

International Trade Currents

OFAC Implements Hizballah International Financing Prevention Act of 2015

By Ted Posner and Dana Watts

On April 15, 2016, the Office of Foreign Assets Control (“OFAC”) promulgated regulations implementing the Hizballah International Financing Prevention Act of 2015 (Pub. L. No. 114-102) (“HIFPA”), which President Obama signed into law on December 18, 2015. The new regulations (codified at 31 C.F.R. part 566) impose secondary sanctions on foreign financial institutions that are determined to provide direct or indirect support for Hizballah. In particular, the regulations prescribe strict restrictions that the Secretary of the Treasury may impose on such an institution’s opening or maintenance of a correspondent account or payable-through account. The regulations also provide for a prohibition on opening or maintaining such an account based on a determination by the Secretary.

A foreign financial institution may be targeted for sanctions under HIFPA if the Secretary determines that it knowingly:

- Facilitates a significant transaction or transactions for Hizballah;
- Facilitates a significant transaction or transactions for a person identified on OFAC’s Specially Designated Nationals and Blocked Persons (“SDN”) List, the property and interests in property of which are blocked for acting on behalf of, or at the direction of, or for being owned or controlled by, Hizballah;
- Engages in money laundering to carry out either of the first two categories of activity;
- Facilitates a significant transaction or transactions or provides significant financial services to carry out any of the foregoing activities.

Correspondent accounts and payable-through accounts are important tools enabling foreign banks and other financial institutions to do business in the United States. Through such an account, a financial institution may receive deposits, make payments, and enable its customers to engage in banking transactions in the United States. Restricting or prohibiting an institution from opening or maintaining such an account therefore constitutes an important sanction.

Restrictions provided for under the regulations include:

- Prohibiting or restricting trade finance;
- Limiting the account to specified types of transactions (e.g., personal remittances);
- Monetary or volume limitations;
- Requiring transactions to be pre-approved by the U.S. financial institution where the account resides;
- Prohibiting or restricting processing of foreign exchange transactions.

As OFAC designates foreign financial institutions under the HIFPA regulations, they will be identified on a Hizballah Financial Sanctions Regulations List (“HFSR List”) on OFAC’s Counter Terrorism Sanctions

webpage. When OFAC issued the new regulations, it did not designate any institutions for the list, but it did give various individuals and entities already on the SDN list a secondary HIFPA designation (“subject to secondary sanctions pursuant to the Hizballah Financial Sanctions Regulations”). Thus, if a financial institution facilitates a significant transaction of any of these persons or entities, it now places itself at risk for designation under the HIFPA regulations.

A general license included in the HIFPA regulations allows U.S. financial institutions to engage in certain transactions necessary to wind down a correspondent or payable-through account of a foreign institution that becomes prohibited from opening or maintaining such an account.

Contributing Authors

Ted Posner (Washington DC)	Bio Page	ted.posner@weil.com	+1 202 682 7064
Dana Watts (Washington DC)	Bio Page	dana.watts@weil.com	+1 202 682 7129

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