

# Overview of US sanctions laws and regulations



*The US sanctions space is very active and changes are made frequently. This guide is current as of February 12, 2021 and will be updated periodically to reflect the most recent changes.*

**The US continues to use economic sanctions as an important foreign policy tool. US sanctions laws and regulations have become increasingly complex and can change with little to no warning in response to world events and evolving national security interests. Given the continuing rapid pace of change in the US sanctions landscape, it is now more important than ever for companies – both US and non-US – to understand various types of US sanctions and their potential influence on the global matrix of business risks, as well as to stay abreast of key developments so that they can nimbly anticipate and prepare their business to respond to emergent US sanctions risks and compliance challenges.**

**This briefing provides a high-level overview of the current state of US sanctions laws and regulations. It does not provide a detailed summary of all of the various nuances of US sanctions regulations, which change regularly; but, we believe, it would serve as a helpful practical tool for companies with cross-border operations, allowing them to better navigate the range of US sanctions laws and regulations by understanding potential risk factors and their influence on their business. Please keep in mind, given the pace of change with US sanctions, it is possible that some of the prohibitions and authorizations listed herein may have been amended since the publication of this briefing.**

**This briefing does not provide legal advice and should not be relied upon in evaluating the propriety of any particular transaction.**

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The US has imposed sanctions on a number of countries, entities, and individuals around the world. These sanctions laws and regulations are principally administered by the US Department of the Treasury, Office of Foreign Assets Control (OFAC), and, in some respects, the US Department of State.

## **1. General principles**

### **(a) US sanctions may be primary or secondary**

In general, primary sanctions, such as asset freezes and trade embargoes, prohibit transactions by persons in the sanctioning country with sanctioned countries or persons. The US primary sanctions generally apply to (1) all entities organized in the US; (2) US citizens and permanent residents (wherever located); and (3) all persons physically located in the US, regardless of nationality (collectively, US persons). In the case of Iran and Cuba, the primary sanctions also apply to foreign entities owned or controlled by US persons. In addition, foreign persons can be liable for (1) taking actions within the US; (2) causing, aiding and abetting, or conspiring with US persons to violate the sanctions; or (3) activities that occur in the US (e.g., processing sanctioned country transactions through the US financial system).

Secondary sanctions, which US enforcers contend do not require a US nexus, may be imposed on foreign persons directly or indirectly engaged in certain significant transactions relating to Russia, Iran, North Korea, Hong Kong, and Syria. Secondary sanctions target specified activities (e.g., certain significant transactions) that do not involve US persons and that otherwise occur outside the US relating to Russia, Iran, North Korea, Hong Kong, and Syria. These sanctions are intended to deter non-US persons from engaging in certain dealings that are deemed to be contrary to US national security and foreign policy interests by restricting their access to US markets. Unlike primary sanctions, which can give rise to civil and criminal penalties if violated, secondary sanctions can result in possible limitations on access to, or even exclusion from, the US financial system and marketplace.

In addition to the restrictions imposed by secondary sanctions, other US sanctions laws can otherwise restrict activity by non-US persons. For example, any person, including non-US persons, that provide material support for persons designated or blocked pursuant to certain US sanctions authorities in certain cases can themselves be subject to designation and blocking. Many recent Executive Orders, including Executive Orders 13936, 13902, and 13884, explicitly authorize such designations. The statutory authority for such provisions includes the International

Emergency Economic Powers Act<sup>1</sup> and laws such as the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014;<sup>2</sup> Iran Threat Reduction and Syria Human Rights Act of 2012;<sup>3</sup> and North Korea Sanctions and Policy Enhancement Act of 2016.<sup>4</sup> The risk of designation on OFAC's List of Specially Designated Nationals and Blocked Persons (SDNs) can be a significant concern to non-US parties considering transactions with designated entities or individuals. While such designations historically have not been common, OFAC has been increasingly willing to make such designations in recent years.

Note that secondary sanctions and SDN designations are often imposed on entities outside the directly sanctioned countries (see section 2(a) below for the list of sanctions programs). For example, pursuant to Section 231 of the Countering America's Adversaries Through Sanctions Act, the US imposed sanctions on the Republic of Turkey's Presidency of Defense Industries and four senior officials at the agency for engaging in a significant transaction with the defense or intelligence sector of Russia;<sup>5</sup> the US also imposed sanctions on a Singapore-based company, Jiayang Energy Holding PTE. LTD, pursuant to Executive Order 13846 for purchasing millions of dollars in petrochemicals from an Iranian petrochemical firm, sales that were ultimately brokered by Trilliance Petrochemical Co. Ltd., a designated entity.<sup>6</sup>

### **(b) Generally, US sanctions are comprehensive or targeted**

While each US sanctions program contains different provisions and prohibitions, they generally can be divided into comprehensive (country-wide) sanctions and more targeted (principally, list-based) sanctions. The US administers comprehensive sanctions (sometimes inaccurately described as "embargoes") relating to Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine, prohibiting virtually all transactions by US persons or within the US that involve these countries or persons in or residents in those countries (or in the case of Cuba, nationals of those countries). The US also administers sanctions that target particular persons or activities, such as any transactions involving persons listed on OFAC's SDN List; certain types of transactions that involve persons listed on OFAC's Sectoral Sanctions Identifications (SSI) List; and transactions involving the Government of Venezuela.

### **(c) Direct and indirect liability and facilitation**

In general, it is unlawful for any person, even a foreign person, to engage in any conduct, including conduct abroad, that "causes" others to violate US sanctions. For example, even if a sanctioned country transaction does not involve US persons, it still can violate US sanctions if it involves payments that are processed through the US financial system or a US financial institution; such transactions would cause US persons such as banks to violate US

sanctions. It is also unlawful for any person, including a foreign person, to engage in any transaction for the purpose, or which has the effect, of evading or avoiding US sanctions.

US sanctions programs also prohibit "facilitation" of a third-party transaction that would be prohibited by US sanctions if conducted by a US person. OFAC construes "facilitation" very broadly to include all instances in which a US person "assists" or "supports" a non-US person in transactions directly or indirectly involving comprehensively sanctioned countries or parties. No US person can be involved in business and legal planning; decision-making; approvals; designing; ordering or transporting goods; or providing financial or insurance assistance in connection with such sanctioned country business. US persons also are generally prohibited from approving, reviewing or commenting on the terms of a transaction or deal documents, engaging in negotiations, or otherwise assisting the foreign entity or individual in planning for or moving a transaction forward. OFAC counsels that, in transactions involving comprehensively sanctioned countries or parties, foreign entities or individuals must ensure that they provide their goods or services independently of US persons.

US persons generally also may not alter their own or their foreign affiliates' operating policies or procedures for the purpose of facilitating sanctioned country transactions or to permit the foreign affiliates to accept or perform a particular transaction if that type of transaction previously required US-person approval. For example, if certain types of transactions or certain transactions exceeding certain dollar thresholds historically have required US-person approval, the US person may not change its own policies or procedures or those of its foreign affiliate to transfer responsibility for those decisions to non-US persons in order to allow a transaction to proceed.

US persons also are prohibited from referring to foreign entities or individuals any business opportunities involving sanctioned countries, entities, or individuals to which the US person could not directly respond under US sanctions regulations. Thus, if a US person receives an inquiry involving a sanctioned country transaction, the US person must decline the opportunity and cannot refer that inquiry to a foreign individual or entity to handle.

## **2. Primary US sanctions**

The following is a summary of the key US sanctions prohibitions, applicable to transactions by US persons or otherwise involving a US nexus, and certain general licenses authorizing otherwise prohibited activities.

**(a) Prohibitions on dealings involving comprehensively sanctioned countries or blocked persons, including:**

- most dealings by US persons or foreign entities owned or controlled by US persons that directly or indirectly relate to Iran and Cuba;
- most dealings by US persons that directly or indirectly relate to Syria, North Korea, and Crimea;
- the direct or indirect export or reexport of most US-origin (or partially US-origin) goods, technologies, and services to Iran, Cuba, Syria, North Korea, or Crimea;
- the importation into the US of most goods, technologies, and services originating in Iran, Cuba, Syria, North Korea, or Crimea;
- limited and specified transactions involving certain other countries and regimes around the world including: (1) the Balkans; (2) Belarus; (3) Burma; (4) Burundi; (5) Central African Republic; (6) China; (7) Congo; (8) Hong Kong; (9) Iraq; (10) Lebanon; (11) Libya; (12) Mali; (13) Nicaragua; (14) Russia/Ukraine; (15) Somalia; (16) South Sudan; (17) Sudan (Darfur); (18) Venezuela; (19) Yemen; and (20) Zimbabwe;
- most dealings with thousands of organizations and individuals around the world listed on OFAC's SDN List or owned 50 percent or more collectively by one or more SDNs; and
- transactions (including the processing of payments through a US financial institution or the US financial system) involving assets of any entities or individuals whose assets are blocked or comprehensively sanctioned countries or regions.

**(b) Prohibitions on Russia-related transactions involving specified persons or activities:**

- transactions with persons identified on the SDN List, or owned 50 percent or more by one or more SDNs;
- certain transactions with persons identified on the SSI List subject to one or more directives, or owned 50 percent or more by one or more SSI Listed persons, including:
  - transacting in, providing financing for, or otherwise dealing in debt of tenors specified below or equity if that debt or equity was or is issued on or after the relevant sanctions effective date ("new debt" or "new equity") by, on behalf of, or for the benefit of persons operating in Russia's financial sector named under Directive 1, their property, or their interests in property:
    - for debt issued on or after July 16, 2014 and before September 12, 2014, longer than 90 days' maturity;

- for debt issued on or after September 12, 2014 and before November 28, 2017, longer than 30 days' maturity; or
- for debt issued on or after November 28, 2017, longer than 14 days' maturity;
- transacting in, providing financing for, or otherwise dealing in new debt of tenors specified below by, on behalf of, or for the benefit of the persons operating in Russia's energy sector named under Directive 2, their property, or their interests in property:
  - for debt issued on or after July 16, 2014 and before November 28, 2017, longer than 90 days' maturity; or,
  - for debt issued on or after November 28, 2017, longer than 60 days' maturity;
- transacting in, providing financing for, or otherwise dealing in new debt of longer than 30 days' maturity of the persons operating in Russia's defense or related materiel sector subject to Directive 3, their property, or their interests in property;
- providing, exporting, or reexporting, directly or indirectly, goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory, and that involve any person subject to Directive 4, its property, or its interests in property; and,
- providing, exporting, or reexporting, directly or indirectly, goods, services (except for financial services), or technology in support of exploration or production for new deepwater, Arctic offshore, or shale projects:
  - that have the potential to produce oil anywhere in the world; and
  - that involve any person determined to be subject to Directive 4 or the property or interests in property of such a person who has a controlling interest or a substantial non-controlling ownership interest in such a project defined as not less than a 33 percent interest.

**(c) Prohibitions on Venezuela-related transactions involving the Government of Venezuela or specified persons and related authorizations:**

**(i) Key prohibitions**

- US persons are prohibited from engaging in any transactions involving the Government of Venezuela, or any designated party; and all property and interests in property in the US of the Government of Venezuela or any designated party are blocked effective August 5, 2019,
  - “Government of Venezuela” includes the state and government of Venezuela, any political subdivision, agency, or instrumentality, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A. (PdVSA), any person owned or controlled, directly or indirectly, by the foregoing, any person who has acted or purported to act on behalf of the foregoing, including as a member of the Maduro regime;
- transactions with persons identified on the SDN List, or owned 50 percent or more by one or more SDNs, e.g., PdVSA, Banco de Desarrollo Economico y Social de Venezuela (BANDES), and the Central Bank of Venezuela, including persons determined to:
  - operate in certain sectors of the Venezuela economy (e.g., the gold, oil, and financial sectors);
  - be involved in deceptive practices or corruption involving the Government of Venezuela; or
  - materially support blocked persons;
- certain financial transactions involving the Government of Venezuela (other than PdVSA and its subsidiaries), including:
  - new debt of the Government of Venezuela with a maturity of more than 30 days or new equity of the Government of Venezuela;
  - certain bonds issued by the Government of Venezuela prior to August 25, 2017;
  - the purchase of debt and equity securities from the Government of Venezuela, with the exception of securities that qualify as new debt of the Government of Venezuela with a maturity of less than or equal to 30 days;
  - payments or other distributions of profits to the Government of Venezuela from any entity owned or controlled, directly or indirectly, by the Government of Venezuela;
  - the purchase of any debt owed to the Government of Venezuela, including accounts receivables;

- any debt owed to the Government of Venezuela that is pledged as collateral after May 21, 2018, including accounts receivables;
- 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; and
- any digital currency, digital coin, or digital token that was issued by, for, or on behalf of the Government of Venezuela after January 9, 2018.

**(ii) Key authorizations**

- dealings in which the only Government of Venezuela entities involved are PDV Holding, Inc., CITGO Holding, Inc. and any of its subsidiaries (General License 2A);
- transactions related to dealings in certain specified bonds (listed in the Annex of General License 3H (“3H Bonds”)) (General License 3H), including:
  - transactions in 3H Bonds, provided that any divestment or transfer (or facilitation thereof) is to a non-US person, except the sale of such bonds to blocked persons or the purchase of, or investment in (or facilitation thereof), such bonds;
  - activities by a US person to facilitate, clear, or settle trades in 3H Bonds, provided such trades were placed prior to 4:00 pm EST on February 1, 2019;
  - transactions related to bonds issued prior to August 25, 2017 by US person entities owned directly or indirectly by the Government of Venezuela, other than PDV Holding, CITGO Holding, and any of their subsidiaries (these bonds are covered by General License 9G);
- new debt transactions and transactions involving Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela) or Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), or Banco Central de Venezuela related to the exportation or reexportation of agricultural commodities, medicine, medical devices, or replacement parts and components (General License 4C);
- dealings involving the PdVSA 2020 8.5 Percent Bond on or after July 21, 2021 (General License 5F);
- activities with PDV Holding, CITGO Holding, and their subsidiaries, where the only PdVSA entities involved are PDV Holding, CITGO Holding, or any of their subsidiaries through February 5, 2021, except for the exportation or reexportation of diluents from the US to Venezuela (General License 7C);

- activities involving Chevron Corporation, Halliburton, Schlumberger Limited, Baker Hughes, and Weatherford International, PLC, and their subsidiaries through 12:01 am EST on June 3, 2021 that relate to the following (excluding the exportation or reexportation of diluents from the US to Venezuela) (General License 8G):
  - the limited maintenance of essential operations, contracts or other agreements that: (i) are for the safety or the preservation of assets in Venezuela, (ii) involve PdVSA or any entity in which it owns a 50 percent or greater interest, and (iii) were in effect prior to July 26, 2019,
    - safety and preservation of assets include activities necessary to ensure the safety of personnel, or the integrity of operations and assets in Venezuela; participation in shareholder and board of directors meetings; making related payments on third-party invoices for the abovementioned activities; and
  - activities ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving PdVSA or any entity in which it owns a 50 percent or greater interest that were in effect prior to July 26, 2019;
- transactions related to dealings in certain PdVSA securities (General License 9G), including:
  - transactions that are ordinarily incident and necessary to dealings in PdVSA debt (including certain bonds listed in the Annex of General License 9G), or equity in PdVSA or any entity in which it has a 50 percent or greater interest, issued prior to August 25, 2017 (together “PdVSA Securities”), provided that any divestment or transfer (or facilitation thereof) is to a non-US person,
    - transactions include facilitating, clearing, and settling transactions to divest to a non-US person PdVSA Securities;
  - activities to facilitate, clear, or settle trades of holdings in PdVSA Securities involving US persons, provided trades were placed prior to 4:00 pm EST on January 28, 2019; and
  - activities in bonds issued prior to August 25, 2017 by PDV Holding, and CITGO Holding;
- the purchase by US persons in Venezuela from PdVSA of refined petroleum products for personal, commercial, or humanitarian uses and activities ordinarily incident and necessary to such purchases, except for any commercial resale, transfer, exportation, or reexportation of such products (General License 10A);
- transactions ordinarily incident and necessary to the activities of the following entities, and their subsidiaries, which involve Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela), Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), Banco del Tesoro, C.A. Banco Universal (Banco del Tesoro), or Banco Central de Venezuela: MasterCard Incorporated, Visa Inc., American Express Company, Western Union Company, and MoneyGram International (General License 15C);
- certain specified transactions involving Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela), Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), Banco del Tesoro, or C.A. Banco Universal (Banco del Tesoro) (General License 16C), including:
  - all transactions and activities ordinarily incident and necessary to maintaining, operating, or closing accounts of US persons; and
  - all transactions and activities ordinarily incident and necessary to processing noncommercial, personal remittances involving Banco de Venezuela, Banco Bicentenario del Pueblo, Banco del Tesoro, or Banco Central de Venezuela;
- transactions ordinarily incident and necessary to maintain or operate Integracion Administradora de Fondos de Ahorro Previsional, S.A., whose fund administrator is owned 50 percent or more by Banco Bandes Uruguay S.A. (Bandes Uruguay), including the purchase from or sale to the Integracion Administradora de Fondos de Ahorro Previsional, S.A. of securities or serving as a custodian for securities held by the Integracion Administradora de Fondos de Ahorro Previsional, S.A. (General License 18A);
- official activities of certain international organizations involving Banco Central de Venezuela, including the CAF Development Bank of Latin America, Fondo Latinoamericano de Reservas, Inter-American Development Bank, International Committee of the Red Cross, International Federation of the Red Cross and Red Crescent Societies, Organization of American States, the World Bank Group, and the United Nations, including other UN-related organizations, through July 21, 2021 (General License 20B);
- US financial institutions to debit blocked accounts for service charges owed by the owner of the blocked account (General License 21);

- provision of goods and services to Venezuela's mission to the United Nations and corresponding payments, except for the purchase, sale, financing, or refinancing of real property (General License 22);
  - processing of fund transfers for operating expenses or other official business of third-country diplomatic or consular missions in Venezuela by US depository institutions, US-registered brokers or dealers in securities, and US-registered money transmitters (General License 23);
  - transactions ordinarily incident and necessary to the receipt and transmission of telecommunications or mail and packages (General License 24);
  - exportation or reexportation of services, software, hardware, and technology incident to Internet communications (e.g., instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, web hosting, and domain name registration services) (General License 25);
  - provision and receipt of nonscheduled emergency medical services and other medical services (General License 26);
  - application, receipt, renewal and maintenance, filing and prosecution of any opposition or infringement, and fees of a patent, trademark, copyright, or other form of intellectual property protection (General License 27);
  - transactions ordinarily incident and necessary to activities related to humanitarian projects, supporting democracy building, education building, non-commercial development projects, and environmental protection carried out by nongovernmental organizations, including processing and transferring funds, payment of taxes, fees, import duties, licenses, permits or public utility services (General License 29);
  - transactions and activities ordinarily incident and necessary to operations or use of ports and airports, including transactions involving the Instituto Nacional de los Espacios Acuaticos or any entity in which it has a 50 percent or greater interest, except for the exportation or reexportation of diluents (General License 30A);
  - transactions with the IV Venezuelan National Assembly and its Delegated Commission; the Interim President of Venezuela, Juan Gerardo Guaidó Marquez (Guaidó); any official designated by Guaidó; any ambassador or other representative to the US or to a third country appointed by Guaidó; any representative to an international organization appointed by Guaidó; any person appointed by Guaidó to the board of directors or appointed as an executive officer of a Government of Venezuela entity; and any person appointed or designated by the foregoing persons to act on behalf of the Government of Venezuela (General License 31A);
  - activities ordinarily incident and necessary to US persons residing in Venezuela, including payment of housing expenses, goods or services for personal use, taxes, fees, permits, licenses, or public utility services (General License 32);
  - activities related to overflights of Venezuela or emergency landings by US-registered aircrafts or persons subject to US jurisdiction, and provision of air ambulance and related medical services, including medical evacuation (General License 33);
  - activities prohibited by Executive Order 13884 (blocking Government of Venezuela's property and interests) provided the individuals are US citizens, permanent resident aliens of the US, individuals who have a valid US immigrant or nonimmigrant visa, former employees and contractors of the Government of Venezuela, current employees and contractors providing health or education services in Venezuela (General License 34A); and
  - payment of taxes, fees, import duties to, and purchase or receive permits, licenses, registrations, certifications, and public utility services from the Government of Venezuela, to the extent such activities are necessary and ordinarily incident to daily operations (General License 35).
- (d) Prohibitions on certain securities transactions involving Communist Chinese Military Companies (CCMCs):**
- (i) Key prohibitions:**
- transactions in (1) publicly traded securities of entities determined to be CCMCs; (2) derivatives of such securities; or (3) securities designed to provide investment exposure to such securities:
    - effective January 11, 2021 at 9:30 AM EST, for CCMCs identified in E.O. 13959;
    - effective February 1, 2021 at 9:30 AM EST, for the four additional CCMCs identified on December 3, 2020;
    - effective March 15, 2021 at 9:30 AM EST, for the nine additional CCMCs identified on January 14, 2021; and,
    - effective 60 days after the identification, for CCMCs that may be identified by the Defense or Treasury Departments in the future.
- (ii) Key exemptions/authorizations:**
- Purchases for value or sales, solely to divest in whole or in part from securities that any US person held as of the effective date of the prohibition:

- for entities whose name closely matches, but does not match exactly, the name of a CCMC, as defined in E.O. 13959, as amended by E.O. 13974, are authorized through 9:30 AM EST on May 27, 2021 (General License 1A);
  - for the 31 CCMCs identified in E.O. 13959, are exempt through 12:01 AM EST on November 12, 2021 (General License 2);
  - for the four additional CCMCs identified on December 3, 2020, are exempt through 12:01 AM EST on December 3, 2021 (General License 2);
  - for the nine additional CCMCs identified on January 14, 2021, are exempt through 12:01 AM EST on January 14, 2022 (General License 2); and
  - for future CCMC determinations, are exempt through 12:01 AM EST on the date that is 365 days after an entity is determined to be a CCMC (General License 2).
- knowingly making or facilitating a significant investment contributing to Russia's ability to privatize state-owned assets; and
  - operating in the Russian railway or metals and mining sectors;<sup>7</sup>
  - the following Iran-related transactions:
    - providing material support for, or goods or services in support of, the purchase or acquisition of US bank notes or precious metals by the Government of Iran;
    - providing material support for, or goods or services in support of, the National Iranian Oil Company (NIOC), the Naftiran Intertrade Company (NICO), the Central Bank of Iran (CBI), or certain Iranian persons on the SDN List;
    - being a part of Iran's energy, shipping, or shipbuilding sectors; a port operator in Iran; or a person that knowingly provides significant support to a person determined to be part of Iran's energy, shipping, or shipbuilding sectors, a port operator in Iran, or certain Iranian persons included on the SDN List;
    - non-US financial institutions knowingly conducting or facilitating any significant financial transactions including:
      - for the sale, supply, or transfer to Iran of significant goods or services used in connection with Iran's automotive, iron, aluminum, steel, copper, construction, mining, manufacturing, or textile sectors;
      - on behalf of certain Iranian persons on the SDN List;
      - with NIOC or NICO; or
      - for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, copper products, petroleum, petroleum products, or petrochemical products from Iran;
    - operating in the iron, steel, aluminum, copper, construction, mining, manufacturing, or textile sectors of Iran;
    - knowingly engaging in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive, iron, steel, aluminum, copper, construction, mining, manufacturing, or textile sectors of Iran; and

### 3. Secondary US sanctions

Recently, some of the most active developments in the secondary US sanctions have been in relation to Russia, Iran, North Korea, Hong Kong and Syria. Non-US companies need to monitor these developments closely to evaluate the potential implications of these sanctions on their business. Please note that per above, in many cases these restrictions apply to entities owned 50 percent or more, collectively, by SDNs. A non-exhaustive list of examples of sanctionable activities relating to Russia, Iran, North Korea, Hong Kong and Syria includes:

- the following Russia-related transactions:
  - knowingly facilitating a significant transaction on behalf of a person subject to sanctions (SDNs or SSI entities); or materially violating, causing a violation of, or attempting or conspiring to violate the sanctions;
  - knowingly making a significant investment in a special Russian crude oil project;
  - foreign financial institutions knowingly engaging in significant transactions in certain energy-related (special crude oil projects) and defense-related activities, or facilitating significant financial transactions on behalf of SDNs;
  - investment, sales, leases, or provision of items in support of Russia's ability to construct energy export pipelines;
  - knowingly engaging in significant transactions with persons related to the Russian defense or intelligence sectors;

- knowingly engaging in a significant transaction for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, copper products, petroleum, petroleum products, or petrochemical products from Iran.
- the following North Korea-related transactions:
  - operating in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries in North Korea;
  - owning, controlling, or operating any port in North Korea, including any seaport, airport, or land port of entry;
  - engaging in at least one significant importation from or exportation to North Korea of any goods, services, or technology;
  - providing material support to any blocked persons;
  - knowingly, directly or indirectly, providing significant amounts of fuel or supplies, providing bunkering services, or facilitating a significant transaction or transactions to operate or maintain, a vessel or aircraft that is designated under applicable US and UN sanctions authorities;
  - knowingly, directly or indirectly, insuring, registering, facilitating the registration of, or maintaining insurance or a registration for, a vessel owned or controlled by the Government of North Korea (except as specifically approved by the UN Security Council);
  - knowingly, directly or indirectly, selling, transferring, or otherwise providing significant amounts of crude oil, condensates, refined petroleum, other types of petroleum or petroleum byproducts, liquefied natural gas, or other natural gas resources to the Government of North Korea (except for heavy fuel oil, gasoline, or diesel fuel for humanitarian use or as otherwise excepted);
  - knowingly conducting a significant transaction or transactions in North Korea's transportation, mining, energy, or financial services industries; and
  - a non-US financial institution knowingly conducting or facilitating (directly or indirectly) a significant export to or import from North Korea or a significant transaction for or on behalf of a North Korea-related blocked person.
- the following Hong Kong-related transactions:
  - foreign financial institutions knowingly conducting a significant transaction with a foreign person who is materially contributing to, has materially contributed to, or attempts to materially contribute to the failure of the Government of China to meet its obligations under the Joint Declaration or the Basic Law.
- the following Syria-related transactions:
  - knowingly providing significant financial, material, or technological support to, or engaging in a significant transaction with the Government of Syria (including any entity it owns or controls) or a foreign person that is a military contractor, mercenary, or a paramilitary force knowingly operating in a military capacity inside Syria for the Government of Syria, the Government of the Russian Federation, or the Government of Iran;
  - knowingly providing significant goods, services, technology, information, or other support that facilitates the maintenance or expansion of the Government of Syria's domestic production of natural gas, petroleum, or petroleum products;
  - knowingly providing military aircraft, related spare parts, or significant goods or services associated with the operation of military aircraft to any foreign person operating in an area controlled by the Government of Syria or foreign forces associated with the Government of Syria;
  - knowingly providing significant construction or engineering services to the Government of Syria; and
  - foreign financial institutions knowingly conducting or facilitating any significant financial transaction for blocked persons, including persons determined to:
    - be responsible for or complicit in, or to have directly or indirectly engaged in, or attempted to engage in, any of the following in or in relation to Syria:
      - actions or policies that threaten peace, security, stability, or territorial integrity of Syria; or
      - the commission of human rights abuse;
    - be a current or former official of the Government of Turkey;
    - be any subdivision, agency, or instrumentality in the Government of Turkey;
    - operate in sectors of the Turkish economy as determined by the Secretary of Treasury and Secretary of State;
    - have provided material support to blocked persons; or
    - be owned or controlled by, or acted for or on behalf of, directly or indirectly, blocked persons.

## 4. Provision of legal services

Lawyers or compliance personnel who advise on sanctions matters need to be careful that their services do not cross the line into facilitation. US persons are authorized to provide US sanctions compliance advice. In addition, US persons are authorized under certain sanctions regulations to provide the following types of legal services to sanctioned persons or countries:

- provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the US, provided that such advice and counseling are not provided to facilitate transactions in violation of the sanctions;
- representation of the government of sanctioned countries or other persons when named as defendants in or otherwise made parties to domestic US legal, arbitration, or administrative proceedings;

- initiation and conduct of legal, arbitration, or administrative proceedings before any US federal, state, or local court or agency;
- representation of the government of sanctioned countries or other persons before any US federal, state or local agency with respect to the imposition, administration, or enforcement of US sanctions against the government of that nation or such persons; and
- provision of legal services in any other context in which prevailing US law requires access to legal counsel at public expense.

The receipt of payments for legal fees and expenses related to the above services, however, may be prohibited unless licensed by the US government. US persons are also authorized to engage in certain transactions involving sanctioned countries that relate to the protection of intellectual property rights.

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The Norton Rose Fulbright International Trade and Sanctions team periodically monitors developments in sanctions laws and regulations. We regularly issue client briefings on key developments or provide individual consultations to our clients on their business compliance to the current laws and regulations.

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<sup>1</sup> 50 U.S.C. §§ 1701-02.

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<sup>2</sup> 22 U.S.C. § 8910(a)(2).

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<sup>3</sup> 22 U.S.C. § 8742(a)(1)(A).

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<sup>4</sup> 22 U.S.C. § 9214(b)(1)(C).

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<sup>5</sup> U.S. Dep't of State, <https://2017-2021.state.gov/caatsa-section-231-imposition-of-sanctions-on-turkish-presidency-of-defense-industries/index.html> (last visited Jan. 27, 2021).

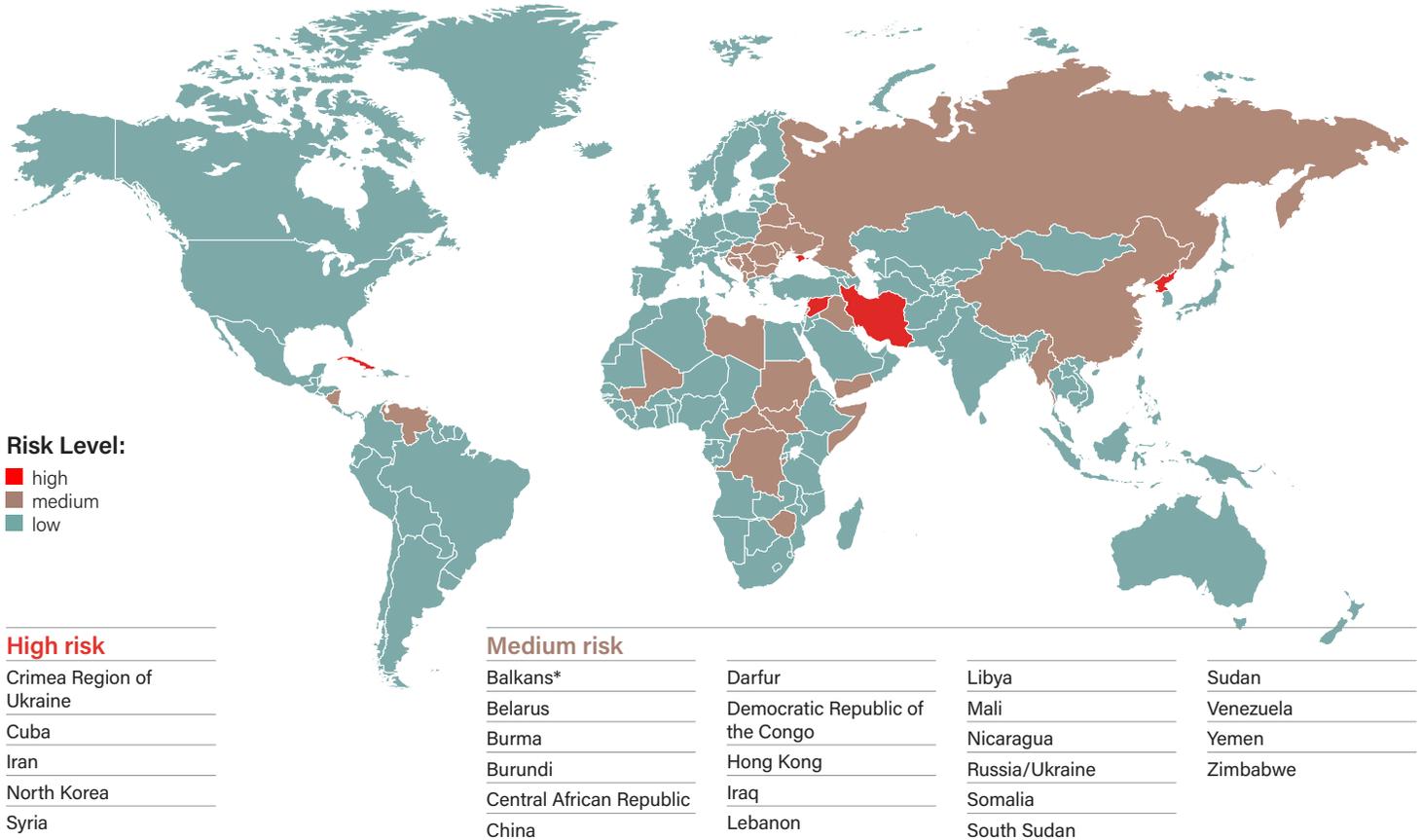
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<sup>6</sup> U.S. Dep't of the Treasury, <https://home.treasury.gov/news/press-releases/sm1168> (last visited Jan. 27, 2021).

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<sup>7</sup> While secondary sanctions for the Russian railway and metals and mining sectors are authorized, OFAC has yet to impose such sanctions. Maintaining unity with allies is important to the US, and it will likely not impose such sanctions without first consulting allies to address any potential unintended consequences.

## Global map of areas presenting US sanctions related risks for cross-border businesses



\* OFAC sanctions apply to the Western Balkans. OFAC has provided minimal guidance on which countries constitute the Western Balkans. See Executive Order 13219, 66 FR 34777 (June 29, 2001), available at <http://www.treasury.gov/resource-center/sanctions/Documents/balkans.pdf>.

## Key contacts regarding this publication

If you would like further information please contact:



**Stephen M. McNabb**  
**Chief Legal Officer, United States, Washington DC**  
 T: +1 202 662 4528  
[stephen.mcnabb@nortonrosefulbright.com](mailto:stephen.mcnabb@nortonrosefulbright.com)



**Kim Caine**  
**Partner, Washington DC**  
 T: +1 202 662 0394  
[kim.caine@nortonrosefulbright.com](mailto:kim.caine@nortonrosefulbright.com)



**Wenda Tang**  
**Associate**  
 T: +1 202 662 4536  
[wenda.tang@nortonrosefulbright.com](mailto:wenda.tang@nortonrosefulbright.com)



**Jeffrey W. Cottle**  
**Partner, Washington DC and London**  
 T: +1 202 662 4753 | T: +44(0)79 3085 5143  
[jeffrey.cottle@nortonrosefulbright.com](mailto:jeffrey.cottle@nortonrosefulbright.com)



**Stefan H. Reisinger**  
**Partner, Washington DC**  
 T: +1 202 662 4512  
[stefan.reisinger@nortonrosefulbright.com](mailto:stefan.reisinger@nortonrosefulbright.com)



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