



FOREIGN ASSETS CONTROL REGULATIONS FOR THE CORPORATE REGISTRATION INDUSTRY

Why?

This brochure provides the corporate registration industry with information about the Specially Designated Nationals and Blocked Persons list (SDN list) of the Office of Foreign Assets Control (OFAC) and other aspects of U.S. sanctions programs. In response to the increased nationwide effort to prevent terrorists, terrorist supporters, narcotics traffickers, and other sanctioned parties from using the U.S. financial system, it is critical that the corporate registration industry implement steps to identify sanctioned parties in order to prevent their incorporation in the United States.

All organizations involved in the corporate registration process need to understand OFAC regulations. Undertaking any type of business or financial transaction with a sanctions target is illegal under federal law and the industry can make an important contribution to the achievement of national security goals by identifying sanctioned targets in order to block their ability to use the U.S. financial system or do business in the United States.

The following example illustrates what can happen if OFAC compliance is ignored: During the 1990s, the U.S. Government placed comprehensive sanctions on the Federal Republic of Yugoslavia (Serbia & Montenegro) for its role in fostering war in the Balkans region. The sanctions prohibited U.S. persons from doing business with individuals or entities located in Yugoslavia and prohibited Yugoslavians from using the U.S. financial system. While the sanctions program was still in place, a Serbian company submitted an application to a U.S. business filing company and was incorporated under a new name in the United States. The U.S. entity was then used by the Serbian company to open seemingly legitimate bank accounts and to transfer money through the United States. Because the business filing company's employees were not trained on OFAC sanctions policies, the company not only permitted a sanctions target to do business in the United States, it also violated federal law.

About OFAC

Economic sanctions are used by the U.S. government to prevent targeted countries, entities, and individuals from, among other things, accessing the U.S. financial system for purposes that are contrary to U.S. foreign policy and national security objectives. OFAC exercises this authority based on a number of different statutes, including:

- Trading With the Enemy Act (TWEA), 50 U.S.C. App. §§ 1-44
- International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-06
- Iraqi Sanctions Act (ISA), Pub.L. 101-513, secs. 586-586J, 104 Stat. 2047-55
- United Nations Participation Act (UNPA), 22 U.S.C. § 287c
- International Security and Development Cooperation Act (ISDCA), 22 U.S.C. 2349 aa-8 and aa-9
- Cuban Democracy Act (CDA), 22 U.S.C. § 6001-10
- Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91
- Antiterrorism and Effective Death Penalty Act, 8 U.S.C. 1189, 18 U.S.C. 2332d, and 18 U.S.C. 2339B

- Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901-1908, 8 U.S.C. 1182
- The Trade Sanctions Reform and Export Enhancement Act (TSRA), 22 U.S.C. 7201-11

These statutes often involve declarations of "national emergency" by the President.

Sanctions Programs

As of October 2004, OFAC administered and enforced comprehensive sanctions programs involving three countries: Cuba, Iran, and Sudan. Unless authorized by OFAC, no U.S. individual or entity can do business with individuals or entities (including government institutions) in those countries, or individuals or entities acting for or on behalf of those countries. For example, incorporating an entity on behalf of a resident of Iran, Cuba, or Sudan would be prohibited. In addition, when the Cuba program is involved, U.S. individuals are also prohibited from doing business with any Cuban national regardless of where he or she resides unless that person is a citizen or permanent resident alien of the United States or is otherwise authorized by OFAC. OFAC also enforces sanctions regimes regarding: the Western Balkans, Burma (Myanmar), diamond trading, Iraq, Liberia, narcotics trafficking, North Korea, the proliferation of weapons of mass destruction, Syria, terrorism, and Zimbabwe. To read about the specifics of each sanctions program and to learn about recent changes to our programs, please visit: www.treas.gov/ofac

Specially Designated Nationals and Blocked Persons List

OFAC has identified and officially "designated" numerous foreign agents and front organizations, as well as terrorists, terrorist organizations, and narcotics traffickers, on its SDN list, which contains over 5,000 variations on names of individuals, governmental entities, companies, and merchant vessels located around the world. To ensure that illicit transactions involving targeted countries and SDNs are not processed, many U.S. banks and corporations are using sophisticated "interdiction" software, developed by the private sector, to flag questionable transactions for review. If such software flags an item as a potential match to OFAC's SDN list, certain "due diligence" steps outlined in this brochure should be taken to verify whether it is an actual match before contacting OFAC or taking action with regard to the match.

Who Must Comply?

All U.S. persons (including individuals and entities) are responsible for ensuring that they do not undertake a business dealing with an individual or entity on the SDN list. U.S. persons are:

- All U.S. citizens and permanent residents,
- All persons located in the United States,
- Any business organized under U.S. law, including U.S. branches and representative offices of foreign companies and overseas branches of U.S. companies, and

- In the case of the Cuba and North Korea programs, non-U.S. subsidiaries of U.S. companies.

Penalties for Noncompliance

Depending on the program involved, criminal violations of the statutes administered by OFAC can result in penalties ranging from \$50,000 to \$10,000,000 and/or up to 30 years imprisonment for willful violations. OFAC also has authority to impose civil penalties of up to \$1,075,000 per violation depending on the sanctions program.

What does “Compliance” Entail?

OFAC does not mandate what type of compliance program a U.S. organization should have. Every organization has a different level of risk that must be assessed to determine the best way to ensure that it does not do business with a sanctions target. For entities in the corporate registration industry, this task is critical because allowing a sanctions target to incorporate in the United States is prohibited and provides access to the U.S. financial system and the ability to move money for purposes contrary to national security objectives.

Because the corporate registration process is highly decentralized and governed by different state laws, some applications may contain minimal or incomplete information on the parties requesting incorporation. If you have reason to be suspicious that an applicant is either a Specially Designated National or affiliated with a sanctioned country, OFAC recommends requesting further information to determine whether doing business with the applicant constitutes a violation of federal law.

How to Determine if a Registration Application Contains an Exact Match to the SDN List

Interdiction software is a tool to help identify potential matches with OFAC’s SDN list. Inevitably, there will be “false positives” with the use of this software. Therefore, certain “due diligence” steps should be taken to ensure that a “hit” is a “good hit” (i.e., to determine whether the individual or entity on the application is indeed on the SDN list). The following is a guide on how to determine if you have a “good hit” when evaluating potential matches against the SDN list:

1. Is the “hit” or “match” listed on the incorporation application against OFAC’s SDN list or targeted countries, or is it “hitting” for some other reason (i.e., Control List or PEP, Non-Cooperative Countries and Territories, Canadian Consolidated List (OSFI), World Bank Debarred Parties, Blocked Officials File, or government official of a designated country), or can you tell what the hit is?

- If the name is hitting against OFAC’s SDN list or targeted countries, continue to Step 2 below.
- If it is hitting for some other reason, you should contact the “keeper” of whichever other list the match is hitting against. For questions about: (1) The [Denied Persons List](#) and the [Entities List](#), please contact the Bureau of Industry and Security at the U.S. Department of Commerce at 202-482-4811, (2) The [FBI’s Most Wanted List](#) or any other FBI-issued watch list, please see the Federal Bureau of Investigation’s website at www.fbi.gov/contact/fo/fo.htm, (3) The [Debarred Parties List](#), please contact the Office of Defense Trade Controls at the U.S. Department of State, 202-663-2700, (4) The [Bank Secrecy Act and the USA PATRIOT Act](#), please contact the Financial Crimes Enforcement Network (FinCEN) at 1-800-949-2732.
- If you are unsure whom to contact, please contact the provider of the interdiction software that told you there was a hit.
- If you cannot tell what the hit is, you should contact the provider of the interdiction software which told you there was a hit.

2. Now that you have established that the hit is against OFAC’s SDN list or targeted countries, you must evaluate the quality of the hit. Compare the name of the individual with the name on the SDN list. Is the name on the SDN list a vessel or a company rather than an individual (or vice-versa)? Is the name on the SDN list a male’s name whereas your applicant is a female?

- If yes to either question, you do not have a valid match.*
- If no, please continue to Step 3 below.

3. How much of the SDN’s name is matching against the name on your application? Is just one of two or more names matching (i.e., just the last name or just the first name)?

- If yes, you do not have a valid match.*
- If no, please continue to Step 4 below.

4. Compare the complete SDN entry with all of the information you have on the matching name on your application. An SDN entry often will have, for example, a full name, address, nationality, passport, tax ID or cedula number, place of birth, date of birth, former names and aliases. Are you missing a lot of this information for the name on your application?

- If yes, go back and get more information and then compare your complete information against the SDN entry.
- If no, please continue to Step 5 below.

5. Are there a number of similarities or exact matches?

- If yes, please call the hotline at 1-800-540-6322.
- If no, you do not have a valid match.*

** If you have reason to know or believe that allowing this person to do business in the United States would violate any of the Regulations, you should call the hotline and explain this knowledge or belief.*

Staying Up-to-Date

Whenever there is an update to any of OFAC’s information, it is quickly made available electronically via many different sources:

All of OFAC’s program brochures, as well as SDN information, are available free in downloadable camera-ready Adobe Acrobat® “*.PDF” format over the Treasury Department’s World Wide Web Server. OFAC’s Home Page is located at www.treas.gov/ofac. The website also contains a self-extracting ASCII file of the SDN list in DOS, delimited, fixed-field, and country-specific versions, and access to all OFAC-related Executive Orders, U.N. Resolutions, statutes, regulations, and the *Code of Federal Regulations* as well as to brochures in ASCII format.

All of OFAC’s forms, including its Annual Report on Blocked Property, Cuban Remittance Affidavit, and license applications are electronically available on the site. Whenever there is a change involving urgent information requiring immediate implementation, the [DATE] changes on the face of the primary Page; users can automate their compliance by structuring their Internet connection to use a Web browser to watch for that date change, check a “Bulletin” file to get the details about changes, and download OFAC’s latest information for incorporation, for example, into interdiction software.

There are two separate email subscription services on the site, one called a “Financial Operations Bulletin” and the other a “What’s New” notice. Financial operations bulletins are geared toward the financial operations community, while “What’s New” notices are geared toward the general public (including exporters and importers, practicing attorneys, and researchers). Generally speaking, those in the operations areas of banks, brokerage houses, and other financial service providers do not require the level of detail and wealth of information provided in no-

tices to the general public. Instead, they are primarily interested in changes directly impacting their day-to-day operations, such as updates to OFAC's listing Specially Designated Nationals and Blocked Persons. All "What's New" notices to the general public also contain information from OFAC's financial operations bulletins.

OFAC operates a free automated fax-on-demand service, which can be accessed 24 hours a day, seven days a week, by dialing 202/622-0077 from any touch-tone

phone and following voice prompts. OFAC documents kept up to date on the system include program and general brochures, listings of Specially Designated Nationals and Blocked Persons, including changes to the listings, licensing guidelines, and *Federal Register* notices (even those filed but not yet printed in the *Federal Register*). The "Index of Available Documents" is date-specific.