

Sanctions Update 2021: the US and UK Perspective

David Mortlock | Britt Mosman | Rita Mitchell | Michael Thorne

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Update on U.S. Sanctions Developments in 2020

China and Hong Kong

- **Uyghur Human Rights Policy Act**

- **June 17, 2020:** bi-partisan Act directs United States resources to address human rights violations and abuses of specified ethnic Muslim minority groups in **China's Xinjiang Uyghur Autonomous region**.
- Mandates sanctions against foreign persons, including CCP officials, determined to be responsible for human rights abuses in the Xinjiang region.

- **Xinjiang Supply Chain Business Advisory**

- **July 1, 2020:** jointly released by the Departments of State, Treasury, Commerce and Homeland Security, the advisory highlights the risks to businesses with supply chain links to entities that engage in **human rights abuses**, including forced labor, in the Xinjiang region and elsewhere in China.

- **Hong Kong Autonomy Act and E.O. 13936**

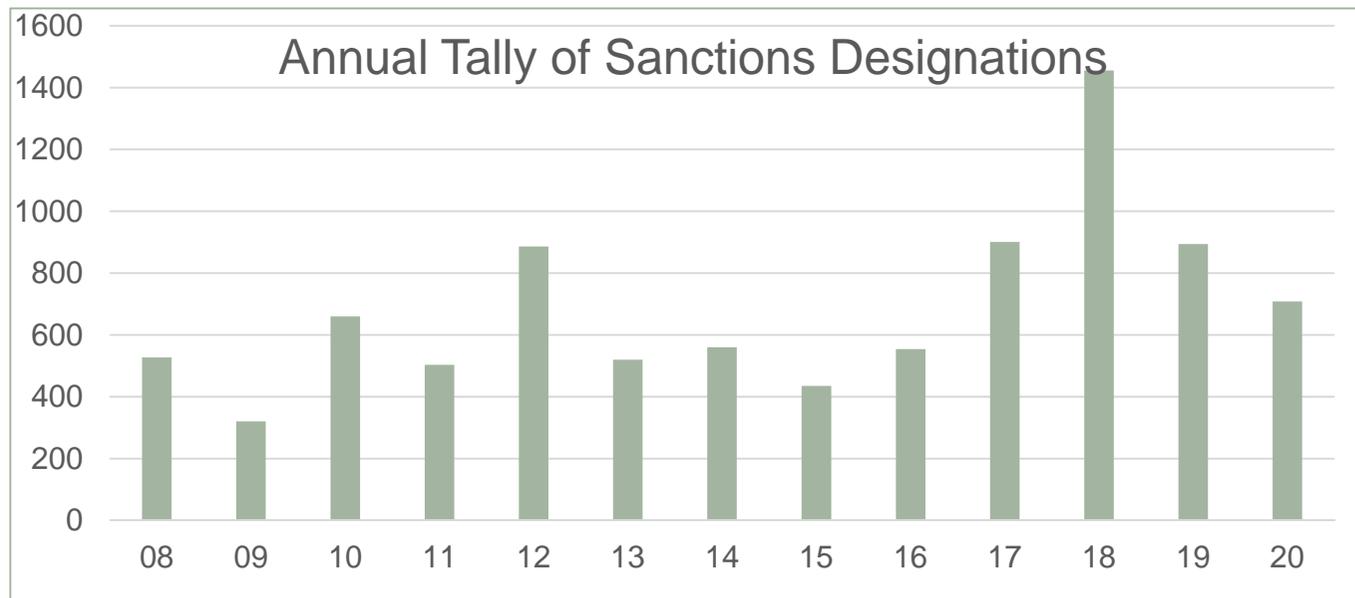
- **July 14, 2020:** unanimously passed in response to China's National Security Law for Hong Kong, the Act mandates sanctions on **(1)** foreign persons determined to materially contribute to the Government of China's failure to meet its obligations to maintain Hong Kong's autonomy and **(2)** foreign financial institutions determined to knowingly conduct significant transactions with such persons.
- **July 14, 2020:** Executive Order (E.O.) 13936 authorizes blocking sanctions for a broad range of activities related to Hong Kong democracy/human rights.

Iran

- **E.O. 13902, Imposing Sanctions With Respect to Additional Sectors of Iran**
 - **Jan. 10, 2020:** authorizes blocking sanctions on persons determined to operate in the **construction, mining, manufacturing, or textiles sectors** of Iranian economy, or any other sector as may be determined by Treasury Secretary.
 - Authorizes correspondent/payable through account sanctions on foreign financial institutions determined to have knowingly conducted/facilitated certain significant transactions involving such persons/sectors.
- **OFAC's Fact Sheet on the Provision of Humanitarian Assistance and Trade to Combat COVID-19**
 - Persons manufacturing medicine, medical devices, or products used for sanitation, hygiene, medical care, medical safety, and manufacturing safety for use in Iran will not be considered to be operating in the "manufacturing sector" of the Iranian economy under E.O. 13902.
 - Persons conducting or facilitating transactions for the provision of agricultural commodities, food, medicine, or medical devices to Iran will not be subject to sanctions under E.O. 13902.
- Increased designations of Iranian persons to the SDN List and use of counter terrorism authorities.

Syria

- **Caesar Act and Secondary Sanctions Authority**
 - Mandates sanctions on foreign persons determined to knowingly engage in certain activity involving the Government of Syria, Syria's oil and natural gas industry, and persons subject to sanctions with respect to Syria (among others).
- New Syria designations and increase in overall designations



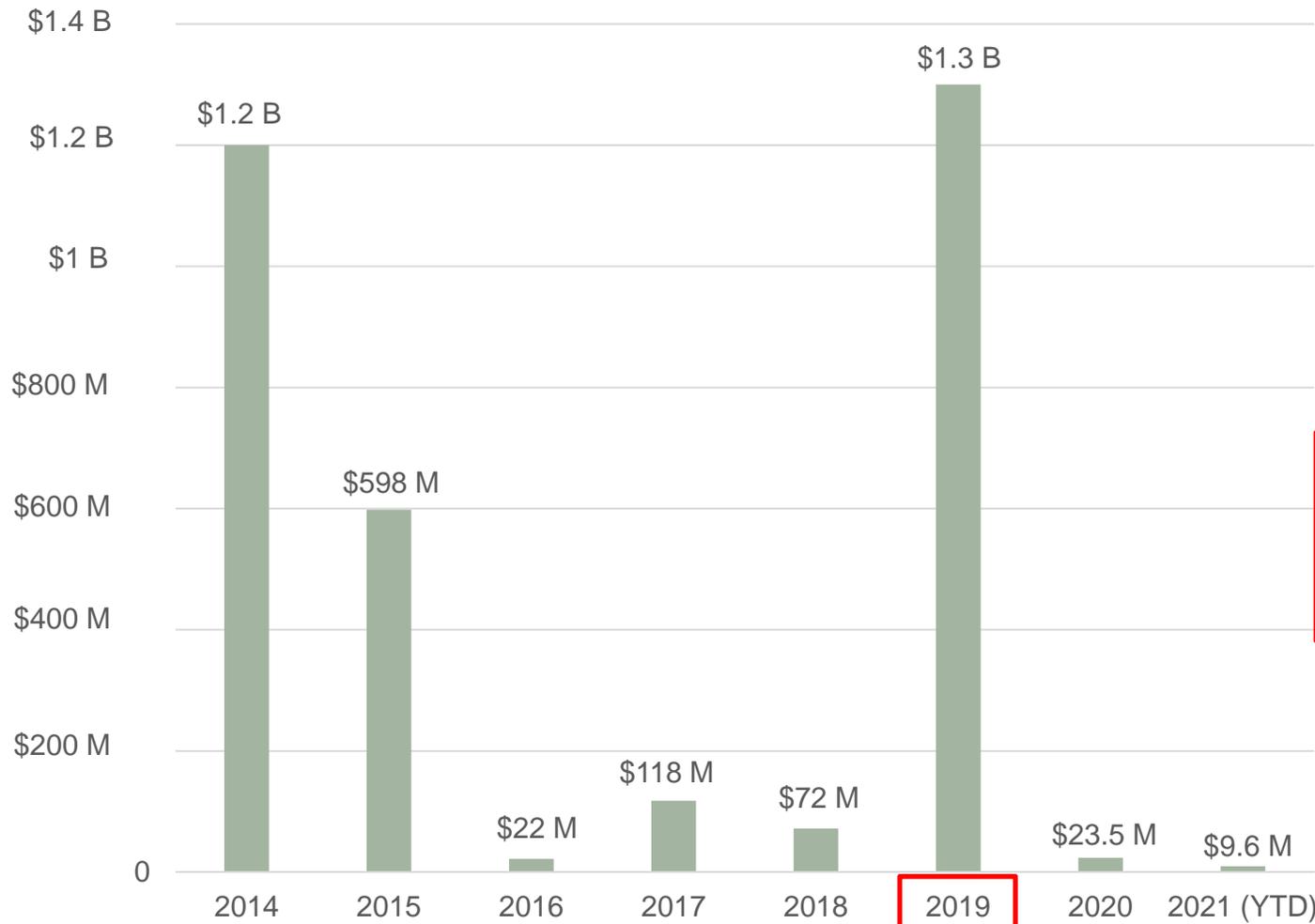
Source: Wall Street Journal citing U.S. Treasury Department Office of Foreign Assets Control; compiled by Dow Jones Risk & Compliance
Data current as of October 29, 2020

Ransomware Advisory

- **Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments (October 1, 2020)**
 - OFAC has increasingly designated, and will continue to designate, malicious cyber actors to the SDN List.
 - Compliance programs should account for the risk that a ransomware payment may involve a blocked person or embargoed jurisdiction.
 - License applications involving ransomware payments demanded as a result of malicious cyber-enabled activities will be reviewed by OFAC on a case-by-case basis with a **presumption of denial**.
 - The advisory encourages victims of ransomware attacks, and their advisors and service providers, to **reach out to OFAC immediately** if they believe a request for a ransomware payment may violate U.S. sanctions.

Recent Enforcement Trends

Total OFAC Civil Enforcement Penalties by Year



OFAC Releases its Framework for Compliance Commitments in May 2019

Recent Enforcement Actions

- **Société Internationale de Télécommunications Aéronautiques SCRL (“SITA”)**
 - SITA, a global IT services provider headquartered in Switzerland and serving the commercial air transportation business agreed to pay \$7,829,640 to settle its potential civil liability for 9,256 apparent violations of the GTSR totaling approximately \$2,428,200.
 - OFAC highlighted that SITA did not maintain or implement an effective compliance policy.
 - OFAC underscored the importance of implementing effective, thorough, and on-going risk-based compliance measures as stated in its Framework for Compliance Commitments.
- **Amazon.com, Inc.**
 - Amazon agreed to pay \$134,523 to settle its potential civil liability for apparent violations of multiple sanctions programs.
 - Deficiencies in Amazon’s screening processes led to the company providing goods and services to sanctioned persons and persons located in Iran, Syria, and the Crimea region. Amazon also failed to report hundreds of transactions conducted pursuant to a general license that included a mandatory reporting requirement.
 - OFAC highlighted the importance of screening measures appropriate for ecommerce and other internet-based businesses that operate on a global scale. OFAC further stated that large and sophisticated businesses should implement and employ compliance tools and programs that are commensurate with the speed and scale of their business operations.

What to Expect From the Biden Administration

Appointments and Nominations



Janet Yellen – Secretary of Treasury



Antony Blinken – Secretary of State



Merrick Garland – Attorney General



Jerome Powell – Federal Reserve Chairperson



OFAC

Brad Smith – Acting OFAC Director



Andrea Gacki – Acting Undersecretary for the Office of
Terrorism and Financial Intelligence

Possible Changes to U.S. Sanctions Programs

- President Biden has not detailed his specific plans for sanctions, but will likely continue to use sanctions as a major foreign policy tool with some possible changes.
- **Potential Return to the JCPOA**
 - “If Iran returns to strict compliance with the nuclear deal, the United States would rejoin the agreement as a starting point for follow-on negotiations.” Sept. 2020 in an opinion piece on CNN written by President Biden.
- **Potential Easing of Sanctions on Cuba**
 - “The administration’s approach is not working. Cuba is no closer to democracy than it was four years ago.” Oct. 2020 speaking at a campaign event in Miami as reported by CNBC and the Miami Herald.
- **Additional Sanctions on Russia for Election Interference**
 - “And [Putin] knows that there will be similar consequences if he engages in trying to interfere with our election, by moving in a direction to seek greater sanctions against Russia, because they’re doing it...all across Europe and other parts of the world.” Feb. 2020 speaking at a CNN town hall as reported by WSJ.
- **Tougher Stance on China**
 - “Trump opposed sanctioning China’s government over its atrocious human rights violations to protect his hollow trade deal and serve his own personal interests. Where Trump has been weak, I will be strong, clear, and consistent in standing up for America’s values and its people” June 2020 in a tweet as reported by WSJ.
- One constant is that sanctions generally have bipartisan support. We expect OFAC will remain active during the Biden administration.

Practical Considerations

- Maintain an effective and well-resourced compliance program that tracks OFAC's Framework for Compliance Commitments.
- U.S. and non-U.S. companies alike need to be able to respond to constantly changing landscape.
- Sanctions compliance is not just an issue for Financial Institutions anymore: e-commerce and virtual currency companies should also focus on sanctions compliance.

Update on UK Sanctions Developments in 2020

UK Sanctions Enforcement

- OFSI in 2020: Enforcement & Breach Data
- Brexit: The new UK Regime and Consequence

UK Sanctions Enforcement: Year in Review

Date	Name	Sector	Regs	Reason	Penalty	Voluntary disclosure	Report
21 January 2019	Raphael & Sons plc	Banking	Council Reg (EU) 270/2011 Egypt (S.I 2011/887)	Dealing with funds belonging to a designated person, without a licence	£5,000	Yes	Report link
08 March 2019	Travelex UK Ltd	Financial services	Council Reg (EU) 270/2011 Egypt (S.I 2011/887)	Dealing with funds belonging to a designated person, without a licence	£10,000	No	Report link
09 September 2019	Telia Carrier UK Limited	Telecommunications	Council Regulations (EU) No 36/2012 enforced by the Syria (European Union Financial Sanctions) Regulations 2012 (S.I. 2012 No 129)	Making economic resources available to a designated person, without a licence	£146,341	No	Report link
18 February 2020	Standard Chartered Bank	Banking	EU Council Regulation 833/2014, Ukraine (European Union Financial Sanctions) (No.3) Regulations 2014	Making funds available to a designated person, without a licence	£20.47m (£7.69m & £12.77m)	Yes	Report link

Source: OFSI Website

UK Sanctions Enforcement: Year in Review

- 2019-2020:
 - OFSI received 140 reports of sanctions breaches valued at £982.34m
 - Majority from banking and financial services sectors, but also include legal, charity, insurance, energy and travel
 - Most resulted in warning letters, notifications of “no breach” and guidance – not publicised
 - Majority of breach notifications related to the Libyan regime: over £11 billion in Libyan assets are currently frozen in the UK

UK Sanctions Enforcement: Frozen Assets in the UK

Frozen Asset Review – 2019 to 2020

Financial sanctions regime	Frozen funds in the UK, £*
Libya	11,809,000,000
Iran (nuclear proliferation)	460,400,000
Syria	160,500,000
Ukraine (Sovereignty)	21,100,000
Yemen	3,500,000
Others**	9,400,000
Total	12,463,900,000

**Figures are rounded to the nearest £100,000*
*** Regimes where the value of total frozen assets is below £3.5 million, or for which OFSI received no returns, have been grouped as 'Others'*

Source: Office of Financial Sanctions Implementation.

Source: OFSI Annual Review 2019/2020

UK Sanctions Enforcement: Standard Chartered

- Standard Chartered
 - Standard Chartered made 102 loans to Denizbank A.S. between 8 April 2015 and 26 January 2018. Denizbank was majority owned by Sberbank at the time, which was subject to restrictive measures on loans and credit arrangements
 - OFSI took enforcement action in relation to 21 of these loans (with a total value of **£97 million**) that it determined breached sanctions.
 - **Controls failure:** Standard Chartered initially blocked loans to Denizbank but subsequently put in place dispensations to allow loans within the scope of an exception for loans with objective of EU imports and exports
 - **Voluntary Disclosure:** 30% reduction in fine (a “most serious breach”)
 - **Review:** Economic Secretary to the Treasury upheld penalty decision but reduced fine from £31.5m to £20.47m
 - **Reasons:** greater weight to mitigating factors, including not a wilful breach and Standard Chartered intended to comply, cooperated with OFSI and remediated

UK Sanctions Framework Post-Brexit

New UK SIs

- Intended to transfer the existing regimes into UK law and to substantially deliver the same policy effects. However, NOTE:
 - The EU sanctions have not been transposed and the new drafting does give rise to interpretive differences, some of which are potentially material to the scope of what is prohibited.
 - In general, where differences arise, the new UK sanctions are broader than what was previously in place
 - Whilst this has a potential impact across the board, it is particularly true of the new UK Russia Sanctions.
 - The UK now no-longer automatically applies EU designations. 113 entries previously designated under EU Sanctions Regulations have not been designated under the UK regime
 - Designation by description (s.12 of the Sanctions and Anti-Money Laundering Act 2018): not yet used.
 - Blocking Stature transferred to English law, applicable to UK Companies with a domestic referral regime

UK Sanctions Framework Post-Brexit

- “Ownership or control”
 - EU position: non binding guidance.
 - New definitions under English law, set out in the legislation.
 - directly or indirectly hold 50% or more shares or voting rights;
 - directly or indirectly hold right to appoint or remove majority of the board; or
 - it is reasonable, having regard to all the circumstances, to expect that a designated person would (if they chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that the affairs of another person are conducted in accordance with their wishes.
 - SIs now include a schedule of “interpretive rules” for how to look at ownership and control in the context of sanctions.
- EU sanctions included guidance that making funds or economic resources available to a person owned or controlled by a designated person is considered making them available to the designated person, **unless rebutted on the facts.** The UK SIs do not include such a qualification.

UK Sanctions Framework Post-Brexit

- The definition of “Brokering Services” has expanded:
 - Under relevant EU Regulations this included buying or selling; or the negotiation or arrangement of transactions for purchase, sale or supply of goods, technology or financial or technical services relating to a particular restricted item.
 - Under the UK SI, it includes: *“the facilitation of anything that enables the arrangement to be entered into”*; and *“the provision of any assistance that in any way promotes or facilitates the arrangement.”*

UK Sanctions Framework Post-Brexit

Type of Trade Control relevant to “Brokering Services”:	Relevant Regimes:		
Military goods, military technology and related activities	<ul style="list-style-type: none"> • Burma • Central Africa Republic • Democratic People's Republic of Korea • Democratic Republic of the Congo 	<ul style="list-style-type: none"> • Iran • Iraq • ISIL • Lebanon • Russia • Republic of Belarus • Somalia 	<ul style="list-style-type: none"> • South Sudan • Sudan • Syria • Venezuela • Yemen • Zimbabwe
Dual-use goods, dual-use technology and related activities	<ul style="list-style-type: none"> • Burma • Russia 		
Crimea exports and imports and related activities	<ul style="list-style-type: none"> • Russia 		
Energy-related goods and related activities	<ul style="list-style-type: none"> • Russia 		
Cultural property	<ul style="list-style-type: none"> • Iraq • Syria 		
Aviation fuel and additives	<ul style="list-style-type: none"> • Syria 		
Crude oil and natural gas goods and technology	<ul style="list-style-type: none"> • Syria 		
Gold, precious metals or diamonds	<ul style="list-style-type: none"> • Syria 		

UK Sanctions Framework Post-Brexit

- The UK Export Control Orders implementing EU sanctions generally included a requirement to demonstrate a person was “*knowingly concerned in an activity*” prohibited by the EU Regulations “*with intent to evade*” those prohibitions.
 - Under the new UK SI’s this has been replaced by a defence if the person violating “*did not know and had no reasonable cause to suspect*” that their actions were prohibited. That is a lower threshold.

UK Sanctions Framework Post-Brexit

- Licensing (incl. general licences)
 - Trade licences from the UK are not valid in the EU and vice versa: this can apply to exports but also to associated activities, such as export finance, insurance etc: in some cases multiple licences may be required
 - General Licences can now be issued by Treasury (OFSI) and Department for International Trade (ECJU) and have already been used. Similar to US General Licences (not currently used under EU law).
 - There are a total of 53 ECJU general licenses and 1 OFSI general licence

UK Sanctions Framework Post-Brexit

- Russia Sanctions
 - Prohibitions on “Financial Assistance” relating to military goods, dual use goods and energy-related goods and technology in Russia (or to persons connected with Russia) and for infrastructure related goods in Crimea replaced with “financial services” and “funds” under English law, which **includes** payment processing and money transmission services (contrary to European Commission guidance).
 - Exemptions for dealing with certain transferrable securities or money market instruments of EU subsidiaries of restricted Russian entities only now apply to their UK subsidiaries under English law.
 - Exemptions for loans and making funds available for non-restricted trade only applies to UK linked trade (not EU linked trade)
 - Prohibition on “technical assistance”, “financial services” or “funds” (or any brokering services relating to the provision of those) in relation to any “military activities” by the Russian military, or any other military end-user who is a person connected with Russia: not specifically connected to military goods as under EU law.

Brexit: Practical Points to Consider

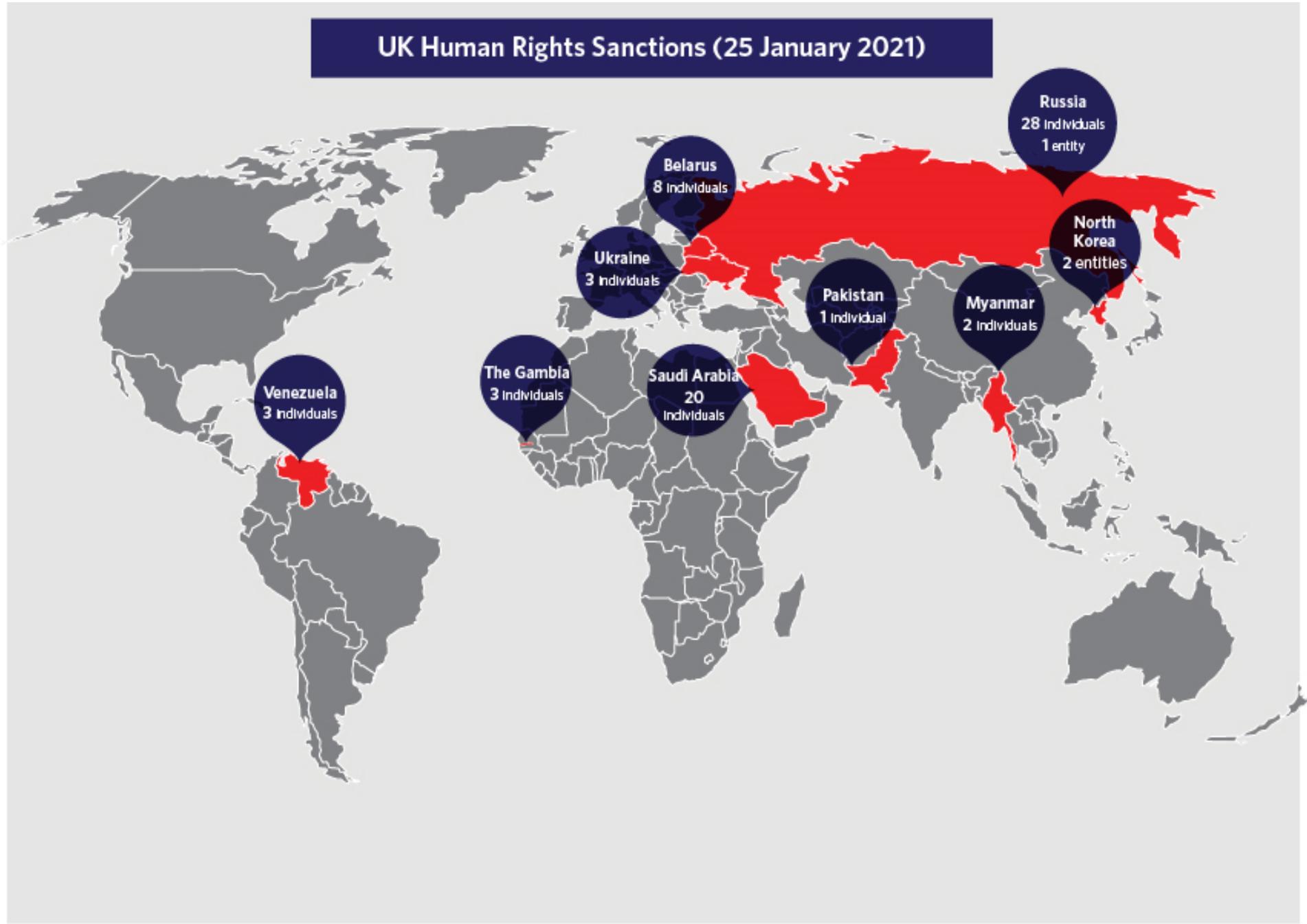
- Policy documents may need to be updated to reflect UK/EU differences
- Screening tools should take account of the correct lists: most providers will do this already, but it is worth confirming
- A review of existing business relationships in sanctioned countries and/or which previously relied on exceptions or exemptions under EU law is recommended, to make sure any business remains compliant

The Intersection of Sanctions, ESG and Human Rights

Sanctions, ESG, and Human Rights

- Increasing regulatory, commercial and media attention on the role of human rights in company supply chains
- Impact of human rights/labour issues on ESG initiatives
- **Further focus on sanctions as a human rights tool**
 - The US has had a human rights focused regime since 2016, with over 200 designations to date focusing on a range of issues
 - A key element of focus recently has been the impact of US sanctions on Chinese companies in Xinjiang
 - UK human rights regime adopted in July 2020
 - So far just over 70 designations
 - Most focus on military and government officials involved in serious human rights abuses
 - EU human rights regime adopted in December 2020
 - The EU is currently debating who should be designated under the new regime
 - EU parliament passed a resolution at the end of last week calling for sanctions over Navalny's arrest in Russia, including under the new human rights regime

UK Human Rights Sanctions (25 January 2021)



UK Human Rights Sanctions: Nature of Designations

No. of individuals subject to sanctions	Country	Human Rights Issue
28 individuals, 1 entity	Russia	(i) Russian officials persecution of the LGBT community in Chechnya; (ii) Russian officials involved in the mistreatment and death of Sergei Magnitsky
20 individuals	Saudi Arabia	Saudi Arabian officials involved in the unlawful killing of Jamal Khashoggi
8 individuals	Belarus	Belarussian officials involved in abuses against detained protestors and journalists following an election
3 individuals	The Gambia	Gambian political officials involved in extra judicial killings, torture and other cruel inhuman and degrading treatment
3 individuals	Venezuela	Venezuelan officials involved in extra judicial killings and incidences of people subject to cruel, inhuman and degrading treatment or punishment and torture
3 individuals	Ukraine	Ukrainian officials involved in the illegal use of lethal force by law enforcement, torture and killing of protestors
2 individuals	Myanmar	Myanmar military officials involved in the unlawful killings and cruel and degrading treatment of the Rohingya community
1 individuals	Pakistan	Pakistani police official involved in the use of lethal force by law enforcement
2 entities	North Korea	Entities involved in the murder, torture and subjection to forced labour of people held in prison

Human Rights & Sanctions: UK China Focus

- 12 January Dominic Raab updated Parliament on the UK Government's response to the situation in Xinjiang:
 - *“our aim, put simply, is that no company that profits from forced labour in Xinjiang can do business in the UK, and no UK business is involved in their supply chains.”*
- However, UK government stopped short of sanctions instead opting to:
 - Issue guidance to UK businesses on the risks of conducting business with Xinjiang
 - Plan the introduction of fines for not complying with Modern Slavery Act transparency obligations (legislative change required)
 - Extend the Modern Slavery Act transparency requirements to the public sector (not new)
 - Conduct an urgent review of export controls to avoid **export** of goods that may contribute to human rights violations in Xinjiang.

Human Rights & Sanctions: Diligence Synergies

- Screening programmes will need to consider the human rights designations in the same way as other designations under the sanctions regimes: most screening software should pick this up, but worth confirming.
- As companies increasingly adopt human-rights focused diligence on their supply chain, in particular looking at modern slavery risks, sanctions risks may also become part of that review, as we are seeing now in China.
- This could have an impact on how far you screen your supply chain, and whether in higher risk territories – currently primarily Xinjiang in China – you might need to consider screening beyond your first tier.
- In the UK Modern Slavery risks can give rise to broader concerns and potential liability, in particular under UK AML laws, for example where supply chain diligence identified goods purchased from suppliers that have used slave labour.
- Conducting due diligence on these issues can be a challenge.

Willkie Farr Contacts



Britt Mosman

Partner

T: +202 303 1057

E: bmosman@willkie.com

Britt Mosman is a partner in the Global Trade & Investment Practice Group in Washington. Her experience includes advising global financial institutions and leading multinational companies on complex, international compliance and enforcement matters, particularly economic sanctions, anti-money laundering (AML), and anti-corruption laws, as well as transaction reviews by the Committee on Foreign Investment in the United States (CFIUS).

Britt has deep experience with economic sanctions laws and regulations, having served as an Attorney-Advisor in the Office of the Chief Counsel (Foreign Assets Control) advising the Treasury Department's Office of Foreign Assets Control (OFAC), prior to joining Willkie. In this capacity, she focused on economic sanctions and national security issues, including as a lead attorney on the Iran, Ukraine/Russia, Cuba, Syria, Election Interference, and Cyber-related sanctions programs.

Her experience includes:

- Guiding major domestic and foreign companies in responding to subpoenas and conducting internal investigations in high-stakes civil and criminal enforcement proceedings by federal and state agencies involving potential violations of sanctions and AML laws;
- Working with clients in national security reviews at all phases of the transaction life cycle, including conducting CFIUS risk analyses and navigating the CFIUS process through preparation of notices, discussions with CFIUS member agencies, advising on follow-on investigations, and negotiating and implementing mitigation agreements; and
- Counseling clients on complying with sanctions, AML, anti-corruption, and export controls laws.



David Mortlock

Partner

T: +202 303 1136

E: dmortlock@willkie.com

David Mortlock is Chair of Willkie's Global Trade & Investment Practice Group and Managing Partner of the Washington office. He advises clients on international trade and government regulation of cross-border transactions, particularly the intersection of economic regulation and national security.

Mr. Mortlock helps clients pursue their business goals in compliance with foreign policy and national security-based regulation, including:

- Compliance with and registration under the International Traffic in Arms Regulations ("ITAR")
- Compliance with U.S. economic sanctions, export controls, and anti-money laundering regulations;
- Navigating the CFIUS review process, including both voluntary and mandatory filings;
- Internal investigations for potential violations of statutes and regulations;
- Self-disclosures of apparent violations to enforcement agencies;
- Criminal and civil enforcement actions;
- Development of compliance programs;
- Due diligence for compliance by investment targets, vendors, and other partners; and
- License requests with the Departments of the Treasury, Commerce and State.

Mr. Mortlock has worked with financial institutions, private equity firms, hedge funds, media companies, and many other institutions to navigate cross-border transactions, build compliance programs, conduct internal investigations, and address government investigations and enforcement actions. His recent experiences have included:

- Representing a major international financial institution before the Office of Foreign Assets Control, the New York Department of Financial Services, and the Federal Reserve Board, including the negotiation of a consent order and disclosure of apparent violations;
- Conducting an internal investigation for an international company in response to a subpoena from the Office of Foreign Assets Control;
- Filing an extensive disclosure of apparent violations with the Office of Foreign Assets Control on behalf of a major international company and negotiating a resolution;
- Filing numerous notices with the Committee on Foreign Investment in the United States and shepherding clients through the review process to obtain CFIUS approval of major transactions; and
- Appearing as an expert witness in international arbitrations regarding the application of U.S. sanctions to commercial disputes.

WILLKIE FARR & GALLAGHER LLP

Willkie Farr Contacts



Simon Osborn-King

Partner

T: +44 20 3580 4712

E: sosborn-king@willkie.com

Simon Osborn-King is a partner in Willkie's Litigation and Compliance, Investigations & Enforcement Practices in London. Mr. Osborn-King's practice is focused on complex regulatory, criminal, and internal investigations – often with dual U.K. and U.S. aspects – and enforcement proceedings facing multinational corporations, financial institutions and individuals across a range of business sectors.

Mr. Osborn-King has advised clients under investigation by regulators and prosecutors in multiple jurisdictions, including the U.K. Financial Conduct Authority and Serious Fraud Office, U.S. Department of Justice, European Commission, Italy Public Prosecutors' Office, Japan Financial Services Agency and Korea Fair Trade Commission. He also provides advice on compliance issues relating to sanctions, money-laundering, anti-corruption, whistle-blowing, and data protection. In addition, Mr. Osborn-King defends corporate clients in high-stakes litigation and arbitration proceedings arising out of investigations or regulatory developments.

Mr. Osborn-King played a lead role advising Deutsche Bank on multiple high-profile global investigations by enforcement agencies into LIBOR misconduct, and on the subsequent coordinated settlements in the U.S. and U.K. He also represented Olympus in relation to investigations in several jurisdictions regarding an alleged financial fraud. This work included cooperating with an SFO investigation as well as representing Olympus in claims brought against it by its former CEO.



Rita Mitchell

Partner

T: +44 20 3580 4726

E: rmitchell@willkie.com

Rita D. Mitchell is a partner in Willkie's Litigation and Compliance, Investigations & Enforcement Practices in London. Her practice includes advising and defending corporations in a variety of criminal and civil investigation and enforcement matters, conducting complex, worldwide internal investigations in relation to bribery, corruption and fraud, advising on and developing and benchmarking compliance programs, conducting pre-merger and third party due diligence, and providing day-to-day counseling and training on compliance with U.S., U.K. and other anti-corruption laws, including the U.S. Foreign Corrupt Practices Act (FCPA) and U.K. Bribery Act 2010 (Bribery Act).

Rita was featured in Global Investigations Review's Women in Investigations 2018, which honours 100 investigations specialists from around the world, and was also recognised in the 2019 edition of *Who's Who Legal Investigations: Future Leaders* as an "up-and-coming star in the field."

Rita is the co-leader of the London Chapter of the Women's White Collar Defense Association, a group of women attorneys and other professionals who represent clients facing government enforcement actions, criminal or civil, and who conduct global internal investigations and handle other compliance and ethics matters for clients.

WILLKIE FARR & GALLAGHER LLP

Willkie Farr Contacts



Michael Thorne

Senior Associate

T: +44 20 3580 4750

E: mthorne@willkie.com

Michael Thorne is a senior associate in Willkie's Litigation Department and Compliance, Investigations & Enforcement Practice Group. His practice covers a range of criminal, regulatory and civil matters with particular focus on compliance and enforcement, internal investigations and white-collar defence.

Michael is recognised by The Legal 500 UK (2021) for 'Regulatory investigations and corporate crime (advice to corporates)' with clients describing him as a "stand-out solicitor" who is "practical and gets stuck in".

His experience includes:

- advising clients on compliance issues relating to money-laundering, bribery and corruption, financial and trade sanctions, fraud, modern slavery and business and human rights;
- conducting corporate investigations covering multiple jurisdictions in Europe, North America, Asia, the Middle East and Africa;
- representing clients in investigations and enforcement actions by the UK's Serious Fraud Office, Financial Conduct Authority, the U.S. Department of Justice and other law enforcement and regulatory agencies; and
- advising clients on developing and benchmarking compliance programs, conducting pre-merger and third-party due diligence, and providing day-to-day counseling and training on compliance with UK and other anti-corruption and sanctions laws