

Managing sanctions risk

Legal perspectives

FSi Webinar Export Control

25 November 2020



Growing risk picture and increased enforcements

Aftenposten Amagasinet Osloby Sport Meninger Søk

Verden | Danmark

Dansk selskap knyttes til ulovlig salg av drivstoff til bombefly: - Datamaskinen forvekslet «Søren» med «Syrien»

Den danske shippinggiganten mente datamaskinen ikke skjønte bokstaven Ø. Lørdag ble forklaringen avvist av Danske Bank.

Anklager kræver fængsel til Bunker Holdings topdirektør

Ifølge anklageskrift vidste bunkerselskap og direktør at jetbrændstof skulle til Syrien i sag om sanksionsbrud



Et russisk Sukhoi Su-24 kampfly letter fra filmbyrnen i Latakia i Syrien. (Foto: Handout fra 2015 via Reuters i Scampix) (Foto: handout i Scampix)

Av: ASTRID FISHER, LINE GERITSEN, MORTEN FRANSEN OG MATHIAS FRIS
18. NOV. KL. 11.00 | UPGDATERET: 18. NOV. KL. 16:29

E24 AKSJELIVE BØRS E24+ TIPS OSS Søk

Kværner risikerer sanksjoner fra USA for gassrør-kontrakt i Russland

Trump-administrasjonen øker nå presset mot alle som bidrar til den nye gassrørledningen Nord Stream 2, som legges gjennom Østersjøen fra Russland til Tyskland. Kværner er blant leverandørene.



E24 AKSJELIVE BØRS E24+ TIPS OSS Søk

Norskeid skip mistenkt for brudd på våpenembargoen mot Libya - bordet i militæroperasjon

Et norskeid skip ble bordet av EU-styrker på vei til Benghazi i Libya. Skipet blir etterforsket for brudd på våpenembargoen mot landet.



Av Erlend Othe Arntsen (VG), Synne Eggem Myrvang (VG), Milas Johnsen (VG) og Vidle Elgaas (VG)
Oppdatert: 12. september 2020 21:10, Publisert: 12. september 2020 18:31

E24 AKSJELIVE BØRS E24+ TIPS OSS Søk

SVT: Storbank kan ha bidratt til brudd på USA's sanksjoner

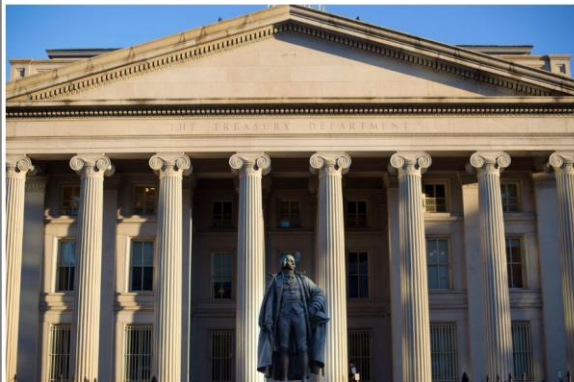
Hvitvaskingsanklagede Swedbank dras onsdag morgen inn i en ny skandale. - Jeg blir opprørt, sier bankens toppsjef til SVT.



THE WALL STREET JOURNAL
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U.S. Sanctions Compliance Fines Hit Decade High

A surge in penalties reflects a broadening range of sanctions affecting a wider swath of industries, lawyers



The Treasury Department's Office of Foreign Assets Control said it has issued about \$1.3 billion in total penalties so far this year.
PHOTO: PABLO MARTINEZ MONSIVAIS/ASSOCIATED PRESS

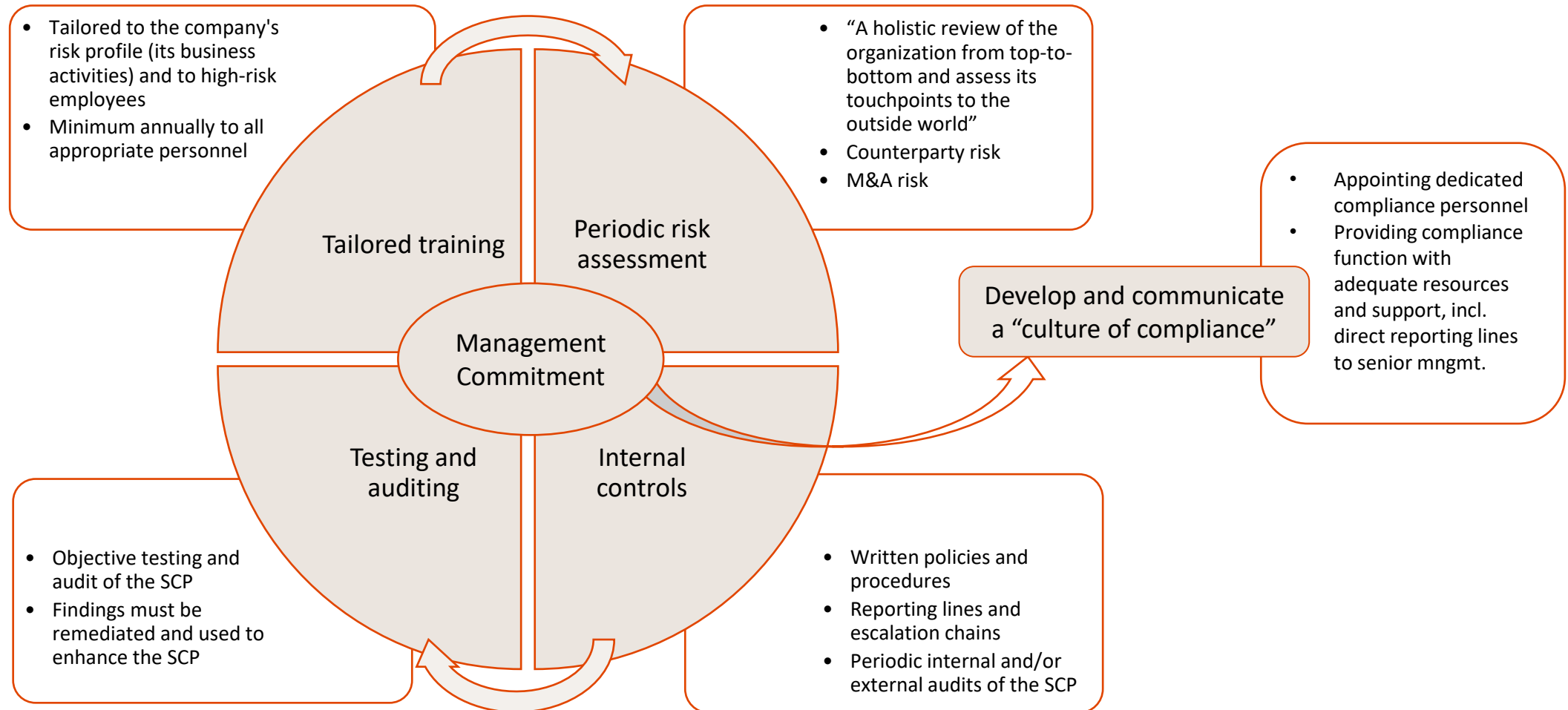
By Mengqi Sun
July 25, 2019 @ 3:22 am ET

Sanctions Compliance Program

Legal framework and expectations

- Regulatory expectations for sanctions compliance frameworks remain formally undocumented in many jurisdictions, including Norway
- Some guidance from Norwegian authorities on “Know your customer” and how to comply with asset freeze measures, but limited to counterparty risks
- Other stakeholders' expectations, e.g. Norwegian banks
- Other places to look for direction:
 - The OFAC Framework for Compliance Commitments, May 2019: guidelines on developing and implementing an OFAC sanctions compliance program
 - OFAC’s advisories gives a preview of OFAC’s enforcement priority and input to maintaining sanctions compliance program
 - The EU guidance on internal compliance programmes (ICP) for dual-use trade controls, July 2019
 - The Dutch guidelines for compiling an ICP for strategic goods and sanctions, December 2019

What does OFAC expect from the sanctions compliance program?



Advantages of taking a holistic risk approach

- The OFAC framework aligns with DOJ's expectations for effective corporate compliance program
- Overlapping risk picture of sanctions, corruption, human rights violations, money laundering and cyber crime
 - Yet, they sanctions compliance is often handled in isolation – e.g. by different functions in the company, separate risk assessment and screening procedures
- Advantages of taking a coordinated approach to sanctions, anti-corruption and anti-money laundering risk management
- It's essential that sanctions compliance forms part of existing risk mitigating measures, such as:
 - third party risk management
 - procurement procedures
 - supply chain qualification
 - product inventory
 - training



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments¹

Date: October 1, 2020

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this advisory to highlight the sanctions risks associated with ransomware payments related to malicious cyber-enabled activities. Demand for ransomware payments has increased during the COVID-19 pandemic as cyber actors target online systems that U.S. persons rely on to continue conducting business. Companies that facilitate ransomware payments to cyber actors on behalf of victims, including financial institutions, cyber insurance firms, and companies involved in digital forensics and incident response, not only encourage future ransomware payment demands but also may provide information that could be used to identify victims of ransomware attacks. OFAC is issuing this advisory to highlight the risks and provide information to help companies understand the risks and functions of OFAC, if there is a real or otherwise

UK imposes sanctions against human rights abusers

6 July

Killing of Jamal Khashoggi

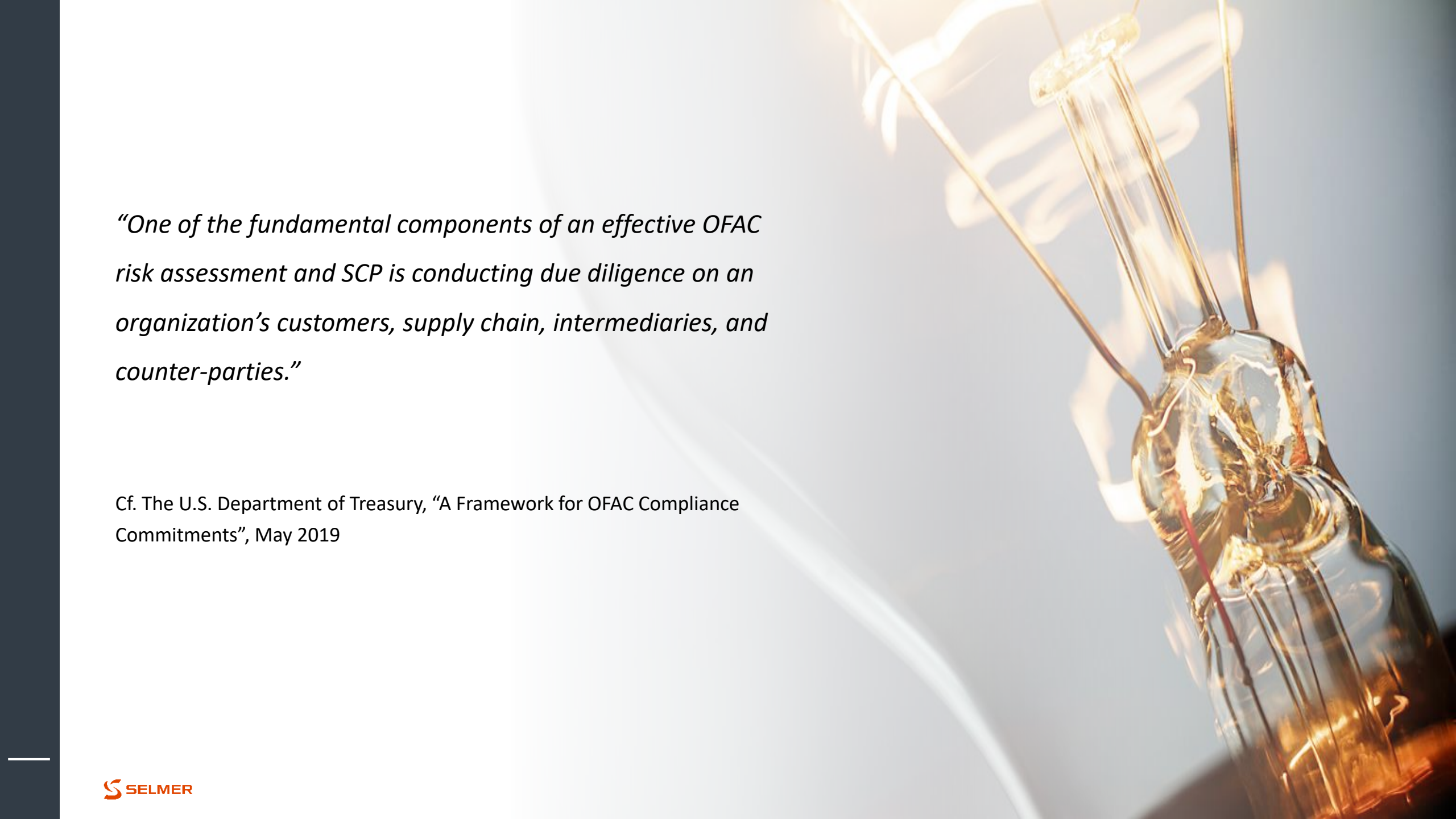


The UK is imposing sanctions on 49 people and organisations behind the most "notorious" human rights abuses of recent years.

Pitfalls

- Not looking, or even be aware, of its sanctions risk exposure points
- Missing key facts
- Misinterpreting the applicability of sanctions regulations
- Improper or incomplete due diligence
- Decentralized compliance structures and lack of a formal escalation process for high-risk transactions
- Sanctions screening software gaps, filter faults or using outdated sanctions lists
- Conducting transactions outside of established commercial practices
- US persons facilitating sanctioned transactions for non-US companies and individuals (e.g. non-US entity involving their U.S.-based headquarters or personnel)
- Non-US persons exporting or re-exporting US-origin goods to a US sanctioned country/person
- Non-US persons processing USD-transactions through US financial institutions that pertain to commercial activity involving a US-sanctioned country/person

Sanctions Due Diligence Requirements



“One of the fundamental components of an effective OFAC risk assessment and SCP is conducting due diligence on an organization’s customers, supply chain, intermediaries, and counter-parties.”

Cf. The U.S. Department of Treasury, “A Framework for OFAC Compliance Commitments”, May 2019

Look before you leap

- Breaching the Norwegian sanctions is a criminal offence
 - Committed wilfully or by neglect
- Sanctions due diligence and screening are crucial to avoid sanctions breach.
- Having performed robust and proportionate due diligence may be a defence should a sanctions enforcement matter arise

Saying you didn't know won't necessarily help to excuse a breach – but proving that you thought about it and tried your best to avoid it will help.

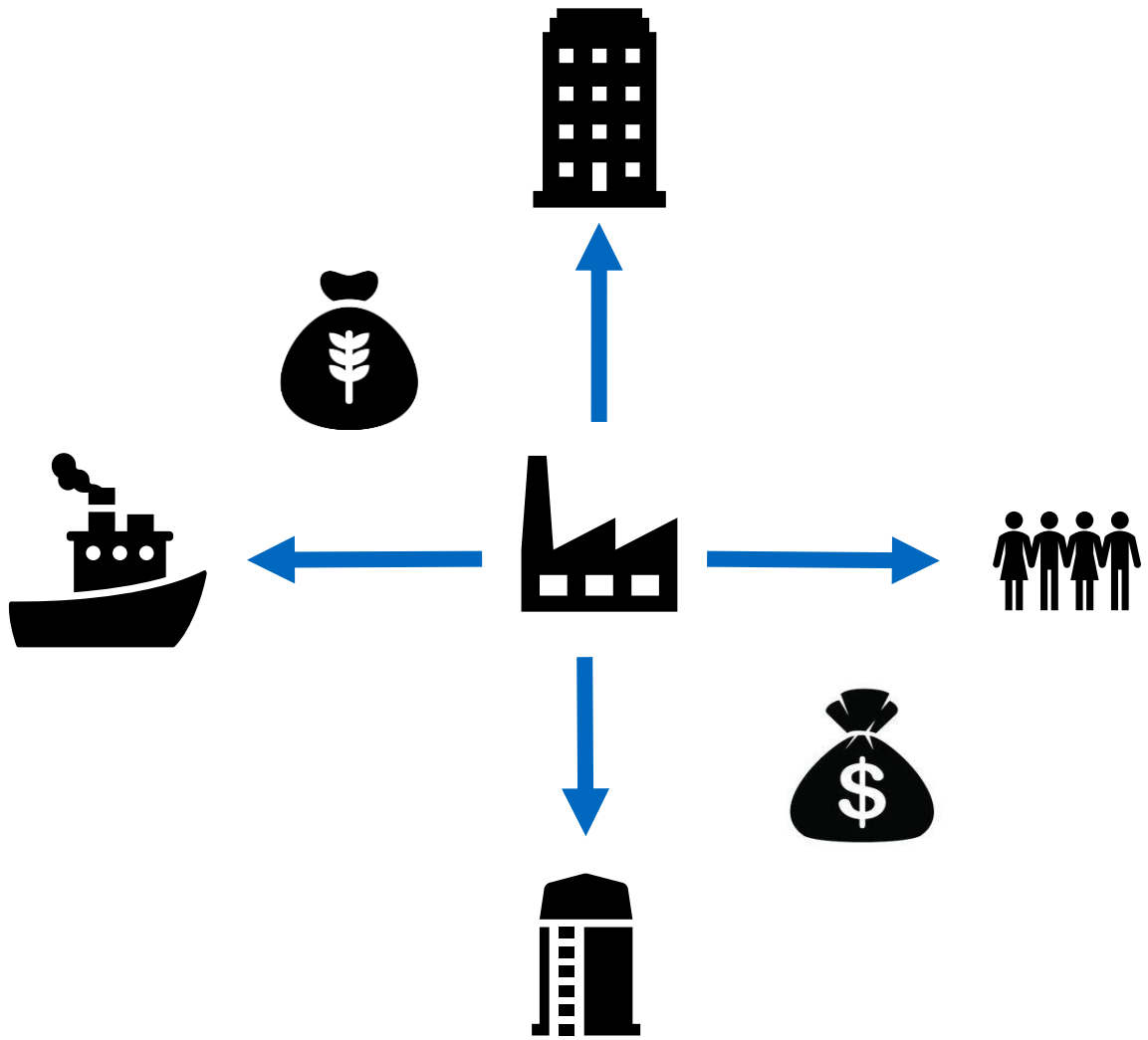
- How much due diligence is enough - when can you stop digging?



Screening sphere - Direct transfers

Contracting party

- Making funds or economic resources available **directly** to or for the benefit of a designated person



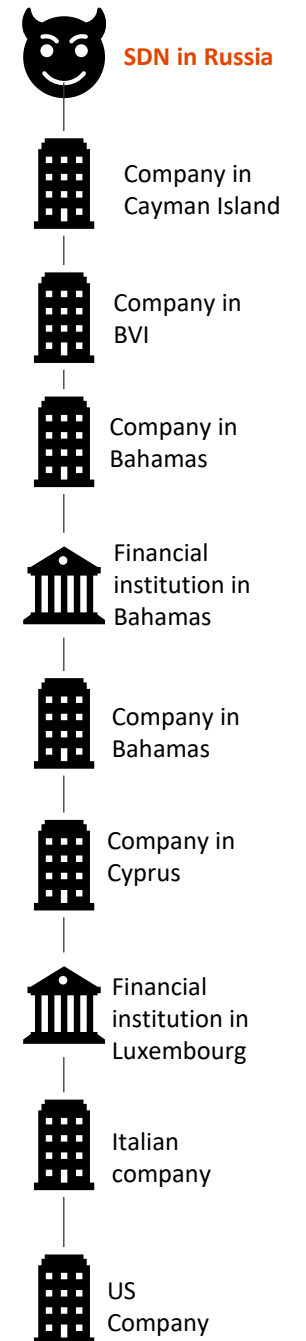
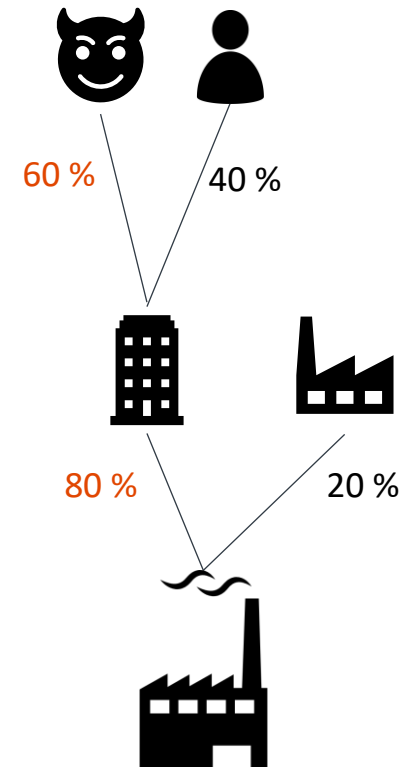
Screening sphere - Indirect transfers

“Sanctioned by extension”

- Making funds or economic resources available **indirectly** to or for the benefit of a designated party
- Companies that are “sanctioned by extension” are not themselves on any sanctions list, but their owner(s) is on a sanctions list
 - The EU/Norwegian asset freeze apply to entities that are owned more than 50 % or controlled by a designated party
 - Under OFAC’s 50 %-rule, a company is sanctioned if its owned in the aggregate 50% or more by one or more SDNs
- Need to identify and screen the direct and indirect owners, including UBO

“If the ultimate beneficial ownership of an entity rests with a designated person (for example, they own a corporate body which owns another corporate body), OFSI takes the view that all entities that are part of the ownership chain are subject to financial sanctions.”

cf. OFSI’s Financial Sanctions Guidance



Screening sphere - Indirect transfers (cont.)

Other third parties

- End-customer, board of directors, key executives, company representatives
- Others? Subject to a concrete and risk-based assessment
 - E.g. bank, end-customer's owners, other suppliers to the project etc.
- The threshold of when you should have inferred knowledge or formed suspicion of potential sanctions red flags depends on the factual circumstances available

Other sanctions risk mitigating measures

1. Determine which national governments may enforce jurisdiction
2. Screen products - Need to apply for a license/authorization?
3. Identify the end-use
4. Implement contractual provisions – and enforce them
 - Sanctions compliance clause, audit and termination-rights, end-user certificate (when applicable)
5. Record keeping - if it's not documented it hasn't happened
6. Monitor developments - you are aiming at a moving target
7. Compliance with the other private (financial) agreements – banks as the new watchdogs?

COMPLIANCE

Some sanctions compliance lifehacks

- Pay attention to OFAC enforcement actions – it is good training material
- Adopt a risk-based approach
- Engage in the business development/sales team
- Have in mind your banks perspective
- Provide assurance that sanctions procedures are being met
- Uphold accountability
- Focus on continuous improvement



Thank you



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Kine is a subject matter expert in economic sanctions and trade restrictions. She has considerable experience in assisting companies with navigating within the EU and Norway's sanctions and export control regulations to ensure compliance in their world-wide operations. Through an extensive global network of leading sanctions and trade control specialists, she is often engaged to coordinate and assist with sanctions assessments under multiple jurisdictions, including U.S. sanctions. In addition, she assists companies in contact with government authorities, banks and other business partners.

Before joining Selmer in 2019, Kine worked in the Compliance and Crisis Management practice of the law firm Wikborg Rein. She has also worked in the legal and compliance department of Aker Solutions ASA (2015 to 2017). Kine has significant operational sanctions compliance experience and first-hand knowledge of third party management, contingency planning and implementing mitigating measures in a global business.



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Thomas specializes in compliance, investigations and crisis management. He assists companies with legal issues relating to anti-corruption, anti-money laundering, sanctions, corporate investigations, governmental interactions and corporate criminal liability. Through his extensive global network consisting of leading fraud and anti-corruption specialists, Thomas has solid experience in assisting Norwegian clients to tackle various challenges related to fraud and corruption in the emerging markets.

Thomas is often engaged by companies, investors, and financial institutions in connection with compliance assessments, due diligence and audits on business partners, and with issues arising from mergers and acquisitions. He also assists Norwegian companies with internal compliance program development and implementation, including establishing workable compliance policies and procedures, training for company management and employee personnel. Thomas is recommended as one of the leading Norwegian compliance lawyers by the rating agency Chambers in 2019.

Access to local law and compliance expertise

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