MATERIAL
COMPLIANCE

JABIL

Understanding the Implications of OFAC and Conflict Minerals Compliance

Introduction to Office of Foreign Assets Control

OFAC is responsible for the enforcement of sanctions and trade restrictions against countries and groups of individuals, such as terrorist organizations, drug cartels, and entities directly related to them.

This American government agency is the successor of the Office of Foreign Funds Control and was formally created in December 1950, when President Truman declared a national emergency after China entered the Korean War and froze all Chinese and North Korean assets in the United States.

OFAC can sanction any U.S. individual or corporation that trades directly or indirectly with entities in certain geographic regions or with certain governments, such as Russia and North Korea. The sanctions also apply to trade with entities or individuals listed in the Specially Designated Nationals and Blocked Persons ("SDN" list), which contains over 6,500 names of companies or individuals connected with sanctions targets.

OFAC CAN SANCTION ANY U.S. INDIVIDUAL OR CORPORATION THAT TRADES DIRECTLY OR INDIRECTLY WITH ENTITIES IN CERTAIN GEOGRAPHIC REGIONS OR WITH CERTAIN GOVERNMENTS, SUCH AS RUSSIA AND NORTH KOREA.

Because entities or individuals on the SDN list are known to move from country to country and acquire assets in regions not included in the sanctions list, it is necessary to check with OFAC on a regular basis, as a previously acceptable supplier can subsequently be added to the SDN list if a blocked entity or individual acquires significant ownership in it.

It is important to note that some OFAC sanctions, such as those pertaining to Russia, North Korea, Iran and Sudan apply to persons and entities acting on behalf of those targeted governments even if those persons or entities do not appear on the SDN list itself.

It is illegal for U.S. persons to trade directly or indirectly with OFAC-listed regions or individuals. Sanctions can be substantial, including criminal charges. According to the U.S. Treasury website:

"The fines for violations can be substantial. In many cases, civil and criminal penalties can exceed several million dollars. Civil penalties vary by sanctions program, and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalty Inflation Adjustment Act Improvements Act of 2015, requires OFAC to adjust civil monetary penalty amounts annually. For current penalty amounts, see section V.B.2.a of Appendix A to OFAC's Economic Sanctions Enforcement Guidelines at 31 C.F.R Part 501."

How OFAC Sanctions Affect Conflict Minerals Compliance Efforts

Several years ago, when reviewing Conflict Minerals declarations (CMRT), the Responsible Business Alliance (RBA) discovered that a widely reported smelter was located in North Korea. At the time, most Conflict Minerals practitioners were not aware that dealing with any entity located in North Korea, or owned by North Korean nationals, was a violation of U.S. sanctions.

Conflict Minerals compliance programs were focused on gathering and aggregating supplier declarations which contained lists of smelters. All the associated analytics were focused on identifying smelters located in and around the Democratic Republic of Congo (DRC). No one realized other compliance violations could be brought to light, such as illegal sourcing from a North Korean smelter. By reporting Conflict Minerals compliance information publicly to the SEC, companies inadvertently discovered compliance issues with other government regulations such as OFAC.

After the initial North Korean smelter discovery, several more smelters were identified as being controlled or owned by entities or persons on the SDN list – a distinction that makes it illegal for any U.S. company to have the smelter in their supply chain.

THE BIGGEST CHALLENGE FOR U.S. COMPANIES IS THAT NEW ENTITIES AND PERSONS ARE CONTINUALLY BEING ADDED AND REMOVED FROM THE SDN LIST.

The biggest challenge for U.S. companies is that new entities and persons are continually being added and removed from the SDN list. A smelter with no OFAC violation concerns today, may later be owned, or controlled by a Russian oligarch who is banned from receiving any payments from U.S. persons or corporations. It is illegal under U.S. law to purchase minerals from smelters subject to OFAC sanctions, even if the transaction occurs through intermediaries. Under these circumstances, the U.S. entity not only needs to immediately stop purchasing from the smelter but must also determine whether they are required to report the violation to OFAC.

Post-Violation Compliance

Identifying OFAC violations based on the physical location of a smelter is straight-forward (i.e. banned countries such as North Korea, Sudan, etc.) but proactively keeping track of sanctioned people and entities is much more complicated. It requires consistent monitoring of the OFAC SDN list, which is maintained by the U.S Department of Treasury.

OFAC does not have an "amnesty" program. However, the agency encourages companies and individuals to voluntarily disclose violations. Self-disclosure, bolstered by a strong compliance monitoring program, has a mitigating effect on any proceedings, and OFAC reviews all the circumstances surrounding a violation, including the efforts of the breacher to comply with OFAC rules.

OFAC DOES NOT HAVE AN "AMNESTY" PROGRAM. HOWEVER, THE AGENCY ENCOURAGES COMPANIES AND INDIVIDUALS TO VOLUNTARILY DISCLOSE VIOLATIONS.

The message is simple, businesses can significantly lower their risk of monetary fines by implementing a robust OFAC violations review as part of a larger Conflict Minerals compliance program.




OFAC Violators

This information was compiled by Jabil's Social & Environmental Responsibility Team in collaboration with third-party legal compliance experts.

1. **Central Bank of the DPR Korea** CID000190

Location: North Korea
Status: Non-Operational

Under the sanctions program, goods, services, and technology from North Korea may not be imported into the United States, directly or indirectly, without a license from OFAC or applicable exemption. This broad prohibition applies to goods, services, and technology from North Korea that are used as components of finished products of, or substantially transformed in, a third country. There also are sanctions blocking the property and interests of the North Korean government and identified SDNs. In addition, unless otherwise authorized or exempt, transactions by U.S. persons, or in or involving the United States are prohibited if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on the SDN List . The property and interests in property of an entity that is 50% or more owned, directly, or indirectly, by a person on the SDN List are also blocked, regardless of whether the entity itself is listed.

2. **JSC Ekaterinburg Non-Ferrous Metal Processing Plant** CID000927

Location: Russian Federation
Status: In Operation

JSC Ekaterinburg Non-Ferrous Metal Processing Plant has ownership ties with Renova Group, which is referenced in US Treasury sanctions. JSC Ekaterinburg Non-Ferrous Metal Processing Plant renders full range of precious metals refining and processing services, and manufactures products of industrial usage made of gold, silver, and platinum-group metals. The refinery in Russia is controlled by Moscow-based conglomerate Renova Group, which along with its key shareholder, billionaire Viktor Vekselberg, was sanctioned by the United States on April 6, 2018. The sanction measures were intended to punish Russia for allegedly engaging in "a range of malign activity around the globe", including activities in Ukraine, Syria, and cyberspace. In connection with this designation, OFAC issued General License 12, authorizing certain activities that are ordinarily incident and necessary to the maintenance or wind-down of operations, contracts, or other agreements involving certain blocked persons, and General License 13, authorizing certain activities that are ordinarily incident and necessary to divest or transfer debt, equity, or other holdings in certain blocked persons.

3. **Fidelity Printers and Refiners Ltd** CID002515

Location: Zimbabwe
Status: In Operation

Based on third-party reported information, Fidelity Printers appears to be majority-owned by Sino Zim Development, which is on the OFAC list as a Specially Designated National. Unless otherwise authorized or exempt, transactions by U.S. persons, or in or involving the United States are prohibited if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on the SDN List. The property and interests in property of an entity that is 50% or more owned, directly, or indirectly, by a person on the SDN List are also blocked, regardless of whether the entity itself is listed.

4. **Sudan Gold Refinery** CID002567

Location: Sudan
Status: In Operation

On January 13, 2017, there was an interim lifting of sanctions on Sudan, with a path to a permanent revocation of sanctions in six months if certain conditions are met. Effective January 17, 2017, the following transactions were authorized:

- The processing of transactions by U.S. persons (including banks) involving persons in Sudan;
- The importation of goods and services from Sudan by a U.S. person;
- The exportation of goods, technology and services to Sudan by a U.S. person; and
- Transactions involving property in which the government of Sudan has an interest.

If, after six months, there is a determination by the U.S. government that the government of Sudan has sustained the positive developments on the issues that gave rise to the lifting of sanctions, the above sanctions would be permanently lifted. Of course, in the interim we changed administrations, which may affect whether this occurs.

5. **Industrial Refining Company** CID002587

Location: Belgium
Status: In Operation

Industrial Refining Company, formerly known as Tony Goetz NV, is wholly owned by a Luxembourg-based holding company, which is beneficially owned by Sylvain and Axel Goetz, two relatives of Alain Goetz. According to court ruling, Alain and Sylvain Goetz set up a fraudulent system in 2010 and 2011 for customers to sell gold anonymously to the Tony Goetz refinery in Antwerp for cash, creating the basis for black-market trade (refined illegally and smuggled conflict gold from eastern Congo at the African Gold Refinery). Industrial Refining Company is currently non-conformant with the RMAP audit standard after failing a major international conflict minerals audit in 2017 and could not demonstrate their due diligence required to be conflict-free.

6. **African Gold Refinery** CID003185

Location: Uganda
Status: In Operation

The U.S. Department of the Treasury announced sanctions against Belgian businessman Alain Goetz, the African Gold Refinery in Uganda, and a network of companies involved in the illicit trade of gold from the Democratic Republic of the Congo (DRC). Since 2016, African Gold Refinery has sourced illicit gold from mines in regions of DRC that are controlled by armed groups, including the Mai-Mai Yakutumba and Raia Mutomboki that are involved in destabilizing activities in South Kivu, DRC. African Gold Refinery has a refining capacity of 219 tons per year and is considered one of the largest gold refineries in Africa, after refineries in South Africa and Ghana. African Gold Refinery and Goetz acknowledged that a share of the gold African Gold Refinery refines comes directly from mines in the DRC and has taken over a significant portion of the market for gold trafficked from the DRC. African Gold Refinery was designated pursuant to E.O. 13413 for being responsible for or complicit in, or having engaged in, directly or indirectly, support to persons, including armed groups, involved in activities that threaten the peace, security, or stability of the DRC or that undermine democratic processes or institutions in the DRC, through the illicit trade in natural resources of the DR C.