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Client Alert

International Trade & Litigation Practice Group

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FinCEN Issues Advisory on Jurisdictions with AML/CFT Deficiencies

The Financial Crimes Enforcement Network ("FinCEN"), an agency within the U.S. Treasury Department, has put forth an Advisory on the FATF-Identified Jurisdictions with AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism) Deficiencies. This advisory concerns the impact of the October 2016 Financial Action Task Force ("FATF") update to its list of jurisdictions with AML/CFT deficiencies.

FATF designates two categories of countries with AML/CFT deficiencies: FinCEN Section I is comprised of jurisdictions for which all countries should either enact countermeasures or conduct Enhanced Due Diligence ("EDD") to guard against potential risks; Section II is comprised of jurisdictions that are of concern, but have developed an Action Plan with FATF.

Section I is comprised of the Democratic People's Republic of Korea ("DPRK" or "North Korea"), designated as requiring countermeasures, and Iran, designated as requiring EDD. Regarding the DPRK, FATF instructed jurisdictions to enact countermeasures such as taking "necessary measures to close existing branches, subsidiaries and representative offices of DPRK banks within their territories and terminate correspondent relationships with DPRK banks, where required by relevant [United Nations Security Council] Resolutions." Due to Iran's recent high-level commitments to an Action Plan addressing FATF concerns, however, FATF in June 2016 suspended its call for countermeasures on Iran for 12 months, during which time FATF will carefully measure Iran and its progress.

FinCEN's Advisory addresses the FATF list in light of other obligations imposed by the United Nations, U.S. sanctions, and U.S. banking regulations. Regarding the DPRK, FinCEN reminds U.S. financial institutions that under U.S. sanctions law, they are prohibited from "engaging in most transactions involving North Korea." Regarding Iran, FinCEN cautions that despite the 12-month suspension from FATF, "U.S. financial institutions are still subject to a broad range of restrictions and prohibitions on engaging in transactions with or involving Iran due to a number of illicit financing risks, including money laundering, terrorist financing, and the financing of Iran's ballistic missile program."

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FinCEN reminds financial institutions that both the DPRK and Iran are jurisdictions of "primary money laundering concern" under the USA Patriot Act, and that "financial institutions must also comply with the extensive U.S. restrictions and prohibitions against opening or maintaining any correspondent accounts (directly or indirectly) with foreign banks licensed by the DPRK or Iran." FinCEN recommends enhanced due diligence procedures for both of these jurisdictions, which include, at a minimum, the obligation to:

- Conduct enhanced scrutiny of correspondent accounts to guard against money laundering and to identify and report any suspicious transactions, in accordance with applicable law and regulation;

- Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks; and,

- Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

Section II of FATF's designations – countries where there are risks but where the leadership has made progress on an Action Plan – is comprised of Afghanistan, Bosnia and Herzegovina, Iraq, Lao PDR, Syria, Uganda, Vanuatu, and Yemen. Guyana has been removed from this list due to its "significant progress in establishing the legal and regulatory framework to address all or nearly all of its strategic AML/CFT deficiencies on a technical levels."

FinCEN advises financial institutions to continue to "consider the risks associated with the AML/CFT deficiencies" in these Section II countries. Financial institutions remain bound by their due diligence and other obligations under the Bank Secrecy Act ("BSA"). Regarding Guyana, FinCEN advises that countries "take the FATF's decisions and the reasons behind the delisting into consideration when assessing risk consistent with their obligations" under the BSA.

Financial institutions should continue to ensure that they maintain a comprehensive compliance program to address U.S. anti-money laundering, sanctions, and other regulatory obligations. Please do not hesitate to contact our team with any questions or concerns.