

Compliance: A General Framework for Practical Steps

- ❖ Management commitment – tone from the top
- ❖ General risk assessment - extent of risk informs compliance measures

General Touchpoints	General Risks	General compliance
General commitments to key business partners: investors, key/long-term vendors (e.g. Your insurers, cloud platform, Israeli banks)	What do you sell/buy? Know your product/services (e.g accounting services), e.g review against: sectoral/horizontal sanctions lists, export controls (OFAC programs , EAR , Council Regulation 833/2014) ask vendors	Refraining from making sanctioned/horizontally prohibited sales to Russia
Key Personal who are U.S./E.U./U.K citizens/'persons'	How do you sell it? Automated online platform or not?	Geo-blocking software: block LNR, DNR, Crimea and other embargoed territories
Indirect Touchpoints: Exposure to secondary sanctions, Israeli regulators (e.g export control authorities)	Where are your business partners located?	Refraining from selling to customers in prohibited territories, absent GL or carveout.

- ❖ Internal controls –create procedures and processes commensurate with risk: **case studies**
- ❖ Testing and Auditing
- ❖ Training

Case study 1:

An Israeli company has a b2b online platform for providing various business courtesies from international customers to companies in Israel, the US and the EU.

The Israeli company has received an order via the platform from a Russian customer to supply gift boxes including chocolate and vodka originating in Russia to hundreds of the Russian customer's business partners, including partners in Israel, the US and the EU.

The Israeli company will purchase (and import) the products from an unrelated Russian vendor in Russia.

Case study 1:

Do the US and/or EU sanctions/export controls apply? Review YOUR TRANSACTION touchpoints

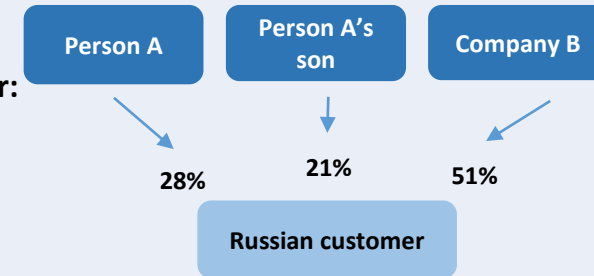
US sanctions/Export Controls	EU sanctions
U.S. currency ? If yes → US sanctions likely to apply	EUR currency ? the use of EUR does not trigger EU jurisdiction – same applies for use of GBP for UK jurisdiction
Is U.S. bank used for payments? If yes → US sanctions apply	Is an EU bank used for payments? If yes → EU sanctions apply
Is an US online platform, distributor or transporter involved? If yes → US sanctions apply	Is an EU online platform, distributor or transporter involved? If yes → EU sanctions apply
Is a US subsidiary or U.S persons involved from your end? If yes → US sanctions apply	Is an EU subsidiary or E.U. persons involved from your end? If yes → EU sanctions apply
Do the products/services enter US territories ? If yes → US sanctions apply	Do the products/services enter EU territories ? If yes → EU sanctions apply
Is the service provided to a US person or entity? If yes → US sanctions apply	Is the service provided to an EU person or entity? If yes → EU sanctions apply
Don't forget to consider general touchpoints and contractual commitment. Consider policy decisions.	Don't forget to consider general touchpoints and contractual commitment. Consider policy decisions.

Case study 1:

US sanctions due diligence and compliance

- Step 1 Risk screening**
- **Review Products:** Gifts origin, classification
 - **Review Parties:** get information about Russian vendor, Russian customer **and its business partners**, other parties e.g., distributors, service providers, forwarders involved & **screen**
 - **Payment channels?** Which banks will be used? What payment methods? **Screen banks/methods**

- Step 2 Risk assessment**
- Targeted sanctions?**
- Russian vendor/other parties to transaction listed? **No**
 - Russian customer/other parties to transaction owned or controlled by listed person? **Possibly for Russian customer:**
 - **Person A (21%) not listed in US**
 - **Person A's son (28%) is not listed in US**
 - **Company B (51%) is an SDN listed in the CSL**
- Trade sanctions?**
- Vodka import prohibition → **E.O of March 11.2022**
 - Chocolate **not listed**
- Sectoral services prohibition?** Not covered



- Step 3 Compliance checks**
- **High risk transaction**
 - **Trade sanctions: swap/remove vodka for non-alcoholic beverage**
 - **Targeted sanctions: deny transaction**

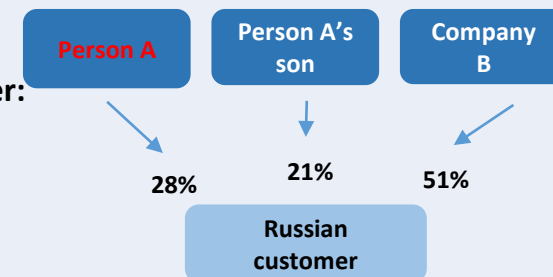
- Step 4 Contractual protection / Monitoring**
- If vodka is removed and the customer is not sanctioned→
- Contractual provisions: re (i) change in sanctions status of parties **including vendor's bank** (i) of the contract in case changes occur that give rise to a US sanctions risk
 - Monitor updates to U.S. sanctions legislation; consult with compliance team

Case study 1:

EU sanctions due diligence and compliance

- Step 1 Risk screening**
- **Review Products:** Gifts origin, classification
 - **Review Parties:** get information about Russian vendor, Russian customer *and its business partners*, other parties e.g., distributors, service providers involved & screen
 - **Payment channels?** Which banks will be used? What payment methods? **Screen banks/methods**

- Step 2 Risk assessment**
- Targeted sanctions?**
- Russian vendor/other parties to transaction listed? **No**
 - Russian customer/other parties to transaction owned or controlled by listed person? **Possibly for Russian customer:**
 - **Person A (21%) is listed in the [EU sanctions list](#)**
 - **Person A's son (28%) is not listed in the EU sanctions but has family ties with Person A**
 - **Company B (51%) is not listed in the EU sanctions list**



Trade sanctions?

- Vodka **listed** in Annexes XVIII and XXI to [Reg 833/2014](#) (Arts. 3h(1) and 3i(1)) → sale and purchase prohibition
- Chocolate **not listed**

Horizontal services prohibition? After-sales services not covered

- Step 3 Compliance checks**
- **High risk transaction**
 - **Trade sanctions:** no derogation ground is available (no option to request an authorisation) → **swap/remove vodka**
 - **Targeted sanctions:** enhanced check to determine whether the shares of Person A's son are controlled by Person A → ask for information/use questionnaire/verify information (shares acquisition date, formal agreements, company documentation, etc.) → **in case of doubt, suspend transaction**

- Step 4 Contractual protection / Monitoring**
- If vodka is removed and Person A does not control his son's shares →
- Contractual provisions re change in sanctions status of parties, **including vendor's bank**
 - enabling the termination of the contract in case changes occur that give rise to an EU sanctions risk
 - Monitor updates to EU sanctions legislation for changes in [Reg 833/2014](#) and the [EU sanctions list](#); consult with compliance team

Case study 2:

An Israeli company distributes low-level, commercial electronic components and related software. It also provides customer support.

The Israeli company has received a purchase order for components, related software and technical support from a trading company in the UAE, for shipment to Russia. The UAE customer was directed to the Israeli company by the Israeli company's EU vendor. The EU vendor had reached out to the Israeli company after first speaking with its U.S. parent company.

Case study 2:

Do the US and/or EU sanctions/export controls apply? Review YOUR TRANSACTION touchpoints

US sanctions/Export Controls	EU sanctions
U.S. currency → If yes US sanctions apply	EUR currency → the use of EUR does not trigger EU jurisdiction – same applies for use of GBP for UK jurisdiction
Is U.S. bank used for payments? If yes → US sanctions apply	Is an EU bank used for payments? If yes → EU sanctions apply
Is a U.S vendor or transporter involved? If yes → US sanctions apply	Is an EU vendor or transporter involved? If yes → EU sanctions apply
Is an US subsidiary involved? If yes → US sanctions apply	Is an EU subsidiary involved? If yes → EU sanctions apply
Are you exporting U.S. origin items OR items that are subject to the FDPR? If yes → US sanctions may apply	Are you exporting items from the E.U. → E.U sanctions apply
Facilitating ? What is the U.S. parent role in facilitating the transaction ? → Consider evasion, secondary sanctions	Facilitating circumvention? Did the EU vendor receive the order and outsource it to the Israeli company? → Risk of targeted sanctions

Case study 2:

US sanctions/export control due diligence and compliance

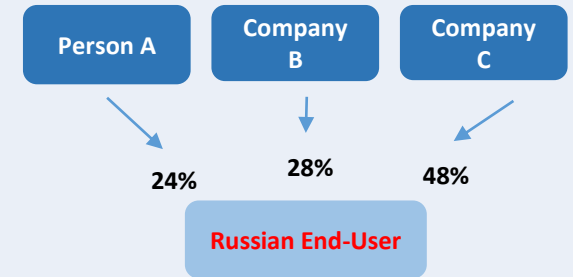
- Step 1 Risk screening**
- **Review Products:** origin , classification
 - **Review Parties:** get information about the customer, end-user, shipper and additional parties involved & **screen**
 - **Payment channels?** Which banks will be used? What payment methods? **Screen banks/methods**

- Step 2 Risk assessment**
- Targeted sanctions? Consider
- **Person A (24%) not listed in the CSL**
 - **Company B (28%) not listed in the CSL**
 - **Company C (48%) is an SDN**

Trade sanctions? **Some of the Items are U.S Origin classified in EAR CCL 3A991**, others are EAR 99

End user/use prohibition: **MEU?**

services prohibition?



- Step 3 Compliance checks**
- **High risk transaction**
 - **Trade sanctions:** Account for export limitation on EAR CCL 3A991 items, perform additional due-diligence on end-user/use re EAR 99 items.

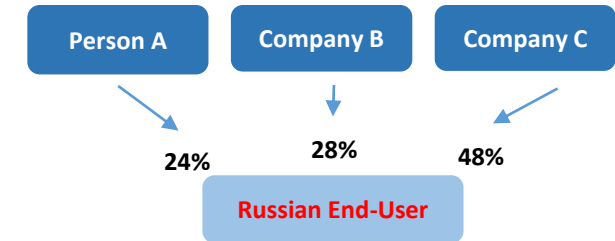
- Step 4 Contractual protection / Monitoring**
- Do not export U.S origin EAR CCL 3A991 items without a license from BIS.
- Contractual provisions re status of parties: enabling the termination of the contract in case changes occur that give rise to an additional sanctions/export control risk
- Monitor updates to US sanctions/export controls; consult with compliance team

Case study 2:

EU sanctions due diligence and compliance

- Step 1 Risk screening**
- **Review Products:** origin, classification, end-use, function
 - **Review Parties:** get information about the customer, end-user, shipper and additional parties involved & **screen**
 - **Payment channels?** Which banks will be used? What payment methods? **Screen banks/methods**

- Step 2 Risk assessment**
- Targeted sanctions? Consider**
- **Person A (24%) not listed in EU sanctions list**
 - **Company B(28%) not listed in the EU sanctions list**
 - **Company C (48%) is not listed in the EU sanctions list**
 - **Russian end-user not an SOE**



Trade sanctions?

- Electronic components/software **listed in** Annex VII to [Reg 833/2014](#) (Category I – Electronics) (Art.2a(1)) – prohibition to, directly or indirectly, export/sell/supply to persons in Russia or for use in Russia
- Prohibition to, directly or indirectly, provide to persons in Russia/for use Russia **technical assistance** related to **listed** electronic components/software

Horizontal services prohibition? ‘IT consultancy Services Definition’ → prohibition to, directly or indirectly, provide services to legal persons in Russia

Circumvention? EU vendor re-directing to a non-EU supplier an order that would violate EU sanctions legislation → **risk of circumvention for the EU vendor**

Facilitation of circumvention? If EU sanctions legislation does not apply to the Israeli company, is the latter – by accepting the re-directed order – facilitating the circumvention of EU sanctions legislation by the EU vendor? → **risk of the Israeli company being listed in the EU sanctions list (targeted sanctions)**

- Step 3 Compliance checks**
- **High risk transaction**
 - **Trade sanctions:** consider trade & services risks, circumvention risk

- Step 4 Contractual protection / Monitoring**
- If no listed items are sold and no services are provided:
- Contractual provisions re change in sanctions status of all parties
 - enabling the termination of the contract in case changes occur that give risk to an EU sanctions risk
 - Monitor updates to EU sanctions legislation for changes in [Reg 833/2014](#) and the [EU sanctions list](#); consult with compliance team

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THANK YOU

This presentation is a summary of legal principles. Nothing herein constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but it is subject to change and does not purport to be a complete statement of all relevant issues.