which quickly targeted Venezuela's efforts to establish the "petro." In light of reports that Iran is seeking to use cryptocurrency to mitigate impacts from the US's JCPOA withdrawal, that focus is unlikely to abate in 2019.

OFAC targeted Turkish government officials under **Global Magnitsky**, later removing them from the List of Specially Designated Nationals (the SDN List) after Turkey released a US citizen who had been detained for two years. 2019 could see similar uses of sanctions to accomplish discrete foreign policy objectives.



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Country programs

A. CUBA

The US made few changes to its sanctions on Cuba in 2018, though the Trump administration has signaled that a new, tougher approach may be forthcoming.

In 2018, the US did not materially change the Cuba sanctions or announce any particularly notable designations under them. The US did, however, add 26 sub-entities to the Cuba Restricted List and update the names of five already-listed entities.¹

The Cuba Restricted List identifies entities and sub-entities controlled by Cuba's military, intelligence and security services, including hotels, travel companies and a range of commercial enterprises. US sanctions on Cuba generally prohibit persons subject to US jurisdiction from engaging in transactions with these entities, notwithstanding the Obama-era sanctions relief that otherwise remains applicable.

The Trump administration has also indicated that US policy toward Cuba may further change course from the Obama-era policy of engagement and limited sanctions relief. In a high-profile speech in Miami, National Security Advisor John Bolton condemned Cuba as part of a "troika of tyranny" with Nicaragua and Venezuela, which "has finally met its match."²



¹ *List of Restricted Entities and Subentities Associated With Cuba as of November 15, 2018*, US DEPARTMENT OF STATE (Nov. 15, 2018), <https://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/287349.htm>.

² *Remarks by National Security Advisor Ambassador John R. Bolton on the Administration's Policies in Latin America*, THE WHITE HOUSE (Nov. 2, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-national-security-advisor-ambassador-john-r-bolton-administrations-policies-latin-america/>.

B. IRAN

US Iran sanctions are back in full extraterritorial force—raising significant risks for almost all commercial activity. In 2018, as part of its “maximum pressure” campaign, the US withdrew from the JCPOA, added or re-added hundreds of Iranian-linked persons to the SDN List, revoked General License H and restored all pre-JCPOA secondary sanctions.

2018 saw extraordinary changes to US sanctions on Iran, as President Trump made good on his campaign promise to withdraw the United States from the JCPOA and terminate the Obama-era sanctions relief that had been in place since January 2016. On May 8, President Trump announced the withdrawal and set in motion a series of steps that:

- Revoked General License H, the authority by which foreign subsidiaries of US companies (and foreign entities owned or controlled by US Persons) were able to engage in a range of trade with Iran
- Imposed (or re-imposed) sanctions on more than 700 Iran-linked individuals and entities, hundreds of which had been de-listed under the JCPOA
- Reinstated the full scope of pre-JCPOA secondary sanctions, pursuant to 90-day and 180-day wind-down periods

As a result, US sanctions now, once again, prohibit or penalize a wide range of commercial activity involving Iran—even, in the case of the secondary sanctions, when that activity is by foreign (non-US) Persons and does not involve any connection with the United States. For example, the restored US secondary sanctions authorize penalties for purchasing Iranian petroleum, petroleum products and petrochemical products; providing support to Iran’s energy, automotive, shipping and shipbuilding sectors; or engaging in significant transactions with sanctioned Iranian persons. Secondary sanctions

also reach “associated services” related to these and other sanctionable activities, meaning that insurance, reinsurance, shipping and other activities may also be subject to penalty.

Despite the full restoration of US sanctions to pre-JCPOA levels (and beyond, in some cases), the US has preserved humanitarian authorizations and exceptions to the sanctions that allow for certain sales to Iran of agricultural commodities, food, medicine and medical devices. Acting on these authorizations and exceptions has, however, remained a challenge, particularly in light of difficulties in securing financing and banking services to process payments.



As part of this new, post-JCPOA approach to Iran, the US has announced a campaign of “unprecedented” and “maximum” financial pressure, regardless of whether the other parties to the JCPOA, especially the European Union, continue to participate in that agreement. The US has signaled that it will strictly enforce the restored sanctions, including the secondary sanctions, if necessary to address attempts at circumvention.

To help identify the illicit methods used by Iran to access to the global financial system, another agency within the Treasury Department, the Financial Crimes Enforcement Network (FinCEN), published an advisory on October 11.³ FinCEN listed red flags to detect potentially illicit transactions, and noted that it expects Iran to escalate its money laundering and sanctions evasion activities now that the US has restored its secondary sanctions post-JCPOA.

In addition to the JCPOA-related developments, 2018 saw the US impose sanctions on Iranian persons engaged in “malicious cyber-enabled activities” (discussed below).

³ *Advisory on the Iranian Regime’s Illicit and Malign Activities and Attempts to Exploit the Financial System*, FinCEN (Oct. 11, 2018), <https://www.fincen.gov/sites/default/files/advisory/2018-10-12/Iran%20Advisory%20FINAL%20508.pdf>.

C. NORTH KOREA

In 2018, the US stepped up its sanctions measures against North Korea, with a particular focus on third-country individuals, entities and vessels engaged in illicit North Korean trade.

During a year marked by extraordinary developments in US-North Korea relations, including the summit with President Trump and North Korean leader Kim Jong-un, the US continued to intensify sanctions.

One of the major developments occurred early in 2018 when, on February 23, OFAC announced what it described as the “largest North Korea-related sanctions tranche to date, aimed at disrupting North Korean shipping and trading companies and vessels to further isolate the regime and advance the US maximum pressure campaign.”⁴ Pursuant to Executive Order 13810, OFAC designated a total of nine shipping companies from China, Singapore, Taiwan, Hong Kong, the Marshall Islands, Tanzania, Panama and the Comoros, as well as nine vessels. OFAC further designated a Taiwanese citizen, along with two companies he owns or controls, for his role in facilitating sanctions evasion. In addition, OFAC designated 16 North Korean shipping companies and blocked 19 of their North Korean-flagged vessels. In a parallel action, OFAC, together with the US State Department and the Coast Guard, issued a global advisory to highlight the significant sanctions risks related to shipments of goods to and from North Korea, including for insurers, flag registries, shipping companies and financial institutions.⁵

Together with the US State Department, Customs and Border Protection and Immigration and Customs Enforcement, OFAC issued a second North Korea advisory on July 23, 2018.⁶ That advisory focused on risks to business supply chains that source goods, services or technology from North Korea or North Korean laborers in third countries.



OFAC also codified the existing set of executive actions and legislative authorities establishing the US sanctions program against North Korea, and reissued the amended North Korean Sanctions Regulations, 31 CFR Part 510.⁷ This step was largely procedural, but did include certain amendments related to educational activities by nongovernmental organizations. It also authorized certain transactions in support of United Nations programs involving North Korea.

OFAC also issued new and updated FAQs regarding North Korea. Among other things, the FAQs underscored that US Persons must obtain a license from both OFAC and the US Commerce Department’s Bureau of Industry and Security (BIS) to export or re-export items to designated North Korean persons. The FAQs also highlighted that foreign financial institutions may not engage in most North Korea-related transactions that touch the US financial system, and may be subject to sanctions for facilitating a significant transaction involving designated North Korean persons or North Korean trade.

⁴ *Treasury Announces Largest North Korean Sanctions Package Targeting 56 Shipping and Trading Companies and Vessels to Further Isolate Rogue Regime*, US DEPARTMENT OF THE TREASURY (Feb. 23, 2018), <https://home.treasury.gov/news/press-releases/sm0297>.

⁵ *North Korea Sanctions Advisory- Sanctions Risks Related to North Korea’s Shipping Practices*, US DEPARTMENT OF THE TREASURY (Feb. 23, 2018), https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/dprk_vessel_advisory_02232018.pdf.

⁶ *North Korea Sanctions and Enforcement Actions Advisory- Risks for Businesses with Supply Chain Links to North Korea*, US DEPARTMENT OF THE TREASURY, STATE, AND HOMELAND SECURITY (July 23, 2018), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dprk_supplychain_advisory_07232018.pdf.

⁷ *Reissuance of North Korea Sanctions Regulations*, US DEPARTMENT OF THE TREASURY (March 1, 2018), <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180301.aspx>.

D. RUSSIA

The US intensified sanctions targeting Russia in 2018 by implementing several far-reaching secondary sanctions and by designating high-profile Russians and their internationally significant businesses.

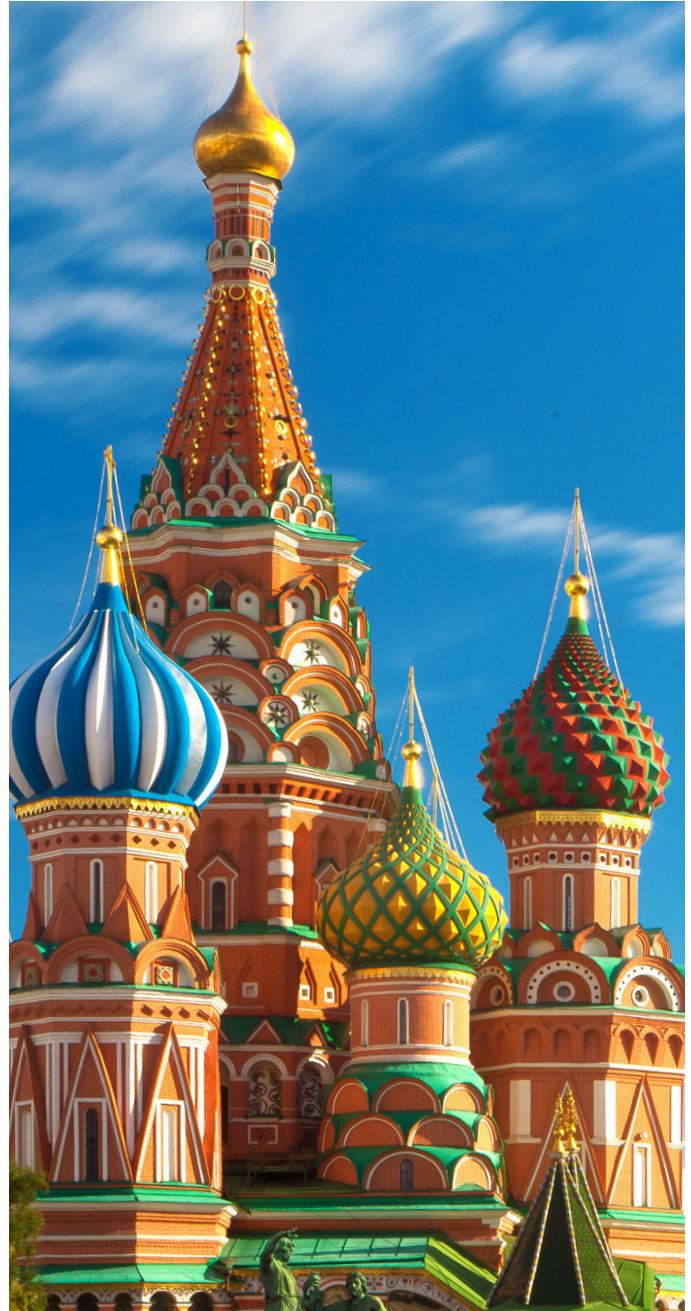
In 2018, the US implemented several Russia sanctions authorities that were established in 2017 by CAATSA. This included, among other things, CAATSA Section 228, which requires the imposition of secondary sanctions for knowingly engaging in a “significant” transaction for or on behalf of any person designated under the Russia sanctions program, or materially violating sanctions against Russia.

Other CAATSA authorities implemented in 2018 expanded the reach of sanctions prohibiting US Persons from providing goods, services or technology to energy projects involving identified Russian companies. The US also released a report mandated by CAATSA identifying 210 “oligarchs” and senior Russian officials (the public version of which, observers noted, listed as “oligarchs” the same Russians who appeared on Forbes Magazine’s 2017 list of the world’s billionaires).⁸ While inclusion on this report was not, itself, a trigger for any sanctions, it nonetheless heightened commercial scrutiny of the persons listed.

On April 6, in one of the most significant Russia sanctions actions to date, the US designated seven “oligarchs,” 12 companies they own or control, 17 Russian government officials or officers of Russian state-owned companies, a Russian state-owned weapons trading company and its bank subsidiary. On December 19, OFAC notified Congress of its intention to terminate the sanctions imposed on three of the entities designated on April 6, based on its determination that “significant restructuring and corporate governance changes will enable them to meet the criteria for delisting.”⁹

As part of a continued expansion of US Russia sanctions, 2018 also saw the US State Department issue a public finding that Russia violated the CBW Act in connection with the poisoning of Sergei and Yulia Skripal. This finding triggered two sets of sanctions.

The first step involved a limited set of restrictions related to arms deals and US government financial assistance. The second step would be further reaching and could include a broad ban on exports to Russia, and a prohibition on Russian state-owned airlines, such as Aeroflot, from flying to or from the United States. This second step has already been triggered under the statute but has yet to be implemented.



⁸ Bosilkovsky, I., “Treasury Department’s Russia Oligarchs List Is Copied From Forbes,” FORBES (Jan. 30, 2018) <https://www.forbes.com/sites/igorbosilkovski/2018/01/30/treasury-departments-russias-oligarchs-list-is-copied-from-forbes/#dba604468253>.

⁹ OFAC Notifies Congress of Intent to Delist Ent., Rusal, and EuroSibEnerg, US DEPARTMENT OF THE TREASURY (Dec. 19, 2018) <https://home.treasury.gov/news/press-releases/sm576>.



2018 saw significant congressional interest in Russia sanctions. New legislative efforts are expected in 2019.

The US State Department also named several additional individuals and entities to the CAATSA Section 231 List of Specified Persons (LSP), which identifies persons that are part of, or operate for or on behalf of, the defense or intelligence sectors of Russia. Additionally, the State Department imposed secondary sanctions for the first time under Section 231 of CAATSA; the target was a Chinese entity and its director, who allegedly engaged in significant transactions with Russia's main arms export entity, which is on the LSP.

Further, while not limited to Russia, prior to the 2018 US midterm elections in November, President Trump issued Executive Order 13848 authorizing sanctions against any foreign individual, entity or government determined to have interfered in US federal elections.¹⁰

Finally, a number of bills that would impose statutory sanctions on Russia were introduced in the US Congress. None of these bills were enacted. Had they been, they would have required imposition of sanctions on a range of Russian persons and entities—including banks, energy companies, entities in the defense and intelligence sector, state-owned enterprises, Russian energy projects and sovereign debt, oligarchs, senior government officials and parastatal entities—if certain conditions are triggered.

¹⁰ Exec. Order 13848 (Sept. 12, 2018).




E. SYRIA

The US continued to implement existing Syria sanctions in 2018 through several rounds of sanctions designations, and also issued a global advisory about petroleum shipments.

In 2018, the US imposed sanctions on a wide range of individuals and entities related to activities in Syria, including persons in Iran, Lebanon, Russia and the United Arab Emirates. OFAC targeted, among others, a Syrian petroleum procurement network, along with Syrian regime figures who served as intermediaries between the regime and ISIS.

OFAC, together with the US State Department and Coast Guard, also issued an advisory in November 2018 “to alert persons globally to the significant US sanctions risks for parties involved in petroleum shipments to Syria.”¹¹

¹¹ OFAC Advisory to the Maritime Petroleum Shipping Community- Sanctions Risks Related to Shipping Petroleum to Syria, US DEPARTMENT OF THE TREASURY (Nov. 20, 2018), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/syria_shipping_advisory_11202018.pdf.



2018 saw the US impose four rounds of Venezuela-related sanctions designations targeting, among others, the first lady of Venezuela and certain other members of Venezuelan President Nicolas Maduro's "inner circle" – along with an airplane.

F. VENEZUELA

The US expanded the scope and reach of its Venezuela sanctions in 2018 but did not impose a general commercial embargo or restrictions on Venezuelan oil sales.

2018 saw the US impose four rounds of Venezuela-related sanctions designations targeting, among others, the first lady of Venezuela and certain other members of President Nicolas Maduro's "inner circle"—along with an airplane. In announcing several of these designations, the US also underscored the strategy behind the sanctions, saying "US sanctions need not be permanent; they are intended to change behavior. The United States would consider lifting sanctions for persons sanctioned under Executive Order 13692 that take concrete and meaningful actions to restore democratic order, refuse to take part in human rights abuses and speak out against abuses committed by the government, and combat corruption in Venezuela."¹²



President Trump also issued three executive orders related to Venezuela sanctions.

- Executive Order 13827 targets Venezuela's efforts to establish the "petro" cryptocurrency by barring US Persons from engaging in any transaction "related to, provision of financing for, and other dealings in... any digital currency, digital coin, or digital token, that was issued by, for, or on behalf of the Government of Venezuela on or after January 9, 2018."¹³
- Executive Order 13835 prohibits US Persons from "(i) the purchase of any debt owed to the Government of Venezuela, including accounts receivable; (ii) any debt owed to the Government of Venezuela that is pledged as collateral after the effective date of this order [May 21, 2018], including accounts receivable; and (iii) the sale, transfer, assignment, or pledging as collateral by the Government of Venezuela of any equity interest in any entity in which the Government of Venezuela has a 50 percent or greater ownership interest."¹⁴
- Executive Order 13850 expands significantly the authority for the Secretary of Treasury to designate additional people related to Venezuela. This executive order authorizes the Secretary of the Treasury to impose sanctions on persons operating in Venezuela's gold sector (and any other sector of Venezuela's economy), or any person engaged in corrupt conduct involving the government of Venezuela.¹⁵ OFAC has clarified, however, that it "expects to use its discretion to target in particular those who operate corruptly in the gold or other identified sectors of the Venezuela economy, and not those who are operating legitimately in such sectors."¹⁶

¹² *The United States Imposes Sanctions on Venezuelan Individuals and Entities*, US DEPARTMENT OF STATE (Sept. 25, 2018), <https://www.state.gov/r/pa/prs/ps/2018/09/286190.htm>; *Treasury Targets Venezuelan President Maduro's Inner Circle and Proceeds of Corruption in the United States*, US DEPARTMENT OF THE TREASURY (Sept. 25, 2018), <https://home.treasury.gov/news/press-releases/sm495>.

¹³ Exec. Order 13827 (March 19, 2018).

¹⁴ Exec. Order 13835 (May 21, 2018).

¹⁵ Exec. Order 13850 (Nov. 1, 2018).

¹⁶ OFAC FAQ # 629, US DEPARTMENT OF TREASURY (Nov. 1, 2018), https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#venezuela.

List-based sanctions programs

A. GLOBAL MAGNITSKY

2018 marked the first full year of Global Magnitsky sanctions authorities. Global Magnitsky, or “Glomag” as it has come to be known, targets non-US individuals and entities that the US believes have engaged in human rights abuses or “corruption” anywhere in the world. This program was first implemented by Executive Order 13818 in December 2017, pursuant to the 2016 Global Magnitsky Human Rights Accountability Act.

In 2018, the US issued several rounds of Glomag-based sanctions against targets worldwide. This included, for example, several designations based on human rights abuses, including a Cambodian general, Nicaraguan officials and several Burmese military officers and units.¹⁷

The US also imposed Glomag sanctions based on alleged corruption. This included, among others, a senator from the Dominican Republic, who allegedly used his connections to win public works contracts to help rebuild Haiti following several natural disasters; 14 companies affiliated with an Israeli businessman who was sanctioned under Glomag in 2017; and a vice president of Albanisa, a private company that imports and sells Venezuelan petroleum products, who is also the head of Nicaraguan state-owned oil company Petronic.¹⁸

In a particularly high-profile—and politically charged—matter, the US also utilized Glomag to impose sanctions on Turkish Minister of Justice Abdülhamit Gül and

Minister of Interior Süleyman Soylu, in connection with the arrest and detention of US pastor Andrew Brunson.¹⁹ Following the release of Mr. Brunson, Messrs Gül and Soylu were removed from the SDN List.

B. SDGTs, SDNTKs, AND TCOs

The US also utilized many of its existing list-based sanctions authorities to designate individuals and entities in 2018, including some of OFAC’s core authorities related to Specially Designated Global Terrorists (SDGTs), Specially Designated Narcotics Trafficking Kingpins (SDNTKs) and Transnational Criminal Organizations (TCOs).

Some of the more notable designations in 2018 included:

- The Zhao Wei Transnational Criminal Organization, which allegedly used a casino in a special economic zone in Laos to facilitate drug trafficking, human trafficking, money laundering, bribery and wildlife trafficking;²⁰
- A range of individuals and entities associated with the Hizballah terrorist organization, a longstanding US sanctions target;²¹
- A Mexican music promoter who, according to OFAC, laundered money for drug cartels;²² and
- A Venezuelan-Italian fashion photographer who allegedly led an international prostitution ring.²³

¹⁷ *Treasury Sanctions Two Individuals and Five Entities Under Global Magnitsky*, US DEPARTMENT OF THE TREASURY (June 12, 2018), <https://home.treasury.gov/news/press-releases/sm0411>; *Treasury Sanctions Three Nicaraguan Individuals for Serious Human Rights Abuse and Corrupt Acts*, US DEPARTMENT OF THE TREASURY (July 5, 2018), <https://home.treasury.gov/news/press-releases/sm422>; *Treasury Sanctions Commanders and Units of the Burmese Security Forces for Serious Human Rights Abuses*, US DEPARTMENT OF THE TREASURY (Aug. 17, 2018), <https://home.treasury.gov/news/press-releases/sm460>.

¹⁸ *Treasury Sanctions Two Individuals and Five Entities Under Global Magnitsky*, US DEPARTMENT OF THE TREASURY (June 12, 2018), <https://home.treasury.gov/news/press-releases/sm0411>; *Treasury Sanctions Fourteen Entities Affiliated with Corrupt Businessman Dan Gertler Under Global Magnitsky*, US DEPARTMENT OF THE TREASURY (June 15, 2018), <https://home.treasury.gov/news/press-releases/sm0417>.

¹⁹ *Treasury Sanctions Turkish Officials with Leading Roles in Unjust Detention of US Pastor Andrew Brunson*, US DEPARTMENT OF THE TREASURY (Aug. 5, 2018), <https://home.treasury.gov/news/press-releases/sm453>.

²⁰ *Treasury Sanctions the Zhao Wei Transnational Criminal Organization*, US DEPARTMENT OF THE TREASURY (Jan. 30, 2018), <https://home.treasury.gov/news/press-releases/sm0272>.

²¹ *Treasury Targets Hizballah Financial Network in Africa and the Middle East*, US DEPARTMENT OF THE TREASURY (Feb. 2, 2018), <https://home.treasury.gov/news/press-releases/sm0278>; *Treasury Continues to Expose and Disrupt Hizballah’s Financial Support Networks*, US DEPARTMENT OF THE TREASURY (Oct. 4, 2018), <https://home.treasury.gov/news/press-releases/sm501>; *Treasury Sanctions Key Hizballah, IRGC-QF Networks in Iraq*, US DEPARTMENT OF THE TREASURY (Nov. 13, 2018), <https://home.treasury.gov/news/press-releases/sm546>.

²² *Treasury Sanctions Music Promoter and Prostitution Ring Leader Linked to Mexican Cartels*, US DEPARTMENT OF THE TREASURY (April 6, 2018), <https://home.treasury.gov/news/press-releases/sm0339>.

²³ *Id.*



C. CYBER ACTIVITY-RELATED SANCTIONS

The US has increasingly turned to sanctions to address concerns about hacking and other types of cyber-enabled activities.

In 2018, OFAC took action, in concert with the US Department of Justice, to sanction an Iranian entity called the Mabna Institute, and 10 Iranian individuals, for stealing intellectual property and data from hundreds of US and third-country universities and a media company.²⁴ OFAC also imposed sanctions on a North Korean computer programmer and his employer for the 2014 cyber attack on Sony Pictures Entertainment, the 2016 cyber theft of US\$81 million from the Central Bank of Bangladesh and the 2017 “WannaCry 2.0” ransomware attack.²⁵ Additionally, OFAC imposed sanctions on five entities and 19 individuals for participating in malign Russian cyber activity, including attempted interference in US elections, destructive cyber attacks and intrusions targeting critical infrastructure such as the energy, nuclear, aviation and critical manufacturing sectors.²⁶

D. CRYPTOCURRENCY

OFAC issued new guidance in 2018 on how it views digital currency, such as bitcoin and other so-called cryptocurrencies.²⁷ These new technologies present new possibilities to evade or circumvent sanctions, anti-money laundering (AML) laws and other regulations. As a result, they have been a focus of regulatory attention.

In a series of new FAQs, OFAC stated that the sanctions compliance obligations of US Persons are the same, regardless of whether a transaction is denominated in virtual currency or traditional “fiat” currency. This approach is consistent with regulatory policy that “virtual currency businesses are subject to comprehensive, routine AML/CFT examinations, just like financial institutions in the securities and futures markets...”²⁸ The FAQs also defined “virtual currency,” “digital currency,” “digital currency wallet” and “digital currency address.”

In November 2018, for the first time ever, OFAC included digital currency addresses in the identifying information when it designated two Iran-based individuals who converted the proceeds of a ransomware scheme from bitcoin into Iranian rial.²⁹

²⁴ *Treasury Sanctions Iranian Cyber Actors for Malicious Cyber-Enabled Activities Targeting Hundreds of Universities*, US DEPARTMENT OF THE TREASURY (March 23, 2018), <https://home.treasury.gov/news/press-releases/sm0332>.

²⁵ *Treasury Targets North Korea for Multiple Cyber-Attacks*, US DEPARTMENT OF THE TREASURY (Sept. 6, 2018), <https://home.treasury.gov/news/press-releases/sm473>.

²⁶ *Treasury Sanctions Russian Cyber Actors for Interference with the 2016 US Elections and Malicious Cyber-Attacks*, US DEPARTMENT OF THE TREASURY (March 15, 2018), <https://home.treasury.gov/news/press-releases/sm0312>.

²⁷ *OFAC FAQs: Sanctions Compliance- Questions on Virtual Currency FAQs # 559-594 and #646-647*, US DEPARTMENT OF THE TREASURY, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx#vc_faqs.

²⁸ *US Department of the Treasury Under Secretary Sigal Mandelker Speech before the Securities Industry and Financial Markets Association Anti-Money Laundering & Financial Crimes Conference*, US DEPARTMENT OF THE TREASURY (Feb. 13, 2018), <https://home.treasury.gov/news/press-release/sm0286>.

²⁹ *Cyber-related Designations; Publication of New Cyber-related FAQs*, US DEPARTMENT OF THE TREASURY (Nov. 28, 2018), <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20181128.aspx>.

E. NICARAGUA

The US created a new list-based sanctions program related to Nicaragua. On November 27, 2018, President Trump issued Executive Order 13851, authorizing sanctions against the government of Nicaragua and individuals and entities engaged in Nicaragua in human rights abuses; threatening the peace, security or stability of the country; or deceptive practices or corruption.³⁰ OFAC has already imposed sanctions under EO 13851 against Nicaraguan Vice President Rosario Maria Murillo De Ortega (who is also the first lady), and Nestor Moncada Lau, National Security Advisor to the Nicaraguan President and Vice President.

In addition to EO 13851, the president signed into law the Nicaraguan Investment Conditionality Act (NICA).³¹ This new statute instructs the US executive directors, appointees and representatives of the World Bank and other international financial institutions to use their “voice, vote and influence” to block loans or other assistance to the government of Nicaragua until the US State Department certifies that it is taking certain specific steps to strengthen democratic institutions.

While neither EO 13851 nor NICA imposes a comprehensive embargo on Nicaragua, the measures do significantly raise the risks of doing business with or involving current or former Nicaraguan government officials, in particular, and the entities they own or control. Additionally, the US has also utilized Glomag to target Nicaraguan government officials, further demonstrating how that program has been used as an overarching global designation authority.³²



³⁰ Exec. Order 13851 (Nov. 27, 2018).

³¹ Nicaraguan Investment Conditionality Act (NICA) of 2017, Pub. L. No: 115-335 (2018).

³² *Treasury Sanctions Three Nicaraguan Individuals for Serious Human Rights Abuse and Corrupt Acts*, US DEPARTMENT OF THE TREASURY (July 5, 2018), <https://home.treasury.gov/news/press-releases/sm422>.

Published civil penalty settlements

OFAC's published 2018 civil penalty settlements span a range of sanctions programs and authorities, as well as relevant industries.

OFAC published a total of seven civil penalty settlements in 2018, with an aggregate penalty amount of US\$71,510,561. While these totals may not seem significant when compared to prior years, the headline figures do not fully reflect the enforcement environment. This is because only some enforcement actions are settled on terms requiring public disclosure, and because many enforcement actions span several years between the time of the conduct at issue and the investigation, negotiations and settlement process.

Additionally, the 2018 figures reflect only OFAC's portion of each settlement. They do not include, for example, the penalties assessed by other regulators, which, as discussed below, are significant. They also do not include the 2018 developments in the multi-agency enforcement action against Chinese telecom company ZTE Corp.—such as the June 11, 2018 agreement by ZTE to pay US\$1 billion and place an additional US\$400 million in suspended penalty money in escrow, along with a range of compliance commitments.

A. ERICSSON

On June 6, 2018, telecom companies Ericsson, Inc. of Texas and Ericsson, AB of Stockholm (collectively, Ericsson) reached a US\$145,893 settlement agreement with OFAC for an apparent violation of US sanctions in effect against Sudan (while these sanctions were still in effect).³³ According to the settlement, Ericsson employees, together with employees of a third company, conspired to export and re-export a satellite hub and satellite-related

services from the United States to Sudan in violation of US sanctions. The transaction occurred despite warnings from Ericsson's personnel that it would violate Ericsson's internal policies regarding sanctions compliance. OFAC said, among other things, that this "enforcement action highlights the importance of empowering compliance personnel to prevent transactions prohibited by US economic and trade sanctions."³⁴

B. EPSILON ELECTRONICS, INC.

On September 13, 2018, OFAC announced a US\$1.5 million settlement agreement with Epsilon Electronics, Inc., in connection with apparent violation of the Iran sanctions.³⁵ According to the settlement, Epsilon knew or should have known that most, if not all, of the products it sold to a distributor were then transferred or sold on to Iran. This settlement came after two years of litigation—a relatively rare occurrence in US sanctions—in which Epsilon challenged OFAC's original penalty notice in federal district court and then on appeal to the DC Circuit.

C. JPMORGAN CHASE BANK, NA

On October 5, 2018, OFAC announced a US\$5,263,171 settlement with JPMorgan Chase Bank, NA (JPMC) in connection with apparent violations of several US sanctions programs.³⁶ According to the settlement, JPMC operated a "net settlement" system for one of its customers to reconcile various sums owed between the customer's members, and a non-US counterparty and its members. Approximately 0.14 percent of the total amount of funds processed through the net settlement system were attributable to the interests of US-sanctioned persons.

³³ *Ericsson, Inc. and Ericsson AB Settle Potential Civil Liability for an Apparent Violation of the Sudanese Sanctions Regulations*, US DEPARTMENT OF THE TREASURY (June 6, 2018), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20180606_ericsson.pdf.

³⁴ *Id.*

³⁵ *Epsilon Electronics, Inc. Settles Potential Civil Liability for Alleged Violations of the Iranian Transactions and Sanctions Regulations and Related Claims*, US DEPARTMENT OF THE TREASURY (Sept. 13, 2018), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20180913_epsilon.pdf.

³⁶ *JPMorgan Chase Bank, N.A. Settles Potential Civil Liability for Apparent Violations of Multiple Sanctions Programs*, US DEPARTMENT OF THE TREASURY (Oct. 5, 2018), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/jpmc_10050218.pdf.

D. SOCIÉTÉ GÉNÉRALE S.A.

On November 19, 2018, OFAC and several other US federal, state and local regulators announced a settlement with Société Générale in connection with apparent violations of US sanctions against Cuba, Iran and Sudan.³⁷ The overall penalty amount was approximately US\$1.34 billion, of which approximately US\$54 million was paid to OFAC. The overall sum is the second largest penalty ever imposed against a financial institution for US sanctions violations.

E. COBHAM HOLDINGS, INC.

On November 27, 2018, OFAC announced a settlement with Cobham on behalf of its former subsidiary, Aeroflex/Metelics, Inc. (Metelics) for violations of the Russia sanctions. The amount of the penalty was US\$87,507.³⁸ The shipments at issue occurred prior to Cobham's sale of Metelics and appeared to have been caused by deficiencies in the sanctions screening software. That OFAC assessed the penalty to Cobham—not to the acquirer of Metelics—underscores the importance and value of pre-acquisition sanctions due diligence.

F. YANTAI JEREH OILFIELD SERVICES GROUP CO., LTD.

On December 12, 2018, OFAC announced a settlement with Yantai Jereh Oilfield Services Group Co., Ltd., and its affiliated companies and subsidiaries worldwide (Jereh Group) in connection with apparent violations of the Iran sanctions.³⁹ The penalty amount was US\$2,774,972. The settlement agreement notes that Jereh Group exported or re-exported, or attempted to export or reexport, US-origin items to Iranian end-users via China. Jereh Group also exported certain US-origin items to China with knowledge or reason to know that the items were intended for production of, commingling with or incorporation into

goods made in China to be supplied to Iran. Jereh Group also entered into a settlement agreement with BIS in connection with these same activities.

G. ZOLTEK COMPANIES, INC.

On December 20, 2018, OFAC announced a settlement with Zoltek, a holding company headquartered in Missouri, and the owner of Zoltek Corporation (US) and Zoltek Vegyipari ZRT (Hungary).⁴⁰ The penalty amount was US\$7,772,102, and the apparent violations involved the purchase of certain fibers from a sanctioned Belarusian company. OFAC cautioned that this “enforcement action highlights the risks for companies with overseas operations that do not implement OFAC compliance programs or that implement compliance programs that fail to address the sanctions regulations administered by OFAC.”⁴¹

Additionally, OFAC said that “this case highlights the need for US parent companies to take care to segregate certain business operations of their overseas subsidiaries so that the US parent and its employees do not violate US sanctions regulations by facilitating the actions of its subsidiaries.”⁴² The settlement agreement between Zoltek and OFAC details more than two dozen compliance enhancements that Zoltek committed to undertake as part of the resolution. These enhancements supplement the resources OFAC has already made publicly available concerning its expectations for corporate sanctions compliance programs.

³⁷ *Société Générale S.A. Settles Potential Civil Liability for Apparent Violations of Multiple Sanctions Programs*, US DEPARTMENT OF THE TREASURY (Nov. 19, 2018), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20181119_socgen_web.pdf.

³⁸ *Cobham Holdings, Inc. Settles Potential Civil Liability for Apparent Violations of the Ukraine Related Sanctions Regulations*, US DEPARTMENT OF THE TREASURY (Nov. 27, 2018), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20181127_metelics.pdf.

³⁹ *Yantai Jereh Oilfield Services Group Co., Ltd. Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations*, US DEPARTMENT OF THE TREASURY (Dec. 12, 2018), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20181212_jereh.pdf.

⁴⁰ *Zoltek Companies, Inc. Settles Potential Civil Liability for Apparent Violations of the Belarus Sanctions Regulations*, US DEPARTMENT OF THE TREASURY (Dec. 20, 2018), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20181220_zoltek.pdf.

⁴¹ *Id.*

⁴² *Id.*



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