

Facing an OFAC Enforcement Action? Here are Five Things to Look for in an Attorney

Article By:

Dr. Nick Oberheiden

One of the most rapidly evolving areas of the law in recent years has been in international economic sanctions. Usually a quiet field, this important realm of business and corporate law has exploded into life with global upheaval, most prominently the Russian invasion of Ukraine.

Corporations that have had little trouble in this field of law are suddenly finding themselves under investigation by the [Office of Foreign Assets Control \(OFAC\)](#) of the [U.S. Department of Treasury](#) for violating international economic sanctions, sometimes with apparent violations of multiple sanctions programs. The legal penalties that can follow these investigations are substantial, while the reputational harm from the apparent violations can be crippling.

Companies that have found themselves in this position need skilled OFAC-defense lawyers to combat the allegations and at least mitigate the damages.

Here are five things to look for in an OFAC lawyer when facing an apparent violation.

1. Prior OFAC (Office of Foreign Assets Control) Successes

The most important thing that you want to see in an Office of Foreign Assets Control (OFAC) defense lawyer is a proven ability to guide businesses and corporations through the OFAC compliance and defense process. Very few attorneys handle these cases. Those that have never defended a company against an OFAC allegation for apparent violations quickly find that it is unlike anything in the U.S. criminal justice system: There are international consequences to the company's actions, leading to numerous different political pressures that push and pull from all sides at once.

Navigating these waters is not easy and generally takes the experience that only comes with having seen several cases through to their completion. Companies facing legal enforcement actions from OFAC should strongly consider screening out attorneys who do not have that experience already.

However, corporations can do better than just demanding generalized OFAC experience. OFAC compliance and OFAC defense are two different things. Even after OFAC has notified your company of a pending legal enforcement actions for apparent violations, the stage of your particular case will matter a great deal. The best OFAC attorney for your company will have conducted successful OFAC

defenses starting from circumstances that are similar to your own.

2. International Business Experience

OFAC allegations are, if nothing else, international in scope. They deal with claims that your company has flouted economic sanctions and other embargoes that have been imposed by the United States of America on its enemies and those who threaten its interests abroad.

Hiring an attorney to handle an OFAC case who is not accustomed and familiar with international business practices is a huge risk. Much of the defense in these cases will revolve around the specific details and the context surrounding an international transaction. Who the company actually dealt with during this transaction – as well as who the company *thought* they were dealing with – will be huge factors. So too will the company's OFAC compliance commitments and mechanisms that were in place at the time of the allegedly wrongful incident.

Attorneys who are not accustomed to these kinds of investigations and negotiations will find themselves in over their head. Unfortunately, it will be the company that hired them that will end up paying the price.

3. A Track Record of Successfully Defending Business Against Other Civil and Criminal Allegations

In addition to specific OFAC experience, corporations in need of an attorney or law firm to represent them during an OFAC investigation or enforcement actions should also look to the firm's prior non-OFAC representations and outcomes. While these cases might not involve the same particular issues that frequently arise in an OFAC claim, they do show that the lawyer or law firm has a broad background in corporate and business defense. That experience can prove helpful in an OFAC case where corporate and financial concerns are also present.

As Dr. Nick Oberheiden, an [OFAC defense lawyer](#) and the founding partner of the national corporate defense law firm Oberheiden P.C., says, *"Very few attorneys practice solely in OFAC defense. There just has not been enough action in the field to support it until very recently. Most OFAC attorneys also provide legal representation and guidance in a variety of other areas, from corporate governance to international business law. Examining an attorney's non-OFAC practice areas is important when choosing a lawyer to guide you and your company through an OFAC enforcement action: The closer that non-OFAC practice is to your company's present needs and background, the better."*

4. Sensitivity Towards Non-Legal Penalties Like Reputational Harm

Lots of attorneys focus almost exclusively on avoiding legal sanctions like prison time, civil penalties or criminal fines, and other financial penalties that are imposed by the judicial system or a law enforcement agency like the Department of the Treasury. However, one of the most pressing repercussions of enforcement actions is the extremely negative publicity that it tends to generate.

A skilled OFAC defense lawyer needs to be ready to deal with that reputational harm, in addition to the traditional legal exposure and potential civil liability that these allegations seek to leverage.

Economic sanctions are often politically charged, particularly in the polarized world of today. If your company gets caught doing business with an individual or entity that is included on the [Specially](#)

[Designated Nationals \(SDN\) list](#), or the blocked persons list, the blowback can be quick and severe. Even if there are clear mitigating factors, like if a business partner had only just been added to the SDN list or if the sanctioned person used an intermediary to hide their true identity from your firm, the taint of violating international sanctions and trading with a blacklisted or prohibited business partner can be difficult to remove.

A good OFAC lawyer knows this, understands the importance of keeping an OFAC investigation quiet, and strives to keep things under wraps.

5. Strong Negotiating Skills

Finally, OFAC investigations are often very fluid. There are frequently unique circumstances to each allegation that leave wiggle room and space for effective negotiation. Additionally, an effective resolution to an OFAC case can take many forms.

Having creative negotiating skills is an essential part of being an effective OFAC defense lawyer. If a resolution can be crafted that both satisfies OFAC and other law enforcement agencies while still preserving your interests and future, it should be pursued.

Oberheiden P.C. © 2025

National Law Review, Volume XIII, Number 54

Source URL: <https://natlawreview.com/article/facing-ofac-enforcement-action-here-are-five-things-to-look-attorney>