

# Client Alert

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## OFAC Announces \$12 Million Settlement to Resolve Enforcement Action Against Non-US Companies Using US Dollars to Do Business With Iran

The settlement of an OFAC enforcement action announced late last month marks the first time OFAC has brought an enforcement action against a non-US company that is not a financial institution for causing sanctions violations by using a US dollars (USD) account at a non-US financial institution to make payments to sanctioned countries or entities. To date, in what is often referred to as “stripping,” OFAC enforcement actions against non-US financial institutions have been focused on USD transactions involving sanctioned countries where information was knowingly removed to conceal the identity of an OFAC-sanctioned country or entity. This recent settlement may signal a broader enforcement focus by OFAC on non-US companies that transact business with OFAC-sanctioned countries or entities using USD payments.

### Background and Settlement

On July 27, OFAC announced a \$12 million settlement with CSE Global Limited and its subsidiary, CSE TransTel Pte. Ltd.; both companies are based in Singapore. TransTel and CSE Global each maintained a USD account at a Singapore-based bank, and had attested to the bank, in writing, that they would not use their USD accounts to route any transactions related to Iran. Despite this written attestation, TransTel used its USD account at the Singapore-based bank to effect 104 transactions totaling over \$11 million in payments to various third-party vendors—including several Iranian parties—for the provision of goods and services to support the installation of telecommunications equipment for several Iranian energy projects. Importantly, the payments were processed through the United States, but none of the transactions contained references to Iran, the Iranian energy projects or any Iranian party. In some instances, explanations were provided with the payment instructions indicating why the transaction was not blocked.

As a result, OFAC determined that the payments caused multiple US and non-US financial institutions to violate US sanctions by engaging in the prohibited exportation of financial services (i.e., processing USD payments) from the United States to Iran or for the benefit of Iran. According to the settlement agreement, at least two of the Iranian companies that TransTel contracted with were designated on OFAC’s List of Specially Designated Nationals and Blocked Persons (SDN List).

### Offshore USD Processing Guidance Issued By OFAC

It is important to distinguish this case from OFAC guidance issued late last year permitting the processing of USD payments by non-US financial institutions, where the payments are **not** processed through any US financial institution and do **not** involve a person on the SDN List.<sup>1</sup> In late 2016, OFAC updated its “Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day,” and provided further guidance with

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<sup>1</sup> [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa\\_faqs.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf).

respect to the processing of USDs by non-US financial institutions. OFAC revised FAQ C. 7 to address whether foreign financial institutions can “process” transactions denominated in USDs or maintain USD-denominated accounts on behalf of the government of Iran or any person subject to the jurisdiction of the government of Iran. Based on the revised guidance, non-US persons engaging in transactions with or involving Iran are permitted to arrange for payment in USD provided: (1) they use a non-US financial institution to process payment outside the US financial system; and (2) no persons on the SDN List are involved. In contrast, OFAC found TransTel and CSE Global had violated US sanctions because the payments in that case were processed through the US financial system (using USDs) and, additionally, involved payments to persons on the SDN List.

Nevertheless, in light of this recent OFAC action against TransTel and CSE Global, many commentators are advising non-US companies to take the conservative approach and cease conducting any business in USDs with sanctioned entities, regardless of whether the related USD payment transactions are processed through the US financial system or involve a person on the SDN List.

### **Implications**

OFAC stated that the enforcement action against TransTel and CSE Global “highlights the sanctions compliance obligations of all individuals and entities that conduct business in OFAC-sanctioned jurisdictions or with OFAC-sanctioned parties and that also process transactions directly or indirectly through the United States, or involving U.S. companies, or U.S.-origin goods, services, and technology.” It also underscores how non-US companies may trigger OFAC’s jurisdiction simply by using USD payments processed through the US financial system to conduct business with OFAC-sanctioned countries and entities. Payments in US dollars involving sanctioned countries or entities present a significant compliance risk for all parties to such transactions, including financial institutions that may unwittingly receive funds related to foreign transactions without significant information to detect the violation.

This action signifies OFAC’s commitment to extend its reach beyond the traditional focus on financial institutions to customers who knowingly engage in conduct that causes a bank to violate US sanctions laws. Non-US companies conducting business in USDs with OFAC-sanctioned countries should reexamine related transactions to confirm that they do not involve routing through the US financial system and take steps to eliminate or mitigate this risk. These steps should include implementation of robust policies/procedures, internal controls, appropriate officer and employee training, and periodic monitoring and screening to ensure that any such USD payments are not processed through the US financial system and do not involve persons on the SDN List.

With respect to non-US and US financial institutions, it is important to identify this risk through the due diligence process by specifically looking for indicators of a customer’s potential for business relationships with sanctioned parties. While an undertaking and commitment from customers to not engage in prohibited transactions is helpful, such representations without supporting compliance procedures can create significant risk and should be addressed to avoid possible liability in the future.

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