

The DC sanctions lawyers to have on speed dial

Michael Griffiths
01 November 2019

As enforcement ramps up under US President Donald Trump's administration, GIR has identified the 25 most respected sanctions lawyers in Washington, DC.

The US is in the middle of a sanctions enforcement boom. In 2019 alone, government agencies have levied just under three-and-a-half billion dollars in penalties to companies deemed to have fallen foul of US trade laws and regulations.

While eye-watering fines aren't new for the sanctions world – BNP Paribas' \$8.9 billion settlement in 2014 is still lodged firmly in the front of many lawyers' minds – recent enforcement actions illustrate that the US Treasury's Office of Foreign Assets Control (OFAC) is pursuing a wider range of companies and sectors, including by issuing landmark fines, in its aggressive sanctions evasion crackdown.

For example, in April, OFAC issued its first penalty for a violation of Russian sectoral sanctions, which allow business in traditionally risky sectors but restrict certain activities. US software provider Haverly Systems was ordered to pay \$75,375 for extending credit to Russian energy company Rosneft for longer than the permitted 90 days.

Other penalties to have broken the mould include the \$996,080 fine to cosmetics company e.l.f in January over the importation of eyelash kits from China that contained material sourced from North Korea. Targeting the beauty industry made waves among the legal community because it showed how a wider variety of industries are in OFAC's crosshairs.

Once predominantly aimed at shipping companies, financial institutions and natural resources multinationals, the US's sanctions enforcement in 2019 has targeted a series of unusual suspects, such as travel agencies, pension providers and insurance companies. Lawyers say this is an attempt by the Treasury Department to spread the word that all companies should be compliant with US sanctions.

"Our sense is that OFAC is focusing its enforcement efforts on cases that it wants to use to publicly message its position on, and we expect it will continue to do so," said Maura Rezendes, a former OFAC director of enforcement now at Allen & Overy.

More than ever, OFAC is more closely examining companies' supply chains as they search for goods sourced from sanctioned entities or countries. The result is that lawyers say they now need to be specialists in the law and in their clients.

"It is essential for sanctions practitioners in our firm to understand in great detail our key clients' business processes, sales and distribution networks, and the products themselves," said Ryan Fayhee at Hughes Hubbard & Reed.

US authorities haven't lost sight of more traditional targets, however. OFAC, along with several US agencies, including the Justice Department and Federal Reserve, have issued fines exceeding one billion dollars against UK bank Standard Chartered and Italy's UniCredit bank this year for violating the International Emergency Economic Powers Act and several sanctions programmes.

The Trump administration has showed no signs of easing up on trade restrictions: it has introduced over 30 separate sets of sanctions in 2019 alone, designating entities and individuals from Iran, Venezuela, Russia, Ukraine, North Korea and Nicaragua.

The developments have underscored the importance of specialist sanctions practitioners, most of whom are concentrated in the US's seat of power, Washington, DC, where the practice area is the most competitive.

GIR set out to identify the 25 most respected sanctions lawyers in the city, and spent several months surveying dozens of practitioners, asking them which individual lawyers they would trust to represent them in a hypothetical sanctions case and why. Coupled with a review of publicly available information to discern which individuals are working on the most significant cases, we whittled down the list to 25 DC-based practitioners at the top of the field, with a maximum of one lawyer per firm.

The list features several former DOJ prosecutors and lawyers with senior experience at both the state and treasury departments, including a former director of OFAC and two former heads of enforcement at the agency. Two of the nominees were undersecretaries within the US government, responsible for trade or national security-related portfolios.



Ryan Fayhee

Partner, leader of the sanctions, export controls and anti-money laundering practice group
Hughes Hubbard & Reed

Ryan Fayhee is Hughes Hubbard & Reed's leading sanctions lawyer. Before moving into private practice in 2015, Fayhee spent over a decade at the DOJ, including seven years in the national security division where he had a one-year stint as the national export enforcement coordinator.

He also led several significant cases, including the DOJ's prosecution of oil services company Schlumberger. The company's subsidiary – Schlumberger Oilfield Holdings – pleaded guilty to violating IEEPA and agreed to pay \$232.7 million in 2015. At the time, it was the largest criminal fine linked to IEEPA.

What are the most important attributes that a sanctions lawyer needs?

As sanctions continue to be the “go-to” foreign policy and national security tool used to target a broad array of extraterritorial conduct in a diverse set of industries across the globe, we are seeing sub-layers of specialisation developing within the sanctions bar, often focused on a particular geography or industry. Multinational clients are very sophisticated and understand both the risks and the opportunities, so it is no longer enough to be merely adept at the complex and ever-changing rules and regulations themselves. Beyond the enforcement matters in which I specialise, for proactive advice it is essential for sanctions practitioners in our firm to understand in great detail our key clients' business processes, sales and distribution networks, and the products themselves. This situates us to give informed practical guidance on the application of the regulations and to enable investments in compliance that are tailored to priority risks areas for any particular client.

How has the nature of your sanctions work changed since you entered private practice?

Being at the DOJ and specialising on sanctions enforcement for nearly a decade, during which time we saw an enormous growth in the use of criminal actions to target wilful sanctions (and export control) violations, was a timely and ideal training ground for the environment we are now confronting

as sanctions practitioners. Almost immediately upon transitioning to private practice four years ago, the effectiveness of regulating US products, services, and, most significantly, the US dollar, was fully realised and led to a number of policy developments to use sanctions in more targeted, but much more powerful, ways – including designations of persons and entities in countries that had not previously been subject to sanctions. Secondary sanctions have been particularly effective at targeting purely extraterritorial conduct previously beyond the reach of US law. Given the complexity of the rules and their application in non-traditional geographies – especially in Latin America and Nordic countries – businesses are trying to adapt, but it is often a challenge to keep pace with weekly, if not daily, policy changes. Companies are particularly at risk with managing banking relationships – the banks stay on top of these rules and are very conservative, often requiring compliance obligations that go well beyond what the law requires to manage their own risk. Business would be well-advised to manage these relationships carefully.

How would you describe sanctions enforcement in the US at the moment?

Intense. We have seen OFAC become far more assertive, but helpfully, also more programmatic and predictable with its enforcement actions as the agency has developed guidance to align its protocols and expectations with other agencies and the DOJ. Similarly, we have seen the DOJ better resource and otherwise prioritise enforcement actions targeting China in particular, as designations and entity listings propagate at OFAC and the Commerce Department. Through secondary sanctions and the targeting of Chinese banks and the shipping industry in enforcement actions, the US has, more than at any other moment in our history, isolated Iran and North Korea. I anticipate that this will continue to be a focus for the foreseeable future. We also continue to see enforcement actions targeting banks outside of global financial centres in Europe – the product of OFAC and FinCEN working closely together within the Treasury Department and asserting themselves aggressively through the use of their respective authorities to target sanctions evasion in the financial industry.