

# Financial sanctions as a tool of foreign policy

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# Agenda

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- Introduction
- China/Hong Kong sanctions developments
- Human Rights sanctions developments
- Additional U.S. & EU sanctions developments
- Compliance considerations
  - Practical steps
  - OFAC's "50% rule" vs EU ownership/control
  - Regulatory expectations
- Q&A



# China/Hong Kong sanctions developments

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## U.S. developments

- 14/07/2020 – Hong Kong Autonomy Act (HKAA) signed into law
  - No designations yet
- 14/07/2020 – Executive Order 13936 on Hong Kong Normalization
  - Several parties sanctioned
- Have to consider “primary” and “secondary” sanctions aspects of the new authority



## EU developments

- 28/07/2020 - Announcements of export control restrictions involving technology that could be used for internal repression, interception of internal communications or cyber surveillance
- Member states taking unilateral stricter measures involving HK extradition treaty, and licensing decisions



## UK developments

- Extension of the arms embargo in place for China to Hong Kong
- HK removed as permitted destinations from 22 OGELs
- Suspension of the HK extradition Treaty

# Human Rights sanctions

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## U.S. developments

- Pre-existing authority under Global Magnitsky Executive Order
  - Has been used for numerous designations
- US Govt. Advisory on Xinjiang
  - Supply chain risks
- Designations of ICC members



## EU developments

- No EU-wide Human-rights or Magnitsky type sanctions regime in force yet but legislative discussions on-going
- December 2019 – 27 EU Foreign affairs ministers announce support for a EU-wide regime
- Discussions re-surfacing under the German Presidency of the Council of the EU in the context of the Navalny poisoning investigations
- Potential targeted asset-freezing measures against Russia/Russian individuals involved in the poisoning investigations



## UK developments

- New independent UK Human Rights sanctions regime under the Global Human Rights Sanctions Regulations 2020 (the Regulations), pursuant to the Sanctions and Anti-Money Laundering Act 2018 (SAMLA)
- 49 designations made this year – potential for more targeted designations re China/HK and Russia

# Additional U.S. sanctions developments – Nord Stream 2

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## State Department Guidance

- In July, State substantially revised its interpretation of section 232 of CAATSA
- Nord Stream 2 and TurkStream (2<sup>nd</sup> line) are now within scope
- Activities after 15/07/20 can create exposure if they meet relevant monetary thresholds

## Pending Legislation

- FY21 NDAA likely to include provision authorizing sanctions targeting foreign persons engaged in provision of underwriting services or (re)insurance for vessels engaged in “pipe-laying activities” for the construction of NS2
- Secondary sanctions
- Potential retroactive application dating back to December 2019



# Additional EU sanctions developments

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## Cyber-attacks

- New dedicated criteria for designations consisting of asset freeze and travel ban of
  - persons and/or entities responsible for cyber-attacks or attempted cyber-attacks, as well as
  - those involved in or offering financial, technical or material support for these attacks and those who assist, encourage, facilitate or are associated with them.



## Turkey

- Discussions on possible EU sanctions to Turkey for its drilling in Mediterranean (in addition to 2 targeted sanctions on physical persons already imposed)
- To be discussed at the European Council meeting on 24-25 September
- Could include listing of ships involved in the oil exploration activities; sectoral sanctions (sales/exports of items used in oil exploration, goods and technology transfers); ban on lending to Turkish banks and industries by EU state banks; possibility for reductions in EU funds to Turkey; and travel bans.

# Sanctions compliance: Practical steps

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## General Points

- No “one size fits all” approach

Risk assessment (by reference to business lines and on an operational level)

Screening – determine start-point and frequency and information screened

Establish clear internal policies, guidance and training

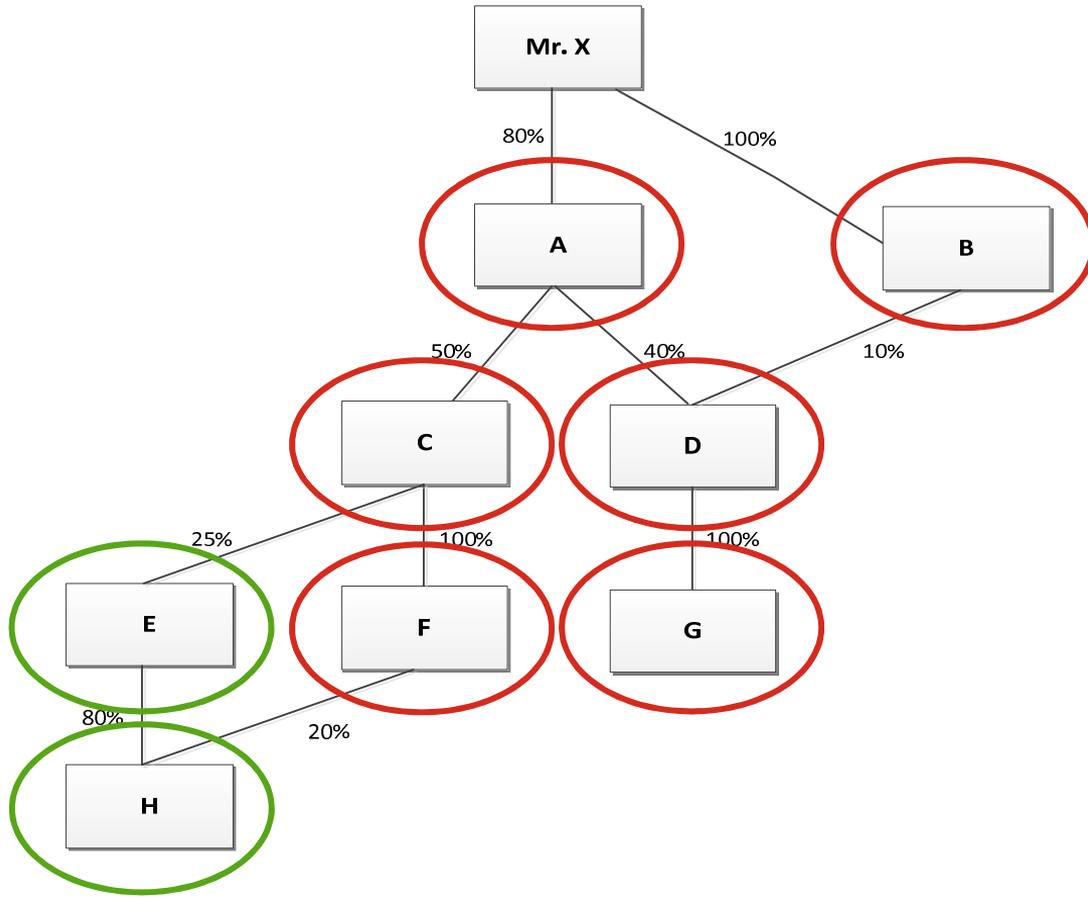
Establish clear lines of reporting and procedures for dealing with risks arising

Audit regularly

Liaise with relevant regulatory authority and seek guidance where in doubt. Apply for a licence to proceed

Alert employees to sanctions and export controls

# What does OFAC's "50% rule" mean in practice?



- Apply “cascading” (waterfall) analysis, going step-by-step down the corporate ladder, with no dilution of interest
- Apply “aggregation” principle by combining interest held by sanctioned parties targeted by the same type of sanctions (e.g., combine interest of two SDNs)

# EU and UK ownership and control test

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## Ownership test

- Key criterion for “ownership” is the **possession of more than 50% of the proprietary rights of an entity or having a majority interest in it**. Includes both direct and indirect ownership.
- Example: *Entity X is not listed on OFSI’s consolidated list. However, your research shows that the majority owner of Entity X is designated Entity Y. As the ownership criterion has been met, Entity X is also subject to the same restrictions as designated Entity Y.*
- For minority interests – check CONTROL criteria

## Control test

- Having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body.
- Having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year.
- Controlling alone a majority of shareholders' or members' voting rights in that legal person or entity.
- Having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association.
- Having the power to exercise the right to exercise a dominant influence referred to in the point above, without being the holder of that right (including by means of a front company).

# What do the regulators expect?



## US - OFAC

OFAC's Compliance Framework identifies and describes "five essential components of compliance":

- Senior management commitment, including stating that “[e]ffective management support includes the **provision of adequate resources to the compliance unit(s) and support for compliance personnel’s authority within an organization.**”
- Risk assessment (refers to OFAC Risk Matrix)
- Internal controls
- Testing and auditing
- Training



## UK - OFSI / FCA

- FCA: “Guidance in the Guide should be applied in a risk-based, proportionate way. This includes taking into account the size, nature and complexity of a firm when deciding whether a certain example of good or poor practice is appropriate to its business.”
- OFSI: “*Each organisation should assess their own risks and put due diligence measures in place to manage these risks.* However, we can provide tips.
  - Make yourself aware of the financial sanctions imposed by the UK and other jurisdictions.
  - Assess all aspects of your proposed project to identify if any partners, contractors or financial institutions appear on the above sanctions list.
  - Tailor your compliance approach on the likelihood of you dealing with these individuals and organisations, directly or indirectly.
  - Consider other financial crime risks such as: terrorist financing, corruption or laundering the proceeds of crime – they all form part of a comprehensive compliance approach.



## France – DG Trésor/ACPR

- Guide de Bonne conduite de la DG Trésor:



- Lignes directrices conjointes:



Juin 2016

Lignes directrices conjointes de la Direction Générale du Trésor et de l'Autorité de contrôle prudentiel et de résolution sur la mise en œuvre des mesures de gel des avoirs

Document à usage explicatif  
(Version mise à jour au 17/06/2016)



# Comparative overview of latest enforcement actions



## U.S. developments

- 26/02/20 - Swiss-based Société Internationale de Télécommunications Aéronautiques SCRL (“SITA”) paid \$7.8 mil to OFAC to settle alleged violations involving use of U.S.-based servers and routing messages through the U.S. for transactions with SDNs



## French developments

- Banque Postale was fined €50m in December 2018 for failures in its systems that are designed to prevent the transfer of money to terrorists, which resulted in 75 transactions over 8 years on behalf of persons subject to EU asset freezes. Banque Postale has lodged an appeal of ACPR's decision with the Conseil d'Etat.
- Lafarge prosecution



## UK developments

Date	Name	Sector	Regs	Reason	Penalty	Voluntary disclosure	Report
21 January 2019	<b>Raphael &amp; Sons plc</b>	Banking	Council Reg (EU) 270/2011 Egypt (S.I. 2011/887)	Dealing with funds belonging to a designated person, without a licence	£5000	Yes	<a href="#">Report link</a>
08 March 2019	<b>Travelex UK Ltd</b>	Financial services	Council Reg (EU) 270/2011 Egypt (S.I. 2011/887)	Dealing with funds belonging to a designated person, without a licence	£10,000	No	<a href="#">Report link</a>
09 September 2019	<b>Telia Carrier UK Limited</b>	Telecommunications	Council Regulations (EU) No 36/2012 enforced by the Syria (European Union Financial Sanctions) Regulations 2012 (S.I. 2012 No 129)	Making economic resources available to a designated person, without a licence	£146,341	No	<a href="#">Report link</a>
18 February 2020	<b>Standard Chartered Bank</b>	Banking	EU Council Regulation 833/2014, Ukraine (European Union Financial Sanctions) (No.3) Regulations 2014	Making funds available to a designated person, without a licence	£20.47m (£7.69m & £12.77m)	Yes	<a href="#">Report link</a>



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