

## HOW TO APPROACH A NEW OFFICE OF FOREIGN ASSETS CONTROL SANCTIONS PROGRAM\*

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I would like to speak with you about how to approach a new sanctions program implemented by my client, the Office of Foreign Assets Control (OFAC). I will examine both the legal authorities involved and the practical aspects of advising a client about how to handle business disruptions caused by sanctions. The new sanctions program also requires that you know the limitations on your own representational activities. I will go through a series of questions to ask yourself in such situations. Please bear in mind that these comments are mine, not those of OFAC, the General Counsel's Office, or the Treasury Department.

### *I. WHAT IS THE SCOPE OF THE EXECUTIVE ORDER OR STATUTE IMPOSING THE SANCTIONS?*

This question is the umbrella for our examination of the legal aspects of the new program. The scope depends on a series of choices among the typical building blocks of sanctions programs made by the President or the Congress based on the particular foreign policy situation facing the United States.

#### A. Who Is the Target?

First, you need to determine who is the focus of the sanctions. Is the target the government of a foreign country, e.g., as Burma, Sudan, Iran, or Libya, and, if so, are its nationals or residents also included, as is true of Cuban and North Korean nationals? Is the target an organization, such as the UNITA rebels in Angola, terrorists threatening the Middle East peace process, foreign terrorist

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\* A version of this presentation was delivered on November 3, 1997 at the International Sanctions Symposium at Stetson University College of Law.

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organizations designated by the Secretary of State, or particular individuals such as drug traffickers centered in Colombia?

One OFAC program targets multiple countries, imposing licensing requirements for “person[s] within the United States” who are involved in offshore transactions that result in the shipment of arms or nuclear materials to the former Communist Bloc.<sup>1</sup> OFAC sanctions are tailored to the foreign policy or military situation facing the United States. One needs a good understanding of the target to determine which types of transactions may be licensable and which are clearly cut off by the policies behind the sanctions.

A frequent means of ensuring that the target is unable to use front companies or agents to circumvent sanctions is the inclusion of persons “owned or controlled by” or “acting for or on behalf of” the target in the definition of the target country, government, or group.<sup>2</sup> These additional persons are often located outside the target country, and are identified either through the direct factual knowledge of a client concerning an agency relationship or ownership or control of an entity by the target, or by OFAC's designation and publication of specific names and identifying information of controlled persons, front companies, and agents in the Federal Register.<sup>3</sup>

#### B. Who Is Required to Comply with the Sanctions?

Most prohibitions in OFAC programs affect only U.S. citizens, permanent residents of the United States, persons organized under U.S. law, and persons actually located in the United States (collectively “U.S. persons”), as well as activities occurring in the United States.<sup>4</sup> The older programs<sup>5</sup> prohibit actions by “persons subject to the jurisdiction of the United States” or “persons within the United States” — terms that include U.S. persons plus foreign entities they own or control. These latter programs are extraterritorial, in that they assert jurisdiction over foreign persons having a nexus with the

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1. 31 C.F.R. § 505.10 (1997).

2. *See, e.g.*, 31 C.F.R. §§ 500.306, 536.312(c), 550.304, 590.307, 595.311(a)(3) (1997).

3. *See* 31 C.F.R., ch. V., app.'s A–C (1997).

4. *See, e.g., id.* §§ 550.203–207 (1997) (for example, when a nonresident alien causes an exportation from or importation into the United States); *id.* §§ 550.201–550.202 (1997).

5. North Korea, the Transaction Control Regulations, Cuba, and the 1979 Iran hostage crisis sanctions. *See* 31 C.F.R. pts. 500, 505, 515, 535 (1997).

United States.

### C. What Delegations of Implementation Authority Are Made, if Any?

In sanctions imposed by the President, the vehicle is ordinarily an executive order, in which a delegation of authority is made. Statutory programs may either delegate authority to the President or directly to an agency within the executive branch. The former require action by the President, normally in the form of an executive order, if authority to implement the sanctions is to be delegated outside the White House. An example is Executive Order No. 13,047, which imposed sanctions on Burma.<sup>6</sup> It was based on two primary authorities. The so-called Cohen-Feinstein Amendment<sup>7</sup> directed specific presidential action prohibiting new investment in Burma upon the President's making certain findings.<sup>8</sup> In addition, the President exercised his authority pursuant to the International Emergency Economic Powers Act (IEEPA),<sup>9</sup> to declare a national emergency with respect to Burma,<sup>10</sup> and to direct specific measures under the President's own emergency authority. Executive Order 13,047 delegated both authorities in the following language:

Sec. 5. I hereby delegate to the Secretary of State the functions vested in me under section 570(c) and (d) of the Act, to be exercised in consultation with the heads of other agencies of the United States Government as appropriate.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by section 570(b) of the Act and by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate the authority set forth in this order to other officers and agencies of the United States Government. All agencies of the United States Government

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6. Exec. Order No. 13,047, 62 Fed. Reg. 28,301 (1997).

7. Pub. L. No. 104-208, 110 Stat. 3009-166 (codified in the Omnibus Consolidated Appropriations Act of 1997 codified in scattered sections of the U.S.C.).

8. *See* 50 U.S.C.A. §§ 1701-1706 (West Supp. 1997).

9. *Id.*

10. *See* Exec. Order No. 13,047, 62 Fed. Reg. 28,301 (1997).

are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.<sup>11</sup>

#### D. Which Statutes Are Invoked?

When a single-purpose statute underlies a sanctions program, the prohibitions and other provisions necessary to prepare yourself to advise clients will be contained in that statute, as is the case with OFAC's Foreign Terrorist Organizations Sanctions Regulations,<sup>12</sup> which implements Sections 302 and 303 of the Antiterrorism and Effective Death Penalty Act of 1996.<sup>13</sup> Other examples include the Cohen-Feinstein Amendment with respect to new investment in Burma,<sup>14</sup> and the Comprehensive Anti-Apartheid Act of 1986,<sup>15</sup> which imposed now-terminated sanctions on South Africa. Such statutes are likely to permit the President and an implementing federal agency less flexibility than is the case when the President is the imposer of sanctions.

On the other hand, if a generic sanctions statute, such as IEEPA,<sup>16</sup> the Trading with the Enemy Act (TWEA),<sup>17</sup> or the United Nations Participation Act (UNPA),<sup>18</sup> underlies the sanctions program, the executive order rather than the generic statute will determine the sanctions' scope.<sup>19</sup> TWEA, IEEPA, and UNPA provide a framework for presidential action, authorizing broad authorities if the conditions for imposing sanctions are met. TWEA and IEEPA provide generally parallel powers to the President; TWEA in time of declared war,<sup>20</sup> and IEEPA in peacetime periods of national emergency.<sup>21</sup> UNPA provides domestic implementation authority for

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11. *Id.*

12. 62 Fed. Reg. 52,493, 52,495–52,501 (1997) (to be codified at 31 C.F.R. pt. 597).

13. 8 U.S.C.A. § 1189 (West Supp. 1997) (Section 302 of the Act); 18 U.S.C.A. § 2339B (West Supp. 1997) (Section 303 of the Act).

14. *See* Pub. L. No. 104-208 § 570(b), 110 Stat. 3009-166 (codified in the Omnibus Consolidated Appropriations Act of 1997).

15. 22 U.S.C.A. §§ 5001–5116 (repealed Nov. 23, 1993).

16. 50 U.S.C.A. §§ 1701–1706 (West Supp. 1997).

17. *Id.* app. §§ 1–44 (West 1990 & Supp. 1997).

18. 22 U.S.C.A. § 287c (West Supp. 1997).

19. That is, the general authority in the statute is permissive, and only presidential exercise of the authority provides content to the particular sanctions program.

20. *See* 50 U.S.C.A. app. § 5(b) (West Supp. 1997).

21. *See id.* §§ 1701–1702 (West Supp. 1997).

mandatory provisions of U.N. Security Council resolutions under chapter 41 of the United Nations Charter.<sup>22</sup> Nonetheless, the specific features of each generic sanctions statute will mark the sanctions program.

*1. Are There Areas of Statutory Exemption  
from Regulation?*

IEEPA and TWEA both provide exemptions from presidential regulation for trade between any countries involving the exchange of information and informational materials other than those controlled for export for national security or for nonproliferation and antiterrorism foreign policy purposes.<sup>23</sup> The UNPA does not contain this carve-out.

IEEPA was amended on April 30, 1994, to prohibit the imposition of new restrictions on travel after that date.<sup>24</sup> This is the reason OFAC regulations do not restrict the travel transactions of Middle East terrorist groups and the Cali cartel, and provide no restrictions on travel to Iran, Burma, or Sudan, or on travel from those countries to the United States.<sup>25</sup>

IEEPA exempts personal communications, which transfer nothing of value, and except where limited by the President for specified reasons, donations of articles intended to relieve human suffering, such as food, clothing, and medicine.<sup>26</sup>

Note that, while the UNPA does not similarly restrict presidential authority, it is available to implement only mandatory provisions of a Security Council resolution.<sup>27</sup> Thus, much of the hortatory language typical of such resolutions requires other authority to support domestic implementation.

*2. What Is the Scope of Enforcement Authority?*

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22. See 22 U.S.C.A. § 287c (West Supp. 1997).

23. See 50 U.S.C.A. § 1702(b)(3) (West Supp. 1997); *id.* app. § 5(b)(4) (West Supp. 1997).

24. See 50 U.S.C.A. § 1702(b)(4) (West Supp. 1997) (amended 1994).

25. See 62 Fed. Reg. 45,098 (1997). However, other federal agencies may impose restrictions on visas and transportation by American carriers to and from those countries.

26. See 50 U.S.C.A. § 1702(b)(1)–(2) (West Supp. 1997).

27. 22 U.S.C.A. § 287c(a) (West Supp. 1997).

Wide variation exists among single-purpose and generic sanctions statutes as to enforcement mechanisms. IEEPA,<sup>28</sup> TWEA,<sup>29</sup> and the UNPA<sup>30</sup> all provide for criminal penalties, and IEEPA<sup>31</sup> and TWEA<sup>32</sup> carry civil penalties as well. TWEA also provides for civil forfeiture.<sup>33</sup> Under TWEA, however, civil penalties or forfeiture may be imposed only after an opportunity for a full hearing on the record with pre-hearing discovery.<sup>34</sup> OFAC entertains requests for hearings and provides pre-hearing discovery pursuant to subpart G of 31 C.F.R. parts 500 and 515.<sup>35</sup> Regulations to establish hearing procedures were recently published.<sup>36</sup>

Certain sanctions statutes are silent about their enforcement mechanism. For example, sections 504 and 505 of the International Security and Development Cooperation Act of 1985 (ISDCA),<sup>37</sup> provide authority for certain import and export sanctions against Libya and import sanctions against other terrorism-supporting countries; however, no enforcement mechanism is provided. In such situations, OFAC relies on other authorities, such as Customs penalties for importation "contrary to law, to achieve the goals of the statute."<sup>38</sup>

### 3. *What Mechanism Is There for Judicial Review?*

In the event that your client wishes to challenge an administrative decision that imposes a sanction, what recourse do the sanctions authorities provide? OFAC entertains requests for administrative reconsideration of a license denial based on a fuller record or changed circumstances.<sup>39</sup> In the absence of specific review provisions, the Administrative Procedure Act provides for federal district court review of final agency actions challenged as arbitrary or ca-

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28. 50 U.S.C.A. § 1705(b) (West Supp. 1997).

29. *Id.* app. § 16(a).

30. 22 U.S.C.A. § 287c(b) (West Supp. 1997).

31. 50 U.S.C.A. § 1705(a) (West Supp. 1997).

32. *Id.* app. § 16(b)(1).

33. 50 U.S.C.A. app. § 16(b)(2) (West Supp. 1997).

34. *See* 5 U.S.C.A. §§ 554–556 (West 1996); 50 U.S.C.A. app. § 16(b)(3) (West Supp. 1997).

35. *See* 31 C.F.R. §§ 500.705–706 (1997).

36. *See* 63 Fed. Reg. 10,321–38 (1998) (to be codified at 31 C.F.R. pts. 500, 505, 515).

37. 22 U.S.C.A. §§ 2349aa-8, 2349aa-9 (West 1990).

38. 19 U.S.C.A. § 1595(a) (West Supp. 1997).

39. *See* 31 C.F.R. § 501.801(b)(4) (1997).

precious.<sup>40</sup>

#### 4. *What Provision Is Made for Termination of Sanctions?*

Once imposed, what statutory provisions govern the termination of sanctions? Certain specific sanctions statutes provide milestones for sanctions removal, such as the termination of apartheid in South Africa,<sup>41</sup> or the establishment of a democratic government in Cuba.<sup>42</sup> Grandfathered peacetime sanctions programs under TWEA<sup>43</sup> lapse unless the President, by September 14 of each year, determines that continued exercise of emergency powers with respect to a program is in the national interest.<sup>44</sup> National emergencies declared under IEEPA, and the emergency authorities exercised under them, lapse on their anniversary dates unless continued annually by the President.<sup>45</sup> At present, IEEPA national emergencies under which sanctions implementation is delegated to OFAC are in effect with respect to Burma,<sup>46</sup> Colombian narcotics traffickers,<sup>47</sup> Iran (1979 and 1995),<sup>48</sup> Iraq,<sup>49</sup> Libya,<sup>50</sup> the Sudan,<sup>51</sup> UNITA rebels in Angola,<sup>52</sup> terrorists threatening the Middle East peace process,<sup>53</sup> and the Federal Republic of Yugoslavia (Serbia and Montenegro) and areas of Bosnia and Herzegovina controlled by

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40. See 5 U.S.C.A. § 702 (West 1996).

41. See Exec. Order No. 12,769, 56 Fed. Reg. 31,855 (1991), reprinted in 22 U.S.C.A. § 5061 (West Supp. 1997).

42. See 22 U.S.C.A. § 6064 (West Supp. 1997).

43. Programs include sanctions against North Korea and Cuba, and prohibitions on certain offshore munitions and nuclear trade. See 31 C.F.R. pts. 500, 505, 515 (1997).

44. See Pub. L. 95-223, § 101(b), 91 Stat. 1625; see also Presidential Determination No. 97-32, 62 Fed. Reg. 48,729 (1997) (the latest extension of TWEA programs).

45. See 50 U.S.C.A. § 1622(d) (West 1991).

46. See Exec. Order No. 13,047, 62 Fed. Reg. 28,301 (1997).

47. See Exec. Order No. 12,978, 60 Fed. Reg. 54,579 (1995).

48. See Exec. Order No. 13,059, 62 Fed. Reg. 44,531 (1997); Exec. Order No. 12,959, 60 Fed. Reg. 24,757 (1995); Exec. Order No. 12,957, 60 Fed. Reg. 14,615 (1995); Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (1979).

49. See Exec. Order No. 12,817, 57 Fed. Reg. 48,433 (1992); Exec. Order No. 12,722, 55 Fed. Reg. 31,803 (1990); Exec. Order No. 12,724, 55 Fed. Reg. 33,089 (1990).

50. See Exec. Order No. 12,543, 51 Fed. Reg. 875 (1986); Exec. Order No. 12,544, 51 Fed. Reg. 1,235 (1986).

51. See Exec. Order No. 13,067, 62 Fed. Reg. 59,989 (1997).

52. See Exec. Order No. 13,069, 62 Fed. Reg. 65,989 (1997); Exec. Order No. 12,865, 58 Fed. Reg. 51,005 (1993).

53. See Exec. Order No. 12,947, 60 Fed. Reg. 5,079 (1995).

Bosnian Serb forces.<sup>54</sup> IEEPA sanctions are normally terminated by executive order to preserve existing enforcement authorities for past violations.<sup>55</sup>

## II. WHAT IS AT STAKE FOR YOUR CLIENTS?

Once you have a handle on the legal scope of new sanctions, you must conduct a mental inventory of the sanctions' impact on your clients' interests. Here is a sample checklist of areas of concern. It is not exhaustive, and will likely raise other issues specific to your clients' businesses.

- **Existing contracts for trade:** Is there a grace period for completion of performance? Are goods on the high seas? Are there outstanding warranty obligations? Does the client have personnel in the target country?
- **Financial transactions:** How is the client's business financed? Are there outstanding payment obligations? Does the client have U.S.-confirmed letters of credit to back up target country banks' financing undertakings? Does the client do foreign business on open account? Are the target country's accounts blocked? Is licensing available to authorize payments to or from the target?
- **Intellectual property:** Does the client have intellectual property registered in the target country? Do the sanctions permit continued renewal of intellectual property? Must payments for intellectual property protection be made into a blocked account in the United States? Is the client dependent upon U.S. intellectual property of a target country national? Can royalties be paid?
- **Insurance or reinsurance undertakings to third-country nationals:** Does a multinational client have group-wide insurance policies covering subsidiaries or personnel still active in the target country? If so, can a claim payment be made to third-

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54. See Exec. Order No. 12,831, 58 Fed. Reg. 5,253 (1993); Exec. Order No. 12,846, 58 Fed. Reg. 25,771 (1993); Exec. Order No. 12,808, 57 Fed. Reg. 23,299 (1992); Exec. Order No. 12,810, 57 Fed. Reg. 24,347 (1992).

55. See 50 U.S.C.A. § 1622(a) (West 1991).

country employees for health, life, or automobile insurance claims arising in the target country? Are target country insurance or reinsurance companies included in insurance or reinsurance pools that insure the client's risks? Is the client in an existing pool insuring or reinsuring target country risks?

- **Existing liens, attachments, or judgments against blocked property or against a blocked person:** Can existing liens against newly-blocked property be executed upon?<sup>56</sup>
- **Mergers and acquisitions with target-country contracts in inventory:** Can the contracts be sold or canceled pre-merger? Will OFAC license their post-merger sale or cancellation? Would an asset acquisition rather than a stock acquisition be worthwhile to ensure the contracts are not picked up by the acquiring U.S. firm? Is there a sanction liability if the client fails to do an adequate pre-merger check of sanctions-related transactions?
- **Informational materials:** Is the client able to continue certain activities because of sanction exemptions to IEEPA or TWEA for trade in information and informational materials? Is the client engaged in journalism, which is often given special treatment under OFAC sanctions?
- **Travel-related transactions:** Does a client have family members in the target country who may wish to come to the United States or whom the client may wish to visit? Note the difference between the exemption in IEEPA and the lack of such an exemption for mandatory U.N. Security Council resolutions under the UNPA.
- **Chartered or leased U.S. aircraft and vessels:** Does the client own aircraft or vessels chartered to a target country national or to a third-country national for transportation to or in the target country? Is the percentage of charter time spent in such transportation the predominant use of the conveyance?
- **Inventory exception for trade:** Does the client trade with a third-country national knowing that person is purchasing spe-

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56. See *Dames & Moore v. Regan*, 453 U.S. 654 (1981).

cifically to re-export the goods or technology to the target country? Is the foreign purchaser buying for general inventory purposes, so that less than a majority of the particular items purchased will be resold to the target country?

### III. WHAT IS THE IMPACT OF THE SANCTIONS ON YOUR ABILITY TO PROVIDE LEGAL REPRESENTATION?

Sanctions often block contracts with target persons,<sup>57</sup> prohibit the exportation of services to a target country,<sup>58</sup> or prohibit the performance of contracts in support of industrial, commercial, public utility, or governmental projects in the target country.<sup>59</sup> In interpreting the term "exportation of services," OFAC applies a benefit test to determine whether an exportation to the target country has occurred.<sup>60</sup> If a benefit is realized in the target country, even when no one in the target country is a party to the service contract, OFAC will find a prohibited exportation of services.<sup>61</sup> A similar interpretation exists in determining whether performance of a service contract "supports" a commercial, industrial, public utility or governmental project in the target country. Thus, a provision of design services to a third-country general contractor for use on a Libyan water project would violate this prohibition.

Since legal representation falls within the service category,<sup>62</sup> the prohibition against exportation of services is of particular interest to attorneys. Of similar interest is the prohibition against transactions in blocked property, which bars performance of a (blocked) contract for the provision of legal services to a target government or other blocked person.<sup>63</sup> Legal advice on the structuring of a commercial transaction in a target country or due diligence review for a third-country underwriter of a target government's new bond issue would also be barred by the prohibition on the performance of contracts in support of a governmental project in the target country.

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57. *See, e.g.*, Exec. Order No. 13,067, 62 Fed. Reg. 59,989 § 1 (1997).

58. *See, e.g., id.* § 2(b).

59. *See, e.g., id.* § 2(d).

60. *See, e.g.*, 31 C.F.R. § 585.416 (1997).

61. *See id.* § 585.416(a)(3).

62. *See id.* § 585.416.

63. Contracts are specifically enumerated in the definition of "property" in each sanctions program that includes the blocking of assets. *See, e.g., id.* §§ 500.311, 515.311, 536.310, 550.314, 575.315, 595.310 (1997).

However, given a constitutional right to legal representation in certain cases,<sup>64</sup> and OFAC's interest in ensuring that blocked persons are advised of the elements of U.S. law and are well-represented in dealings with OFAC on sanctions, OFAC has published in several program's regulations a general license for certain forms of legal services.<sup>65</sup> Payment for such services by a target country or other blocked person requires an OFAC license.<sup>66</sup>

Similarly, representation of blocked persons generally requires a specific license. Exceptions exist when representation is a constitutional right, such as defending criminal charges or representation in civil proceedings where a right to counsel has been found by the Supreme Court.<sup>67</sup> OFAC also permits by general license certain legal services that aid blocked persons in complying with U.S. law, aid the U.S. Government in its regulation of blocked persons, or defend property interests of a blocked person in the United States.<sup>68</sup> Nonetheless, the payment of legal fees for representation of blocked persons always requires a specific license.<sup>69</sup> The purpose of the specific license requirement is to prevent debits to blocked accounts whenever feasible. In general, OFAC licenses the payment of attorneys' fees only from so-called "fresh funds" — funds coming into the United States from unblocked sources, such as foreign bank accounts at non-U.S. financial institutions.<sup>70</sup>

A specific license is required, but is not likely to be granted, for other types of legal services for blocked entities, such as lobbying services or advice in negotiating commercial transactions on behalf of the target country.<sup>71</sup> Providing general compliance advice to blocked persons about the state of U.S. law and its impact on them is authorized, unless that advice extends to the provision of specific transactional advice on how to structure a transaction to evade or

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64. *See American Airways Charters, Inc. v. Regan*, 746 F.2d 865, 873 (D.C. Cir. 1984).

65. *See, e.g.*, 31 C.F.R. §§ 536.506, 550.517, 560.525, 585.517, 595.506 (1997).

66. *See, e.g., id.* § 550.517 (1997) (discussing exportation of certain legal services to the Government of, or persons in Libya).

67. *See, e.g., id.* § 550.517(b).

68. *See, e.g., id.*

69. *See, e.g., id.* § 550.517(a).

70. *See, e.g., id.* § 550.517(b).

71. This includes representation of U.S. or third-country persons wishing to negotiate commercial transactions with the target country.

avoid U.S. sanctions jurisdiction.<sup>72</sup> Representation of blocked persons in foreign proceedings requires a specific license, which is unlikely to be granted. No constitutional right, of course, guarantees foreign persons representation by U.S. counsel in their transactions or legal proceedings outside the United States. The demand for U.S. legal services in the international market — particularly with respect to negotiation of commercial, financial, and securities transactions — makes such transactional legal services an attractive area for restriction in economic sanctions programs.

Finally, you should be aware of obligations of counsel in litigation contexts involving blocked assets. Because of OFAC's interest in ensuring that disputes involving blocked property do not lead to unlicensed transfers of such property, litigation involving (or likely to affect the status of) blocked property must be reported to OFAC.<sup>73</sup> Counsel is also required to provide immediate notice to OFAC's Chief Counsel's Office if it appears likely that there will be a dispositive ruling or settlement in the case, so that OFAC can examine the potential impact on blocked assets.<sup>74</sup>

In initiating proceedings subject to the reporting requirements, counsel must also notify the court of applicable restrictions on transfers of blocked property.<sup>75</sup> This notice requirement is a companion to the provision in each blocking program prohibiting any action, including entry of a judgment, execution on a lien, or other use of legal process, that would transfer blocked assets without OFAC authorization.<sup>76</sup>

I hope that these comments on approaching a new OFAC sanctions program have been useful. I would be happy to respond to your questions. You can also reach me and my staff at 202/622-2410 with legal questions as they arise in your practice.

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72. *See, e.g.*, 31 C.F.R. § 550.517(b)(1).

73. *See id.* § 501.605(a) (1997); 62 Fed. Reg. 45,098, 45,103-04 (1997).

74. *See* 31 C.F.R. § 501.605(a)(3).

75. *See id.* § 501.605(c).

76. *See, e.g., id.* §§ 500.204(a), 550.210(e) (1997).