

Economic sanctions against Iran

Ibtissem Lassoued - Partner, Co-Head of White Collar Crime & Investigations - White Collar Crime & Investigations / Family Business

i.lassoued@tamimi.com - Dubai International Financial Centre

As a matter of fact, abstaining from dealing with blacklisted entities, ensuring that self-regulation is diligent and thorough, and actively ensuring the validity of a client or transaction in line with applicable trade sanction laws will best enable companies to comply with these far-reaching economic sanctions.

Enhanced due diligence is the key, as highlighted by the recent advisory issued by the US Treasury's Office of Foreign Assets Control (OFAC) in January 2013.

The OFAC has issued on the 10th of January 2013 an Advisory on "the Use of Exchange Houses and Trading Companies to evade US Economic Sanctions against Iran", providing primarily and cautiously guidance to US financial institutions dealing with such entities located in countries/regions identified as high risk by the OFAC. In particular, the OFAC identifies the Iranian evasion techniques used to circumvent but also to adapt to the existing economic sanctions (i.e. the use of third country exchange and trading companies to access the US financial system). The OFAC Advisory is available at:

http://www.treasury.gov/resource-center/sanctions/Programs/Documents/20130110_iran_advisory_exchange_house.pdf

Important note from the OFAC: "The Advisory is not intended to suggest that U.S. financial institutions close accounts they hold for third-country exchange houses and/or trading companies. Additionally, the Advisory should not be interpreted to signal that third-country exchange houses and/or trading companies are necessarily facilitating illicit finance".

This recent development is briefly summarized below, as it is relevant from a business perspective in the Middle East.

1. Practices used by third country exchange houses and trading companies

- Both the exchange houses and the trading companies are able to transmit funds on behalf of third parties, and consequently allowing them to access the US financial system.
- The OFAC identifies practices used by third country exchange houses and trading companies to circumvent international and US Economic Sanctions against Iran; in particular:
 - Omitting references to Iranian addresses
 - Omitting the names of Iranian persons or entities in the originator or beneficiary fields; and
 - Transmitting funds from an exchange house or trading company located in a third country to or through the US on behalf of an individual or company located in Iran or on behalf of a US designated person without referencing the involvement of Iran or the designated persons.

2. Fact Patterns identified by the OFAC

- Trading companies would try to send payments through the US on behalf of a company located in Iran thus with an Iranian address: such payment would be blocked or rejected after review by the US financial institution's filter. The Trading companies would resubmit payments through the US, with no reference to the company's address located in Iran, to avoid the US financial institutions' filters.
- Trading companies or exchange houses would repeatedly try to send payments through the US to Iran

and without the required information in relation to the involved entities/individuals and their location (Iran).

- Trading companies or exchange houses would have for example:

- an unusual frequency/volume of payments, or
- an inconsistent volume/frequency of payments in light of the type of business

3. Recommended Measures and Risks Mitigations

- When processing such payments, it is recommended:

- to monitor such payments by exchange houses and trading and requesting any relevant information from the correspondents in relation to the parties involved
- to conduct account and transactions reviews for “individual exchange houses or trading companies that have repeatedly violated or attempted to violate the US sanctions against Iran”
- to contact and request additional information from the correspondent bank that holds accounts for (or facilitate transactions on behalf of), a trading company or a third country exchange house

As per the US Treasury Department’s statement in January 2013, the US Undersecretary for Terrorism and Financial Intelligence will discuss “issues related to illicit finance including the implementation of international economic sanctions against Iran and Syria” with senior officials in the UAE. This is in line with the continued cooperation between both countries on combating terrorism and illicit finance. Press reports also indicate that some global banks have taken a step further by deciding – under certain conditions – to discontinue accounts of customers from countries that are subject to significant sanctions from the USA or the European Union.

In the context of significant expansion of Iran sanctions and with the Middle East being on the watchlist (e.g. re. the hawala system), it is crucial for companies located in the Region to ensure that proper detection and compliance programs are in place, as it is the best practice to limit your exposure.

For any questions on this topic, please contact Ibtissem Lassoued, heading the Global Economic Sanctions Practice at Al Tamimi & Company: i.lassoued@tamimi.com.