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Overview of US sanctions laws and regulations



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The US sanctions space is very active and changes are made frequently. This guide is current as of June 24, 2019, 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.

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.

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).

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

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 Iran, Russia, North Korea, 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 Iran, Russia, North Korea, 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.

(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 resident from those countries (or nationals of those countries in the case of Cuba). The US also administers sanctions that target particular persons or activities, such as any transactions involving persons listed on OFAC’s Specially Designated Nationals and Blocked Persons (SDN) List; certain types of transactions that involve persons listed on OFAC’s Sectoral Sanctions Identifications (SSI) List; and certain types of transactions involving the Government of Venezuela. US sanctions laws can involve restrictions on activity by non-US persons. For example, any person that provides material support for persons designated or blocked pursuant to certain US sanctions authorities can itself be subject to designation and blocking.

(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;
 - transactions (including the processing of payments) through a US financial institution or the US financial system;
 - limited and specified transactions with certain other countries and regimes around the world including: (1) the Balkans; (2) Belarus; (3) Burundi; (4) Central African Republic; (5) Congo; (6) Iraq; (7) Lebanon; (8) Libya; (9) Nicaragua; (10) Russia/Ukraine; (11) Somalia; (12) South Sudan; (13) Sudan (Darfur); (14) Venezuela; (15) Yemen; and (16) 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.
- (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 Sectoral Sanctions Identifications List (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 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

- transactions with persons identified on the SDN List, or owned 50 percent or more by one or more SDNs, e.g., Petroleos de Venezuela (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 CITGO Holding, Inc. and any of its subsidiaries (General License 2);
- dealings in certain specified bonds, provided that any divestment or transfer (or facilitation thereof) is to a non-US person (General License 3E), except the sale of such bonds to blocked persons or the purchase of, or investment in, such bonds;
- activities to facilitate, clear, or settle trades in these bonds (if to a US person), provided such trades were placed prior to 4:00 pm EST on February 1, 2019 (General License 3E);
- wind down of agreements linked to bonds entered into prior to 4:00 pm EST on February 1, 2019 through 12:01 am EST on September 30, 2019 (General License 3E);
- 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 Nynas AB, PDV Holding, CITGO Holding, and any of their subsidiaries (these bonds are covered by General License 9D) (General License 3E);
- 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 4B);
- dealings involving the PdVSA 2020 8.5 Percent Bond (General License 5);
- certain activities necessary to the maintenance or wind down of operations or existing contracts with Globovision Tele C.A. or Globovision Tele CA, Corp. that were in effect prior to January 8, 2019, through 12:01 a.m. EST on January 8, 2020 (General License 6);

- 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 December 6, 2020, except for the exportation or reexportation of diluents from the US to Venezuela (General License 7B);
- all activities related to operations in Venezuela involving PdVSA for Chevron Corporation, Halliburton, Schlumberger Limited, Baker Hughes, and Weatherford International, PLC, and their subsidiaries through 12:01 am EST on July 27, 2019, except for the exportation or reexportation of diluents from the US to Venezuela (General License 8A);
- transactions related to dealings in certain PdVSA securities issued before August 25, 2017 (General License 9D), including:
 - transactions in PdVSA debt (including certain listed bonds) and equity in PdVSA or any entity in which it has a 50 percent or greater interest issued prior to August 25, 2017, provided that any divestment or transfer (or facilitation thereof) is to a non-US person;
 - activities relating to trades involving US persons if trades were placed prior to 4:00 pm EST on January 28, 2019;
 - wind down of contracts linked to PdVSA securities if the contract was entered into prior to 4:00 pm EST on January 28, 2019, through 12:01 am EST on September 30, 2019; and
 - activities in bonds issued prior to August 25, 2017 of Nynas AB, PDV Holdings, and CITGO Holdings;
- the purchase by US persons in Venezuela from PdVSA of refined petroleum products for personal, commercial, or humanitarian uses, except for any commercial resale, transfer, exportation, or reexportation of such products (General License 10);
- certain activities involving Nynas AB through 12:01 am EST on July 27, 2019 (General License 13A), except for the exportation or reexportation of diluents from the US to Venezuela, provided that any payments benefiting a blocked person other than Nynas AB be placed into a blocked account (except as authorized by General License 11);
- certain transactions relating to Venezuela for the official business of the US government by employees, grantees, or contractors (General License 14);
- 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) 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 through 12:01 am EST on March 22, 2020: MasterCard Incorporated, Visa Inc., American Express Company, Western Union Company, and MoneyGram International (General License 15A);
- certain 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) through 12:01 am EST on March 22, 2020 (General License 16A), including:
 - all transactions and activities ordinarily incident and necessary to maintaining, operating, or closing accounts of US persons in Banco de Venezuela or Banco Bicentenario del Pueblo; and
 - all transactions and activities ordinarily incident and necessary to processing noncommercial, personal remittances;
- 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 18); and
- official activities of certain international organizations, 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, International Monetary Fund, Organization of American States, United Nations, and the World Bank, involving Banco Central de Venezuela (General License 20).

3. Secondary US sanctions

Recently, some of the most active developments in the secondary US sanctions have been in relation to Russia, Iran, and North Korea. 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% or more, collectively, by SDNs. A non-exhaustive list of examples of sanctionable activities relating to Russia, Iran, and North Korea 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 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;
- 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), or the Central Bank of Iran (CBI);
 - providing material support for, or goods or services in support of, 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;
 - certain significant financial transactions by non-US financial institutions:
 - for the sale, supply, or transfer to Iran of significant goods or services used in connection with Iran’s automotive sector;
 - on behalf of certain Iranian persons on the SDN List;
 - with NIOC or NICO; or,
 - for the purchase, acquisition, sale, transport, or marketing of petroleum, petroleum products, or petrochemical products from Iran;
 - knowingly engaging, on or after August 7, 2018, in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with Iran’s automotive sector, or being related to such a person;
 - knowingly engaging, on or after November 5, 2018, in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran, or being related to such a person; and,
 - knowingly engaging, on or after November 5, 2018, in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran, or being related to such a person;

- 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.

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:

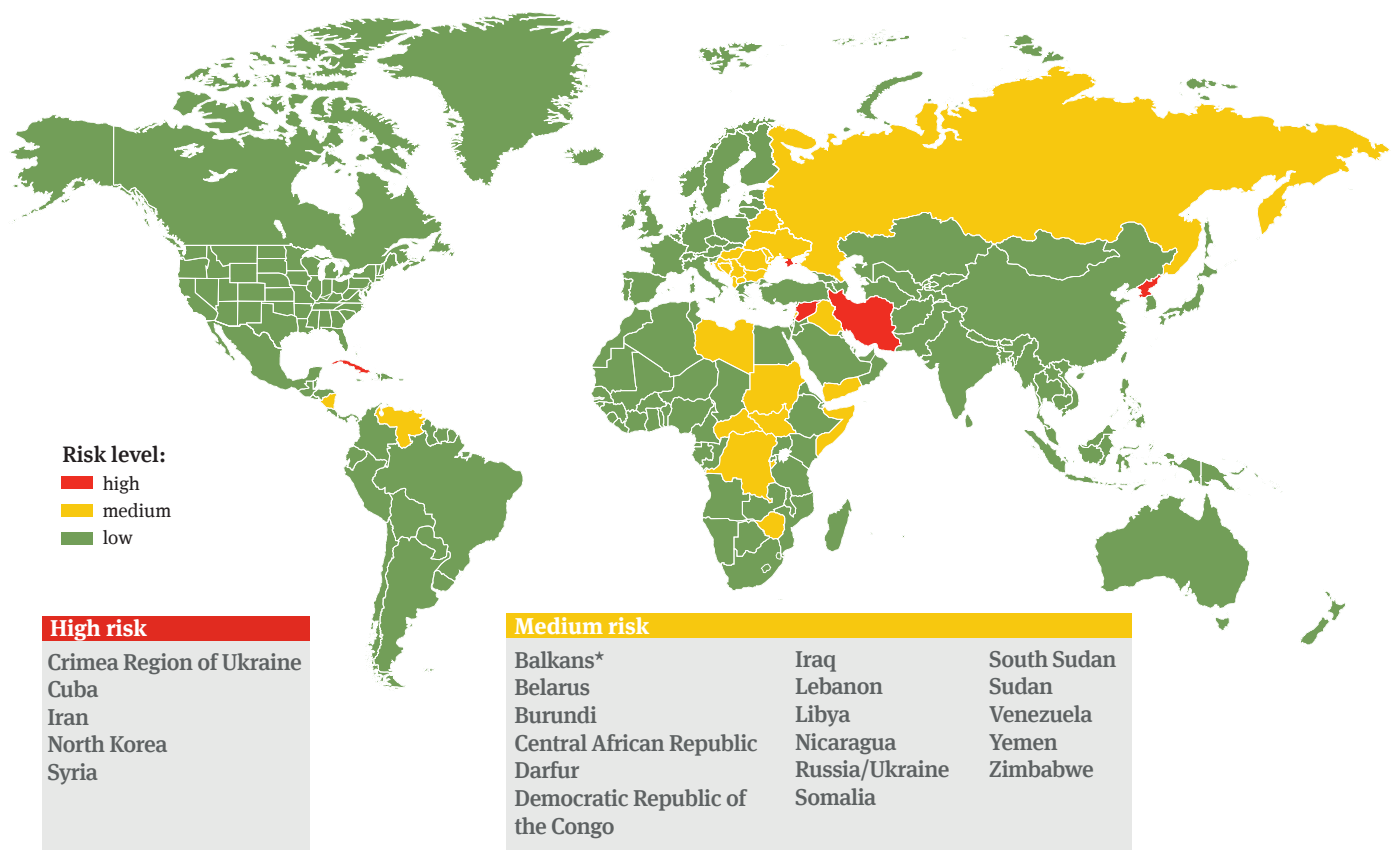
- provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the US, provided that such advice and counseling are not provided to facilitate transactions in violation of the sanctions;
- representation of the government of sanctioned countries 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.

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>.

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