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Editorial Office

729 15th Street, NW, Suite 500, Washington, D.C. 20005
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Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541.

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Economic Sanctions: Developments and Lessons for Boards of Directors

Chase D. Kaniecki, Samuel H. Chang, and William S. Dawley*

In this article, the authors offer suggestions about economic sanctions for boards of directors to keep in mind.

Continued volatility in geopolitical events last year and corresponding responses in sanctions policies highlight the importance of integrating economic sanctions considerations in board agendas. In particular, boards of directors should be aware of the increasing global collaboration among sanctions authorities as well as the continuing expansion and application of sanctions in new domains such as digital assets. Sanctions developments can be expected to be particularly fluid with respect to China, Russia, and Venezuela.

Responses to Global Conflict and Crises

In 2023, economic sanctions by the United States and its partners and allies continued to be a key component of conflict and crisis response.

For example, as the Russian offensive in Ukraine entered its second year, the United States, United Kingdom, and European Union have maintained close coordination in the further imposition and enforcement of sanctions, in particular with respect to the enforcement of the price cap against Russian-origin crude oil and petroleum products.[1]

Also, in response to commitments made by representatives of Venezuelan President Maduro and the Unitary Platform relating to democratic elections and the release of prisoners, the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) suspended sanctions relating to oil and gas sector operations in Venezuela through April 18, 2024, authorized certain transactions involving the Venezuelan state-owned mining company, and—consistent with private-sector sentiment and pressure—revoked a

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Trump-era ban on the ability of U.S. persons to purchase Petróleos de Venezuela, S.A. and Venezuelan sovereign bonds on the secondary market.[2] The U.S. government has threatened the reimposition of certain sanctions—most prominently the general license authorizing oil and gas transactions—if the Maduro regime fails to follow through with its commitments to take concrete steps toward a democratic election in 2024.

In addition, following the October 7, 2023, attack by Hamas against Israel, the United States imposed several rounds of sanctions, primarily targeting Hamas operatives and financial facilitators, including conduits for illicit funds. The United States stated its intention to continue imposing such sanctions this year to disrupt Hamas's financial network, including through new sanctions authorities, as discussed below.[3]

Sanctions Coordination

The war in Ukraine has served as a catalyst for the Biden administration's emphasis on incorporating multilateral coordination into its sanctions policy. For example, in May 2023, members of the G7 and other partners imposed additional sanctions on Russia in response to commitments made at the G7 Leader's Summit. Also, throughout 2023, the United States updated its sanctions guidance and enforcement posture relating to the joint price cap on Russian crude oil and petroleum products in coordination with the price cap coalition countries.[4]

October 2023 marked the first year of the OFAC-UK Office of Financial Sanctions Implementation (OFSI) Enhanced Partnership between U.S. and UK sanctions authorities,[5] through which OFAC and OFSI coordinated at multiple levels of seniority to exchange best practices, align on sanctions implementation and shared objectives, and hold joint private-sector engagements (including the first round table with fintech and digital assets stakeholders). This partnership has manifested in concrete actions, including coordinated sanctions in response to the Israel-Hamas conflict,[6] as well as joint coordination with Canada in imposing new actions against several individuals and entities for supporting Myanmar's military regime.[7]

OFAC has similarly continued its bilateral EU partnership with the European External Action Service and the Directorate-General for Financial Stability, Financial Services and Capital Markets union. This coordination includes participation in the U.S.-EU Trade and Technology council, which continues to play a key role in coordinating action between the partners, particularly in the context of the war in Ukraine.

We expect that these communication channels, institutional structures, and precedent established over the past two years will continue to facilitate and shape multilateral coordination on other issues.

Enforcement Against Non-U.S. Entities and Expanding Jurisdictional Reach

U.S. sanctions also continue to extend extraterritorially to non-U.S. entities, including in the digital asset realm. Indeed, of the 17 civil penalties imposed by OFAC in 2023, roughly half involved apparent violations by non-U.S. entities, including a $968,618,825 settlement with virtual currency exchange Binance Holdings, Ltd., in conjunction with the U.S. Department of Justice, the Financial Crimes Enforcement Network, and the Commodity Futures Trading Commission.

The U.S. government has also recently sought to expand OFAC's statutory authorities to impose secondary sanctions against non-U.S. financial institutions and other entities on multiple fronts. For example, on November 28, 2023, the U.S. Department of the Treasury requested that Congress expand its authority to impose secondary sanctions on digital asset service providers engaged in dealings with terrorist groups and other illicit actors outside of U.S. jurisdiction.[8] In turn, on December 11, 2023, a bipartisan group of senators introduced a bill directing the U.S. president to impose "mandatory" sanctions against foreign financial institutions and digital asset service providers that knowingly facilitate any significant financial transaction with sanctioned terrorist organizations.[9]

Similarly, on December 22, 2023, the Biden administration issued an executive order authorizing the imposition of secondary sanctions against foreign financial institutions for engaging in significant transactions on behalf of certain sanctioned parties or otherwise involving Russia's military-industrial base, including transactions relating to certain identified items.[10]

Looking Ahead

Boards of directors should prepare for another dynamic year with elections scheduled in over 50 countries representing more than half the global population. As political transitions bleed into potential changes in sanctions policies, boards should expect continued efforts among the United States and its partners and allies to cooperate on sanctions issues where interests align.[11] U.S. sanctions against Russia, in coordination with U.S. partners and allies, are expected to further expand, in particular against the Russian military-industrial complex, Kremlin-linked elites, and sanctions and export control evasion networks.[12] Companies with activities relating to Venezuela or its energy sector should also closely monitor the political situation in Venezuela for potential implications on U.S. sanctions policy.

Lastly, boards of directors should be cognizant of the willingness of OFAC to exercise its broad jurisdictional powers, including with respect to U.S. financial institutions and service providers in facilitating international and digital-asset transactions. Irrespective of the outcome of the 2024 U.S. presidential election, the U.S. government will likely continue to wield the threat of secondary sanctions and apply sanctions enforcement broadly with respect to key areas of focus, such as digital assets.

Notes

* The authors, attorneys with Cleary Gottlieb Steen & Hamilton LLP, may be contacted at ckaniecki@cgsh.com, sachang@cgsh.com, and wdawley@cgsh.com, respectively.

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