

Settlement highlights risk of USD payments in transactions with US-sanctioned countries

Last week, the US Treasury Department's Office of Foreign Assets Control (OFAC) announced a USD 12 million settlement with Singaporean company CSE Global Limited and its wholly-owned subsidiary CSE TransTel Pte. Ltd. for causing certain US financial institutions to engage in USD payments involving Iran, thereby violating US sanctions.

OFAC has so far appeared to concentrate its enforcement action on non-US banks processing USD payments involving a US-sanctioned country or person. However, this settlement shows the agency's interest in also targeting their non-US customers who initiate such payments. It reconfirms the importance for non-US companies of recognising and addressing the risk of making USD payments involving US-sanctioned countries or parties, even if there is no other US link to the transaction.

Causing a US sanctions violation

CSE Global and Transtel are both located in Singapore and not subject to US jurisdiction. Transtel entered into contracts with multiple Iranian companies to deliver and install telecommunications equipment for several energy projects in Iran. Transtel then used its USD-denominated account at a Singaporean bank to make 104 wire transfers, amounting to over USD 11 million in payments, for services provided for the projects by third-party vendors. Transtel did this after misrepresenting to the bank that it would not route any Iran-related payments through the bank. None of the transfers contained references to Iran, the projects at hand or any Iranian parties. All transfers were processed through the US financial system.

USD payments initiated from non-US bank accounts are generally cleared through the US. By initiating USD payments related to Iran, Transtel caused multiple US banks to violate US sanctions by processing these payments. The act of "causing" such a violation constitutes a violation of US sanctions by the initiating party (i.e., the customer) itself.

According to the settlement, Transtel appears to have had explicit knowledge and reason to know that the transactions were destined for or involved or benefitted Iran. Transtel settled with OFAC for an amount of just over USD 12 million. In deciding on the settlement amount, OFAC took into account certain aggravating and mitigating circumstances on Transtel's part.

Implications for non-US companies doing business in US-sanctioned countries

Non-US companies acting outside of the US and without the involvement of US persons or goods are not prohibited from engaging in transactions in countries that are subject to US

sanctions. In itself, making a USD payment related to those transactions also does not automatically give rise to US jurisdiction. Clearing the payment through the US, however, is subject to US jurisdiction and is prohibited. Therefore, making USD payments in transactions related to US-sanctioned countries can expose a non-US company to liability under US sanctions, if the payments are routed through a US bank and the non-US company thereby causes the US bank to violate US sanctions.

This has long been applicable law and there is nothing in the Transtel settlement which points to any change. However, until now, OFAC appears to have focused its enforcement action on non-US banks processing the relevant payments through the US financial system. The fact that OFAC is now also targeting their customers initiating such payments reconfirms the importance for non-US companies to recognise and address the risk of making USD payments in relation to transactions in countries or with parties subject to US sanctions.

As a practical matter, non-US companies, and non-US banks alike, should therefore consider:

- avoiding or discontinuing USD payments in transactions relating to US-sanctioned countries or parties;
- clearly instructing contracting parties or banking relations not to make any USD payments in transactions related to US-sanctioned countries or parties;
- avoiding contracts in those transactions being denominated in USD. Although mere denomination in USD alone is generally deemed insufficient to create US jurisdiction – the actual processing of the USD payment through the US financial system creates US jurisdiction – it adds to the risk of exposure.