



Oil & Gas
Authority

Sanction Procedure

The OGA's statement of the procedure it proposes to follow in relation to enforcement decisions

[Energy Act 2016, part 2, Chapter 5](#)

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Section 1

Introduction

Purpose of this Procedure

1. The Energy Act 2016 (“**the 2016 Act**”) established the powers of the Oil and Gas Authority (“**the OGA**”) among which are powers to give Sanction Notices for failure to comply with a petroleum related requirement¹. These powers commenced on 1 October 2016.
 2. The 2016 Act requires that the OGA must determine and issue a statement of the procedure it proposes to follow in relation to enforcement decisions concerning Sanction Notices (section 59(1)-(4)). This document forms that statement and additionally provides a description of matters related to sanctions. It is not a substitute for any regulation or law and is not legal advice.
 3. The procedure will be kept under review and be amended as appropriate in the light of experience and developing law and practice and any change to the OGA’s powers and responsibilities. If the OGA changes its procedure in a material way, it will publish a revised procedure.
 4. The Wood Review recommendations were the subject of a consultation process and a response, “*Implementing the Wood Review Recommendations*”, was published in November 2014³. In its response, the Government confirmed its intention to implement graduated sanction powers that would apply to non-compliance with licence conditions, the MER UK strategy and other obligations arising from the recommendations.
- Sir Ian published his report on 24 February 2014 and made four key recommendations to maximise economic recovery from the UKCS². In addition to the production of a strategy for achieving MER UK, the report recommended that the OGA be created and be given the power to impose a range of sanctions including change of operator and termination of the licence should companies fail to comply with their obligations.

Background & Context

4. In June 2013 the then Secretary of State for Energy and Climate Change, Edward Davey, asked Sir Ian Wood to conduct an independently led review of the United Kingdom Continental Shelf (“**UKCS**”) oil and gas recovery, specifically looking at how economic recovery could be maximised.

¹ Petroleum-related requirements are defined in paragraph 11.

² The final report of the Wood Review can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471452/UKCS_Maximising_Recovery_Review_FINAL_72pp_locked.pdf.

³ The response can be read in full at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/414444/Call_for_Evidence_Govt_Response-FINAL_120315.pdf.

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6. Implementing the Wood Review recommendations led to the creation of the OGA initially as an Executive Agency of the Department for Energy and Climate Change. Amendment of the Petroleum Act 1998 (the “**1998 Act**”) by the Infrastructure Act 2015 established in law the principal objective of maximising economic recovery of UK petroleum (“**MER UK**”) and required the generation of one or more strategies for enabling the principal objective to be met (“**the Strategy**”)⁴.
7. The 2016 Act created the OGA as an independent regulator, transferred to it the Secretary of State’s petroleum licensing functions and provided it with a number of additional powers as recommended by the Wood Review. These powers were commenced on 1 October 2016.

⁴ The MER UK Strategy can be found at: <https://www.ogauthority.co.uk/news-publications/reports-publications/2016/maximising-economic-recovery-of-uk-petroleum-the-mer-uk-strategy/>

Section 2

Sanction Powers

Summary of the MER UK Strategy

8. The Strategy was published on 18 March 2016; its Central Obligation states that “relevant persons must take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath UK waters.”

9. The Central Obligation is binding on relevant persons and the OGA and, to assist with its effective delivery, the Strategy also sets out a number of Supporting Obligations, Required Actions and Behaviours. These expand on how the Central Obligation applies in particular circumstances and specify the actions and behaviours to be adopted by relevant persons when carrying out activities in the UKCS.

10. The Strategy also contains a number of Safeguards; the Central and Supporting Obligations, Required Actions and Behaviours should be read subject to those safeguards.

Summary of sanctions powers in the 2016 Act

11. Part 2, Chapter 5 (sections 42 to 60) of the 2016 Act details the circumstances when the OGA is empowered to give Sanction Notices and the approach to be followed to impose a Sanction Notice. Sanction Notices can be issued where a person has failed to comply with one of three petroleum-related requirements⁵:

- i. A duty imposed under section 9C of the 1998 Act to act in accordance with the Strategy for enabling the Principal Objective to be met;
 - ii. A term or condition of an offshore licence; and
 - iii. A requirement imposed on a person by or under the 2016 Act which is sanctionable in accordance with Chapter 5 of the 2016 Act.
12. There are four forms of Sanction Notice (enforcement, financial penalty, revocation and operator removal)⁶.

⁵ Energy Act 2016, section 42(3).

⁶ The sanction notices are described in sections 43 to 48 of the Energy Act 2016.

Section 2

Sanctions arising from a duty under section 9C of the 1998 Act

13. Further to paragraph 11(i) above, section 9C(1) requires that a person listed in section 9A(1)(b) of the 1998 Act must act in accordance with the current strategy or strategies when planning and carrying out activities.

Sanctions arising from a term or condition of an offshore licence

14. The right conferred on the licensee by a licence to search, bore for and get petroleum in the licensed area is accompanied by a number of duties and obligations (either set out at length in the licence itself or incorporated by reference from the applicable set of Model Clauses⁷). These clauses have evolved with time, particularly with the introduction of Frontier, Promote and Innovate licences, but the core principles remain consistent throughout.
15. Further to paragraph 11(ii) above, any failure to comply with these licence terms and conditions may result in the OGA issuing a Sanction Notice. It should be noted that the power to issue a Sanction Notice with respect to a failure to comply with a term or condition of a licence does not fetter the right of the OGA to exercise its powers in respect of the licence.

Sanctions arising from other provisions of the 2016 Act

16. Further to paragraph 11(iii) above, there are certain provisions in the 2016 Act that

may also lead to sanctions:

- i. Chapter 2, sections 21, 23-25 – in relation to disputes;
- ii. Chapter 3, sections 28, 31, 33-35 in relation to information and samples;
- iii. Chapter 4, sections 38-40 in relation to meetings;
- iv. Chapter 5, sections 42, 43, 48, 57 in relation to requirements of the sanctions process itself.

⁷ See The Petroleum (Current Model Clauses Order) 1999 (SI1999/160)

Section 3

Sanction Procedure

Regulatory Enforcement Principles

17. The sanction procedure described in this document seeks to conform with the following principles of effective regulation by being:

- i. Transparent: with respect to the process leading to the imposition of a Sanction Notice, including the prior engagement with the relevant persons receiving a Sanction Notice;
- ii. Consistent: with respect to its approach to the assessment of a suspected failure to comply with a petroleum-related requirement and, subject to case specific circumstances, consistent with respect to previously issued Sanction Notices;
- iii. Targeted: to address the underlying cause of the specific failure to comply.

Separation of duty within the OGA regarding enforcement decisions

18. Sections 59(2) and (3) of the 2016 Act provide that an enforcement decision should be taken by a person who was not directly involved in establishing the evidence on which the enforcement decision is based. To ensure such separation the OGA will partition its work into three activities.

19. The first activity is concerned with identifying potential sanctionable events

and gathering the prima facie evidence of these.

20. Work in support of this activity will normally fall to staff within the OGA's Exploration, Production and Decommissioning Directorate, whose function is to ensure that activities undertaken by companies are aligned to the Strategy⁸; the Technology, Supply Chain and Data Directorate; and the section of the Licensing and Legal Directorate whose role is to administer the licence regime. These and other Directorates may also conduct analysis or provide other support to the evidence base in subsequent activity.

⁸ See Paragraph 6

Section 3

21. The second activity is concerned with examination of the prima facie evidence, deciding whether or not to undertake a full Investigation, establishing the evidence on which any enforcement decision is based (including making the case for a failure to comply and making recommendations on the appropriate sanction to address the failure to comply). This activity also entails making the recommendation for any Sanction Warning Notice, the evaluation of representations made in response to the Sanction Warning Notice, recommendations regarding any Sanction Notice and its issue, and the management of any appeals arising from the sanction process.
22. Work in support of this activity will normally be undertaken by the Disputes and Sanctions team within the Licensing and Legal Directorate.
23. The third activity is making the enforcement decision over a failure to comply and relevant sanction, and entails whether or not a Sanction Warning Notice should be issued (and the type and level of sanction to be imposed), consideration of any representations made in response to a Sanction Warning Notice, and whether or not to withdraw the Sanction Warning Notice, to modify the failure to comply or the sanction to be imposed, or to issue a Sanction Notice as originally conceived.

24. Currently, the Board of the OGA will undertake this activity.

The Sanction Notice Process

25. The process the OGA will follow when considering whether or not to issue a Sanction Notice is described in the following paragraphs and illustrated in Figures 1 and 2.
26. The OGA will normally undertake an initial triage process to assess the appropriate power or function to use, including sanctions, non-binding dispute resolution, third party access determination and the exercise of licence powers. The triage process does not oblige the OGA to take any specific action to address any suspected failure to comply. Further information on how the OGA will consider the appropriate course of action, including the application of specific powers may be posted on the OGA website.

Section 3: Stage 1

Enquiry into a suspected failure to comply

27. Where the OGA considers that there may have been a failure to comply with a petroleum-related requirement, and the triage process has routed the failure into the sanction notice process, the OGA will undertake an Enquiry based on the evidence it has on the actions of relevant persons and the nature and general details of the suspected failure to comply.
28. The purpose of the Enquiry is to determine whether there is sufficient initial evidence of a failure and whether the circumstances merit a full Investigation. In reaching a conclusion regarding the merits of a full Investigation, the OGA will have regard among other things to the relevant criteria listed in paragraph 32 below to ensure that an Investigation will be consistent with the OGA's priorities and that it will be an efficient use of its time and money. It will weigh the likely benefits of conducting an Investigation against the time and money that would be required to carry out that Investigation, and the comparative benefits to MER UK of using those in other ways.
29. The OGA will normally inform the relevant person(s) that it is making an Enquiry and, in accordance with section 57 of the 2016 Act, may request further information from the relevant person(s) to assist in the Enquiry. Safeguards, including the right of appeal against a requirement to provide information and limitations on disclosure of material provided to the OGA, are provided in sections 58 and 61-69 of the 2016 Act respectively. Failure to provide documents or other information is itself a sanctionable matter⁹.
30. The OGA will aim to reach a conclusion on whether or not to open an Investigation within 15 working days. If the OGA decides to open an Investigation, it will normally inform the relevant person(s) (unless, exceptionally, it considers doing so may prejudice the progress of the Investigation). The OGA will appoint an official as the main point of contact for the Investigation and will provide the relevant person(s) with contact details as appropriate.

⁹Energy Act 2016, section 57(4)

Section 3: Stage 2

Investigation of suspected failure to comply

31. If merited, the OGA will undertake a full Investigation into a suspected failure to comply. Notwithstanding any request for information made in the Enquiry phase, the OGA is also likely to exercise its information gathering powers¹⁰ during the Investigation stage.

32. Throughout the Investigation stage, and in drawing conclusions as to whether or not there has been a failure to comply and therefore whether or not a Sanction Warning Notice and a subsequent Sanction Notice is issued, the OGA will usually, amongst other considerations, take account of the following criteria:

- The strength of the evidence that there has been a failure to comply;
- The significance of the failure or suspected failure to comply with the objectives of the Strategy. The risk to the fulfilment of the Strategy as a result of the failure to comply, whether that risk is immediate or not and whether that risk is direct or indirect;
- Establishing a material principle or precedent. Whether pursuing the failure or suspected failure to comply will establish a material principle or precedent;
- The prospect of success. Whether there is a reasonable chance that a sanction can be imposed successfully

and whether the sanction will be successful in correcting the failure to comply. This does not mean that the OGA will focus solely on cases where it considers that a successful outcome is very likely as there will be instances where the impact on MER UK is grave and a balance will need to be struck, or where taking action will clarify the Strategy or issues of law;

- The relationship of the failure or suspected failure to comply with the OGA's broader strategic goals. Whether the failure or suspected failure to comply relates to and undermines the OGA's broader strategic goals and/or priorities, including those set out in the OGA's Corporate Plan¹¹;

¹⁰ Energy Act 2016, section 57

¹¹ The OGA Corporate Plan can be found at: <https://www.ogauthority.co.uk/news-publications/reports-publications/2016/oil-and-gas-authority-corporate-plan-2016-2021/>

Section 3: Stage 2

- The severity of the failure or suspected failure to comply in the context of the relevant petroleum-related requirement. Whether the allegation concerns conduct that is, or that appears to be, a repeated, intentional or flagrant contravention;
- The wider impacts of the failure or suspected failure to comply. Whether there is a point of wider application with respect to which an investigation would help to clarify the OGA's approach for its stakeholders;
- The suitability of the imposition of sanctions to address the failure or suspected failure to comply. Whether there are other alternative proceedings that are likely to achieve the same ends, or deal with the same issues, as the Investigation (for example, would opening a dispute regarding third party access be more appropriate in the circumstances);
- The availability of money and time within the OGA to pursue the failure or suspected failure to comply. The input required to conduct an Investigation, given the need to do justice to the interests of the parties likely to be affected, may not be justified when compared to other activity the OGA may wish to undertake;
- The urgency for action. Whether there is a continuing urgency to pursue the Investigation, or whether the case can be deferred.

Section 3: Stage 3

Issuing a Sanction Warning Notice

33. Where the OGA proposes, as a result of an Investigation, to give a Sanction Notice in respect of a failure to comply with a petroleum-related requirement, the OGA will first issue a Sanction Warning Notice in accordance with section 49 of the 2016 Act.
34. The Sanction Warning Notice will among other things specify the evidence and the grounds on which the OGA considers that there has been a failure to comply and provide an indication of the type and level of the sanction being considered.
35. When a Sanction Warning Notice is issued, the OGA will specify in it the representation period that it considers appropriate in the circumstances. In doing so it will take into account, amongst other matters, the complexity of the case, the number of persons involved and the severity of the indicative sanction.

Section 3: Stage 4

Issuing a Sanction Notice

36. Following the issue of a Sanction Warning Notice, the OGA will take into account representations made during the representations period and will decide on the following courses of action:

- to issue a Sanction Notice in respect of a failure to comply as detailed in the Sanction Warning Notice;
- to issue a Sanction Notice in respect of a failure to comply which differs from the failure detailed in the Sanction Warning Notice; or
- not to issue a Sanction Notice in respect of a failure to comply.

37. The Sanction Notice will specify the level and type of sanction to apply to the failure to comply. Where the level and type of sanction in the Sanction Notice is materially different from the indicative level and type advised on the Sanction Warning Notice, the OGA will advise the affected person(s) of the change and allow 5 days for the affected parties to provide further representations regarding the sanction before, where appropriate, issuing the Sanction Notice.

Consideration of the Sanction to be applied

38. In deciding which type and level of sanction to apply to the failure to comply, the OGA's aim is that any sanction should be among other things:

- Effective in addressing the underlying cause of the failure to comply;
 - Dissuasive of future failure to comply, either by the person or, further to publication of the Sanction Notice, other persons in similar circumstances; and
 - Proportionate to the significance of the failure in the context of the petroleum-related requirement and the impact on the relevant persons.
39. The OGA will also usually take into account matters relating to the specific circumstances of the failure to comply including, but not limited to:
- Any gain (financial or otherwise) made by the person(s) or any connected body as a consequence of the failure to comply; the extent to which the person(s) may have sought to benefit from the failure to comply.
 - The degree of harm caused to the Principal Objective, or cost incurred by others by the failure to comply.
 - The severity of the failure to comply in the context of the petroleum-related requirement.
 - The extent to which parties have followed industry Codes of Practice¹² where these are relevant to their failure to comply.

¹² For example the Infrastructure Code of Practice; the Commercial Code of Practice

Section 3: Stage 4

- The duration of the contravention.
- Co-operation with the OGA's Investigation.
- Mitigating circumstances or behaviours associated with the failure to comply with the petroleum-related requirement, including, but not limited to: action taken by the person in advance to address the failure to comply; previous conduct by the person with respect to this and other petroleum-related requirements; the presence of internal mechanisms / processes intended to prevent the failure to comply.
- Aggravating circumstances or behaviours associated with the failure to comply with the petroleum-related requirement including, but not limited to: persistent inaction to address the failure to comply; previous conduct by the person with respect to this and other petroleum-related requirements; the absence of internal mechanisms / processes to prevent the failure to comply; evidence of senior management involvement in support of the failure to comply.

Guidance on the matters determining the level of financial penalty

40. The guidance on the matters to which the OGA will have regard in determining the level of financial penalty is covered in a separate document that is the subject of a consultation process. The document can be found on the OGA website. The current maximum amount of a financial penalty is £1 million.

Appeals

41. The 2016 Act makes provision for appeals against certain decisions and actions of the OGA to the First Tier Tribunal

(General Regulatory Chamber)¹³ regarding disputes, information and samples, meetings and Sanctions Notices. A right of appeal to the Tribunal against a Sanction Notice may be based on the grounds that there was no failure to comply or on the sanction imposed by the Sanction Notice. Appeals are time limited.

Publication and withdrawal of a Sanction Notice

42. Further to the provisions of section 53 of the 2016 Act, the OGA may publish details of any Sanction Notice¹⁴ given in accordance with this procedure subject to the condition that the OGA may not publish anything that, in the OGA's opinion, is commercially sensitive, not in the public interest to publish or is otherwise not appropriate for publication.
43. It is the intention of the OGA to publish Sanction Notices where by doing so it considers that this transparency is to the benefit of MER UK. It is not the OGA's intention to publish material preceding the Sanction Notice, such as the Sanction Warning Notice.
44. If, after details of a Sanction Notice are published by the OGA, the Sanction Notice is cancelled or varied on appeal, or withdrawn by the OGA, the OGA will publish details of the cancellation, variation or withdrawal.

Contacts

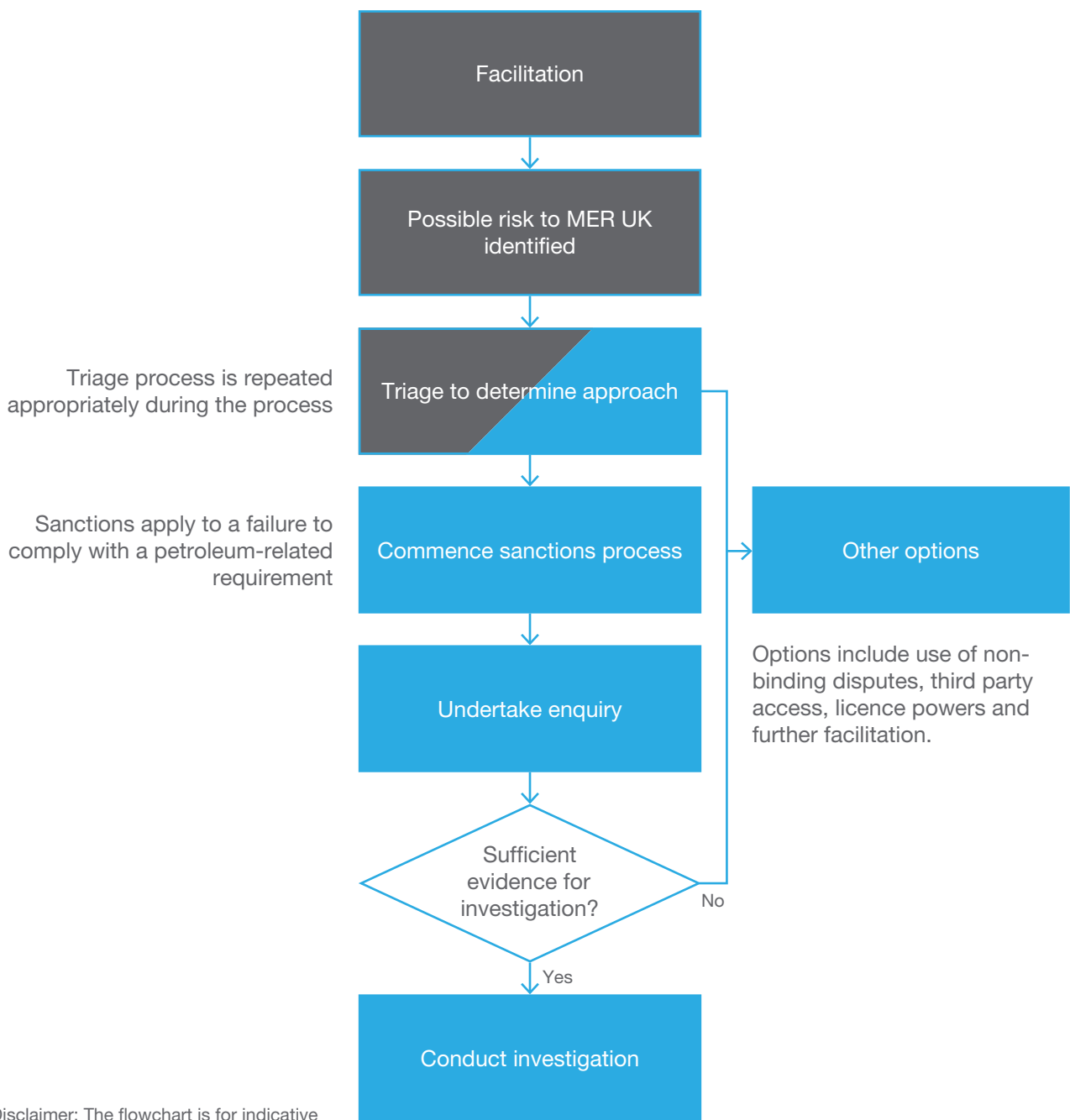
45. If you would like to discuss the sanction procedure further, please contact Simon Churchfield by email: oga.correspondence@ogauthority.co.uk.

¹³ The First-tier tribunal – Energy Act 2016, section 18(1). Details of the tribunal procedure may be found here: <https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules>

¹⁴ Energy Act 2016, sections 50-52

Figure 1

Simplified Sanction Notice Procedure from Facilitation to Investigation

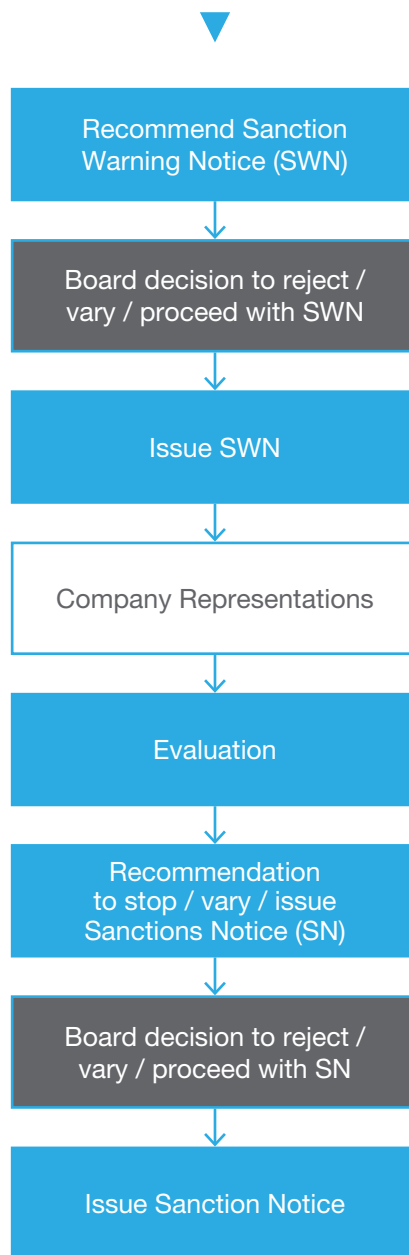


Disclaimer: The flowchart is for indicative guidance purposes only and does not provide legal advice.



Figure 2

Simplified Sanction Notice Procedure from Recommendation to Publication



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