



OFAC Sanctions update



Re-imposition of sanctions against Iran

On 8 May 2018, the United States of America (US) announced that it would be withdrawing from the Joint Comprehensive Plan of Action (JCPOA), subsequently leading to a full re-imposition of sanctions on Iran from 5 November 2018. The Executive Order 13846, which re-imposed sanctions with respect to Iran, also broadened the scope of certain sanctions that were in effect prior to the JCPOA implementation by providing new authority to sanction persons on or after 5 November 2018.

The sanctions imposed on Iran are far-reaching and seek to target critical sectors of Iran's economy, including the financial, energy and shipping sectors and are led by the Office of Foreign Assets Control of the Terrorism and Financial Intelligence department of the US Treasury (OFAC). As part of the re-imposition of sanctions, hundreds of persons were re-listed, or newly identified as, Specially Designated Nationals and Blocked Persons (SDNs). This included more than 70 Iran-linked financial institutions and their foreign and domestic subsidiaries. Generally, the sanctions prohibit all transactions which deal with the property, or interests in property, of SDNs.

As a fundamental component of US foreign policy in 2019 the US is continuing (from November 2018 onwards) vigorous sanctions enforcement and targeting individuals for criminal prosecution.

Sanctions significantly impact both US and non-US companies. US persons and non-US, non-Iranian persons may face serious civil and criminal sanctions exposure if they provide or deliver goods or services or extend loans or credit to Iranian persons designated on the SDN List. Any indirect dealings that may be carried out by subsidiaries or joint venture partners, for example, would also be affected.

The landscape of international sanctions is evolving rapidly and sanctions developments should be closely monitored on an ongoing basis and legal advice should be sought in all cases.

Primary and secondary sanctions

OFAC primary sanctions are US-focused and target transactions with a US nexus. The primary sanctions prohibit US persons from any dealings or interests in property of all SDNs, for example, making payments to SDNs.

Of chief concern for our clients in the Gulf region are the pervasive secondary sanctions, which apply to non-US persons and do not require a US nexus. OFAC will consider secondary sanctions breached where persons have 'materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of...any Iranian person included on the SDN list'. **The secondary sanctions can bite even where there is no US nexus.**

Further, OFAC will treat non-US persons in breach of primary sanctions where non US actors cause a US person, such as a US financial institution, to deal in the property of an Iranian SDN. OFAC are able to, and typically will, claim jurisdiction over a non-US person if that person or its bank uses the US financial system to facilitate a transaction which causes a US person to breach sanctions. By way of example, making payments to an SDN in US dollars will typically constitute a transaction routed through the US financial system and is highly likely to be caught by the primary sanctions. There is therefore extremely wide scope for breach of both the primary and secondary sanctions by persons and institutions based and operating outside of the US.

Consequences of non-compliance

As OFAC considers non-compliance with US sanctions to be a threat to national security and foreign relations, consequences are extremely severe.

Punishment varies depending on the specific violation with criminal fines reaching up to US\$1 million and prison sentences for natural persons reaching up to twenty years. Civil fines can be imposed up to an amount of US\$250,000 or twice the amount of the value of the offending transaction.

Published by
Trowers & Hamblins

Trowers & Hamblins LLP
3 Bunhill Row
London
EC1Y 8YZ

t +44 (0)20 7423 8000
f +44 (0)20 7423 8001

www.trowers.com

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Although the US sanctions are broad, there are some specific exemptions for certain countries and a number of licenses that can be applied for. To-date, none have been granted for countries in the Middle East.

Regional considerations

Banks, financial institutions, companies and natural persons in the GCC must be sensitive to primary and secondary sanctions to ensure that they do not breach US sanctions regardless of whether the jurisdiction in which they are operating has imposed its own sanctions against Iran or not.

Banks, financial institutions, companies and natural persons in the GCC should also be prepared for aggressive enforcement of the US sanctions by the Department of the Treasury and the State Department.

This means that the institutions must not only consider their own compliance requirements, due diligence and KYC procedures when conducting new business but also in relation to ongoing business by actively monitoring shareholding structures and director positions of its clients and counterparties.

Transacting with SDNs or dealing in US dollars, by way of example, could very easily give rise to sanctions violations. If any GCC-based entity is already dealing or has an ongoing business relationship with an SDN, it must obtain specific legal advice to ensure that it is not in breach of sanctions and that it has robust controls in place to prevent any potential future breaches.

Where a GCC entity has an SDN as one of its own shareholders, the entity is placed in very real risk of a breach of sanctions whilst conducting its usual business. The Sultanate of Oman, for example, does not prevent Iranian persons (natural or legal) from investing in the country. A GCC entity with an SDN-designated shareholder will likely find that they are in breach of sanctions by making payments such as dividend payments, to SDN-designated shareholders, in US dollars (triggering primary sanctions) or another currency (which may still trigger secondary sanctions), by virtue of providing financial support to a blocked person.

Even where such an entity considers that it can continue to do business with an SDN or have an SDN at shareholder or director level, by steering clear of contact with the US money markets, there is likely to be very severe hindrances to the business both on a domestic, regional and global scale. Should a GCC entity (bank or otherwise) wish to raise funds from a regional bank, it will find many potential lenders will be unable and unwilling to transact with an entity having an SDN-designated shareholder, due to the extensive risk of violating sanctions. Lending to such a borrower

would have a domino effect on the lender bank, rendering it unable to access global markets. Another example to be considered is that where a borrower drawing down a US dollar loan has, or has been dealing with an entity who has an SDN-designated shareholder, this is likely to be classed an event of default under a well-draft market standard facility agreement and the loan will be called in. Not only are financial loss and penalties a huge risk, but reputational damage can be irreparable; assets can be seized and accounts can be frozen.

Compliance

There are immediate options available to companies who are aware that sanctions may be breached. Each case will turn on the facts. The road to compliance will evidently be a balancing exercise given the nuanced commercial sensitivities at play. There is also a question mark over how the regulatory authorities in the relevant jurisdiction will view and support entities heading towards divestment, especially given the relatively free movement afforded to Iranian investors in some regional markets.

Conclusion

US sanctions have expanded considerably over the past year. US sanctions now target a considerably wider range of individuals and entities, including through secondary sanctions. If there are any concerns about the application of the US sanctions legal advice should be sought as an essential first port of call.

We represent a wide variety of domestic and international clients on regulatory, civil and criminal matters involving anti-money laundering and economic sanctions laws. Please feel free to contact any of our team or your relationship partner at Trowers & Hamblins if you have any questions.

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For more information please contact



Salman Ahmed
Partner
t +968 2468 2912
e sahmed@towers.com



Alex Burton
Partner
t +44 (0)20 7423 8035
e aburton@towers.com



Thomas Wigley
Partner
t +968 2468 2928
e twigley@towers.com



Jeremy Ingham
Partner
t +973 1751 5626
e jingham@towers.com



Jamie Gibson
Partner
t +968 2468 2905
e jgibson@towers.com



Lydia Clatworthy
Associate
t +968 2468 2926
e lclatworthy@towers.com



Majid Al Toky
Partner
t +968 2468 2914
e maltoky@towers.com



Aaron Ohm
Solicitor
t +968 2468 2933
e aohm@towers.com