

The long arm of American law strikes again! Foreign companies should be careful when dealing with OFAC-sanctioned countries

By **Martin Aquilina, International Business Lawyer**



The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") is in charge of enforcing economic and trade sanctions imposed under various U.S. federal law and orders such as the *International Emergency Economic Powers Act* and Presidential Executive Orders.

OFAC's power to penalize not only American companies but also foreign companies for transacting with a sanctioned country can be seen in its settlement agreement made on July 27, 2017 with Singaporean companies, CSE Global Limited ("CSE") and its wholly-owned subsidiary, CSE TransTel Pte. Ltd. ("TransTel").

SUMMARY

According to the settlement agreement, TransTel violated U.S. sanctions by paying over eleven million U.S. dollars through its U.S. dollar account at a Singapore-based bank to various third-party vendors that included Iranian companies supplying goods and services associated with Iranian contracts. These payments were processed through the U.S. CSE and TransTel made these payments despite their signed letter of undertaking to the bank whereby they undertook "not to route any transactions related to Iran through [the Bank], whether in Singapore or elsewhere." Ultimately, these payments caused at least six separate financial institutions to engage in unauthorized exportation or re-exportation of financial services in violation of U.S. sanctions. The maximum penalty that CSE and TransTel could be subject to was \$38,181,161. The parties settled for \$12,027,066.

ITS RELEVANCE TO FOREIGN COMPANIES INVOLVED IN INTERNATIONAL TRADE

From a practical standpoint, U.S. dollars are often the default currency in international business transactions. OFAC generally has no jurisdiction over foreign companies outside of the U.S. transacting with OFAC-sanctioned countries (such as Iran, Libya, and Syria, to name a few) but as seen above, using U.S. dollars can create a nexus for OFAC to have jurisdiction. Foreign companies should therefore take into consideration the risk of possible penalties from U.S. authorities when paying parties in OFAC-sanctioned countries with U.S. dollars, even if those funds are not processed through the U.S. In addition to the civil penalties that OFAC can impose on foreign companies, foreign companies should be wary of other U.S. authorities such as the Department of Justice, which can impose criminal penalty for certain U.S. sanctions

violations. Previously, OFAC's target has been non-U.S. financial institutions. This settlement shows OFAC's willingness to go after foreign companies that are not financial institutions. With increasing U.S. sanctions against other countries, it is more likely than before that companies in other foreign countries involved in international trade could be the next target.

This article is for informational purposes only and does not constitute legal advice.

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