

Alert

FinCEN, OFAC, the UN, EU and UK Issue Advisories, Freeze Orders, Other Measures Related to Libya, Egypt and Tunisia

March 17, 2011

FinCEN Advisories and OFAC Sanctions

As a result of the recent unrest in Libya,¹ Egypt² and Tunisia,³ the U.S. Financial Crimes Enforcement Network ("FinCEN") has issued a series of advisories to remind financial institutions of their obligations under the USA PATRIOT Act to apply enhanced scrutiny for private bank accounts held by or on behalf of senior foreign political figures and to monitor transactions and file Suspicious Activity Reports involving transfers that may represent misappropriated or diverted state assets, proceeds of bribery or other illegal payments, or other public corruption proceeds. The FinCEN advisories draw particular attention to the fact that the recent instability in the area creates a heightened risk that senior foreign political figures (also known as politically exposed persons) in the Libyan, Egyptian and Tunisian governments may attempt to move misappropriated government funds out of their respective countries.

Separately, on Feb. 25, 2011, President Obama signed Executive Order 13566, freezing assets located within the United States, or within the possession or control of any United States person, belonging to the Government of Libya, its agencies, instrumentalities and controlled entities, Colonel Qadhafi and designated members of his family, and certain senior officials of the Libyan government. On Feb. 25 and March 11, 2011, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") imposed financial sanctions against Qadhafi, his family members and other senior officials of the Libyan government.⁴

Likewise, on Feb. 26, 2011, the U.N. Security Council unanimously adopted Resolution 1970 imposing an asset freeze on "all funds, other financial assets and economic resources" owned or controlled by Qadhafi or members of his family.⁵ The sanctions include a travel ban against Qadhafi, members of his family and other senior Libyan Government officials and a ban on the supply of arms and related material to the Government of Libya.⁶ On Feb. 28, 2011, the European Union ("EU") adopted sanctions⁷ against the Government of Libya

¹ FinCEN, *Guidance to Financial Institutions on Recent Events in Libya* (Feb. 24, 2011), available at http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2011-A004.pdf.

² FinCEN, *Guidance to Financial Institutions on Recent Events in Egypt* (Feb. 16, 2011), available at http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2011-a002.pdf.

³ FinCEN, *Guidance to Financial Institutions on Recent Events in Tunisia* (Jan. 20, 2011), available at http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2011-A001.pdf.

⁴ See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/OFAC-Recent-Actions.aspx>. On March 15, 2011, OFAC added 1 individual and 16 Libyan entities, including several financial institutions, to its list of Specially Designated Nationals. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20110315.aspx>.

⁵ <http://www.un.org/News/Press/docs/2011/sc10187.doc.htm>.

⁶ See http://www.un.org/Docs/sc/unscl_resolutions11.htm.

⁷ See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/119524.pdf.

including an asset freeze on Qadhafi, his family members and close associates. On March 2 and March 11, 2011, the EU extended these restrictive measures (by enacting further EU Regulations with more restrictive sanctions), extending the U.N. Security Council's sanctions to additional individuals within the Qadhafi family, members of the Libyan army and intelligence services, the political party supporting Qadhafi and certain Libyan financial entities including, among others, the Central Bank of Libya, the Libyan Foreign Bank and the Libyan Arab Foreign Investment Company.⁸

The United Kingdom has followed these EU sanctions with measures of its own, including asset-freezing regulations⁹ which make it a criminal offence for a UK person or a UK incorporated entity to deal in any way with the funds of the persons listed in the EU sanctions and legislation or to in any way make funds or other economic resources available to such persons — the penalty being two years imprisonment and/ or a fine.

On Feb. 4, 2011, the EU also adopted a Regulation¹⁰ providing for restrictive measures directed against Tunisia's former president (Zine El Abidine Ben Haj Hamda Ben Haj Hassen Ben Ali), members of his family, as well as associated entities and bodies. The Regulation freezes the assets of these persons within the EU and prohibits any EU persons from making funds available to them or from assisting with the misappropriation of Tunisian State funds.

FinCEN Implements Special Measure Against Lebanese Canadian Bank SAL

Through a Notice of Proposed Rulemaking (the "Proposed Rule")¹¹ issued on Feb. 17, 2011, FinCEN is seeking to impose the fifth special measure specified in section 311 of the USA PATRIOT Act, which would prohibit banks, broker-dealers and other covered financial institutions¹² from establishing, maintaining, administering or managing correspondent accounts¹³ for, or on behalf of, Lebanese Canadian Bank SAL ("Lebanese Canadian Bank"), located in Beirut, Lebanon and with an office in Montreal, Canada.

In a contemporaneously issued Notice of Finding, FinCEN explained its rationale for determining that Lebanese Canadian Bank is a financial institution of primary money laundering concern. Among other things, FinCEN noted that multiple Lebanese Canadian Bank accounts are used to facilitate the movement of funds related to both drug trafficking and trade-based money laundering and certain Lebanese Canadian bank managers provide banking services to Iranian officials, who are introduced to the bank by Hizballah's Tehran-based envoy.

The Proposed Rule requires these covered financial institutions to apply special due diligence to its correspondent accounts to guard against any indirect use by Lebanese Canadian Bank. At a minimum, this includes: (1) a one-time notification to those correspondent account holders that the covered financial institution "knows or has reason to know" provides services to the Lebanese Canadian Bank, that such correspondents may not provide the Lebanese Canadian Bank with access to the correspondent account maintained at the covered financial institution and (2) the identification through its transaction records of any indirect use of its correspondent accounts by Lebanese Canadian Bank.

Notably, the prior special measures against Commercial Bank of Syria, VEF Bank, and Banco Delta Asia¹⁴ require covered financial institutions to give to *all* correspondent account holders, not only to the ones that it "knows or has reason to know" provide services to Lebanese Canadian Bank. The Proposed Rule states that

⁸ http://www.hm-treasury.gov.uk/d/finsanc_council_regulation_euno204_030111.pdf and http://www.hm-treasury.gov.uk/d/finsanc_council_implementing_regulation_233_100311.pdf.

⁹ http://www.hm-treasury.gov.uk/d/libya_financial_sanctions_order270211.pdf and http://www.hm-treasury.gov.uk/d/fin_sanc_assetfreezing_libya_030311.pdf.

¹⁰ (EU) No 101 2011: http://www.hm-treasury.gov.uk/d/finsanc_council_regulation_eu_no101_070211.pdf.

¹¹ 76 Fed. Reg. 9,268, 9,273 (Feb. 17, 2011).

¹² See definition of covered financial institution at 31 C.F.R. § 1010.605(e) (formerly 31 C.F.R. § 103.175(f)).

¹³ See definition of correspondent account at 31 C.F.R. § 1010.605(c) (formerly 31 C.F.R. § 103.175(d)).

¹⁴ 31 C.F.R. § 1010.653(b)(2)(i)(A) (formerly 31 C.F.R. § 103.188(b)(2)(i)(A)) (Commercial Bank of Syria); 31 C.F.R. § 1010.654(b)(2)(i)(A) (formerly 31 C.F.R. § 103.192(b)(2)(i)(A)) (VEF Bank); 31 C.F.R. § 1010.655(b)(2)(i)(A) (formerly 31 C.F.R. § 103.193(b)(2)(i)(A)) (Banco Delta Asia).

a covered financial institution should take a risk-based approach to determining if additional due diligence is necessary to prevent the indirect use by Lebanese Canadian Bank of its correspondent accounts.

If a covered financial institution learns that a correspondent account it maintained for a foreign bank was being used to provide services indirectly to Lebanese Canadian Bank, it would be obligated to take steps to prevent such indirect access including terminating the correspondent account.

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