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**COMPLIANCE PROGRAMS**

**OFAC’s Streak Continues: Takeaways from the TransTel Sanctions Settlement**



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On July 27, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) entered into a settlement agreement with CSE TransTel Pte. Ltd. (“TransTel” or the “Company”), a wholly-owned subsidiary of international technology group CSE Global Ltd. (“CSE Global”). TransTel agreed to pay over \$12 million to resolve apparent violations of the Iranian Transactions and Sanctions Regulations (“ITSR”). The settlement—announced just one week after OFAC issued a \$2 million penalty to ExxonMobil Corp. (“ExxonMobil”)—relates to TransTel’s origination of U.S. dollar (“USD”) fund transfers to third parties in connection with TransTel’s dealings in Iran.

The TransTel settlement is noteworthy because it represents one of the largest penalties that OFAC has imposed on a non-financial institution. In addition, this matter illustrates a number of recent OFAC enforcement trends, from increased scrutiny of non-financial institutions, to aggressive assertion of extraterritorial jurisdiction, to rigorous enforcement of the Iranian sanctions.

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**I. Overview of the TransTel Settlement**

**a. Factual Background**

According to the parties’ settlement agreement, between August 2010 and November 2011, TransTel retained multiple third-party vendors—including Iranian and non-Iranian vendors—to deliver and install telecommunications equipment in support of various oil and gas projects in Iran (the “Iranian Projects”). Among other vendors, TransTel engaged Petropars and SADRA, both entities included on OFAC’s Specially Designated Nationals and Blocked Persons List. During the relevant period, TransTel conducted business in Iran through a 49-percent-owned Iranian entity, TransTel Engineering Kish Co. Ltd.

TransTel maintained multiple bank accounts at a Singaporean bank (the “Bank”), including separate accounts for USD-denominated transactions. In April 2012, the Bank required TransTel to sign a “Sanctions – Letter of Undertaking,” in which the Company agreed “not to route any transactions related to Iran through [the Bank], whether in Singapore or elsewhere.” Notwithstanding this covenant, between June 2012 and March 2013, TransTel originated 104 wire transfers from its USD-denominated account, totaling \$11,111,812, to various third-party vendors for services linked to the Iranian Projects. Some of the transfers were made to Iranian vendors, while others were sent to non-Iranian vendors. The settlement agreement states that “TransTel appears to have had explicit knowledge and reason to know that the transactions were destined

for or involved, or that the benefit of these funds transfers would be received in, Iran.” It is unclear whether the wire transfers were made to Iran, and the precise nexus between the payments and the Iranian Projects is not known.

According to the settlement agreement, none of the 104 transfer requests referenced Iran, the Iranian Projects, or any Iranian parties. However, the settlement agreement does not specify whether TransTel—or a third party acting on behalf of TransTel—actively concealed that the transfers related to Iran. The USD-denominated wire transfers were processed through the U.S., which caused at least six financial institutions—including U.S. financial institutions—to export financial services to Iran, in violation of the ITSR.

## b. Settlement Agreement

OFAC determined that TransTel committed 104 violations of the ITSR. OFAC further determined that the apparent violations, which TransTel did not voluntarily self-disclose, were egregious violations, although OFAC did not explain how it reached that conclusion. As a result, TransTel faced a statutory maximum penalty of over \$38 million.

The parties ultimately negotiated a settlement of \$12,027,066. In its enforcement information, OFAC cited numerous aggravating factors, including TransTel’s commercial sophistication and scope of international operations, involvement by senior management in the underlying activities, and the Company’s apparent efforts to “systematically obfuscate” its misconduct. OFAC cited as mitigating factors the Company’s lack of historical violations, cooperation with the investigation, and implementation of remedial measures.

## II. Key Takeaways

### a. Resurgence in OFAC Enforcement Activity

The TransTel settlement marks OFAC’s ninth enforcement action in 2017 that has resulted in a settlement or civil penalty, as compared to nine such enforcement actions during all of 2016. Similarly, OFAC has imposed \$116,193,290 in civil penalties this year to date, as compared to \$21,609,315 in 2016. While OFAC’s settlement with Zhongxing Telecommunications Equipment Corp. (“ZTE”) in March 2017 represents the lion’s share of civil penalties collected this year, the TransTel settlement alone would represent over 50 percent of the total penalties that OFAC collected in 2016.

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By entering into a settlement agreement, TransTel waived its right to challenge OFAC’s enforcement action in court. Presumably, TransTel consented to a settlement agreement because, by doing so, the Com-

pany agreed to pay only a fraction of the statutory maximum penalty. Four days before OFAC announced the settlement, CSE Global issued a statement that TransTel had “agreed to settle with OFAC . . . as the alternative would have been a costly and lengthy litigation in the US, which would take up much of management time and resources, the outcome of which is not at all certain” (see Lyneytte Khoo, *One-time charge at CSE likely to drag group into the red for Q2*, The Business Times (Jul. 23, 2017), <http://www.businesstimes.com.sg/companies-markets/one-time-charge-at-cse-likely-to-drag-group-into-the-red-for-q2>.) Similarly, for OFAC, the prospect of a settlement—without the possibility of a colorable legal challenge—may have been attractive, even at a significantly reduced penalty, in light of high-profile claims that Epsilon Electronics, Inc. and Exxon-Mobil brought against OFAC seeking to set aside penalties the agency unilaterally levied on those companies.

### b. Continued Scrutiny of Non-Financial Institutions

The TransTel settlement is yet another example of OFAC’s continued scrutiny of non-financial institutions’ compliance with U.S. economic sanctions. In 2017 to date, OFAC has brought enforcement actions against six non-financial institutions, including participants in the oil and gas (Aban Offshore Ltd.; B Whale Corp.; ExxonMobil), telecommunications (ZTE; TransTel), and health-care industries (United Medical Instruments Inc.). Collectively, these six enforcement actions have accounted for the overwhelming percentage of civil penalties imposed in 2017.

While scrutiny of non-financial institutions marks a break from OFAC enforcement activity over the past ten years, this departure was foreseeable. Since 2009, OFAC (as well as the U.S. Department of Justice, the Securities and Exchange Commission, and state regulators) have extracted headline-grabbing penalties from an extensive roster of U.S. and non-U.S. financial institutions, including Lloyds TSB Bank plc, Credit Suisse, Barclays Bank PLC, ING Bank, Standard Chartered Bank, HSBC, Royal Bank of Scotland, and BNP Paribas. In response to intense scrutiny by OFAC and other regulators, many financial institutions have implemented state-of-the-art sanctions compliance programs, including policies and procedures that are *more restrictive* than the requirements of U.S. sanctions regulations. While the financial industry’s broad adoption of enhanced sanctions compliance controls was, at least nominally, a primary OFAC enforcement objective, a byproduct of achieving this objective is that OFAC now has the resources to refocus its enforcement efforts elsewhere.

### c. Aggressive Extraterritorial Enforcement

TransTel and its parent company, CSE Global, are based in Singapore. TransTel appears to have violated the sanctions regulations by *causing* financial institutions (both U.S. and non-U.S.) to unwittingly violate the ITSR.

In recent enforcement actions, OFAC has adopted increasingly aggressive positions related to jurisdiction and extraterritoriality. For example, in February 2017, OFAC issued a finding of violation to Taiwan-based B Whale Corp. (“BWC”) for an alleged violation of the ITSR. In 2013, a BWC vessel received a ship-to-ship transfer of Iranian crude oil in international waters. The

transfer occurred while BWC was in bankruptcy proceedings in federal court in Texas, and OFAC determined that this legal presence was sufficient to bring BWC within its jurisdiction. OFAC also determined that the ship-to-ship transfer constituted an importation from Iran to the U.S., in violation of the ITSR.

In March 2017, OFAC entered into a \$100,871,266 settlement with China-based ZTE to resolve alleged violations of the ITSR. Pursuant to coordinated settlements with other U.S. regulators, ZTE agreed to pay a combined penalty of over \$890 million. As in the TransTel settlement, OFAC alleged that ZTE violated § 560.203 of the ITSR, which prohibits any transaction that “evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate” the ITSR. In the alternative, OFAC alleged that ZTE violated ITSR § 560.204 (for knowingly exporting goods, technology, or services from the U.S. to Iran) and/or ITSR § 560.205 (for knowingly re-exporting U.S. goods, technology, or services from a third country to Iran). While the language of the ITSR arguably supported OFAC’s assertion of jurisdiction over ZTE, it is questionable whether OFAC could have successfully extracted such a large settlement from ZTE absent the U.S. government’s threat of denying ZTE future access to U.S. exports.

The TransTel settlement underscores that non-U.S. companies must remain vigilant in complying with U.S. economic sanctions. U.S. sanctions regulations have broad extraterritorial application, and even foreign entities that do not appear to be subject to OFAC’s jurisdiction can incur liability by causing U.S. financial institutions or companies to violate the sanctions. Recent settlements also illustrate that OFAC is willing to enforce existing regulations to the fullest extent possible by finding that parties committed egregious violations and imposing the maximum financial penalties allowable by law.

#### **d. Recommitted Focus on Iran-Related Enforcement**

Finally, the TransTel settlement highlights that OFAC remains committed to pursuing unlawful dealings with Iran. In its enforcement information, OFAC reported that TransTel’s conduct “conveyed significant economic benefit to Iran” and “benefited Iran’s oil, gas, and power industries.” And it is no coincidence that OFAC’s largest civil settlements this year—ZTE and TransTel—have involved violations of the Iranian sanctions.

The announcement of the TransTel settlement comes at a potentially pivotal moment in the evolution of U.S. sanctions policy toward Iran. In April 2017, the Trump administration initiated an interagency review process to assess whether the U.S.’s relaxation of sanctions against Iran, pursuant to the Joint Comprehensive Plan of Action (“JCPOA”), was consistent with U.S. national security interests. Despite this step, the U.S. govern-

ment certified Iran’s compliance with the JCPOA on July 17. The results of the interagency review have not been announced; however, on July 25, President Donald Trump said he “would be surprised” if Iran was determined to be in compliance with the JCPOA during the U.S. government’s next compliance assessment, scheduled for September (see *Excerpts: Donald Trump’s Interview With The Wall Street Journal*, Wall St. J. (Jul. 25, 2017), <https://blogs.wsj.com/washwire/2017/07/25/donald-trumps-interview-with-the-wall-street-journal-edited-transcript/>).

In parallel, the U.S. Congress has acted to enhance U.S. sanctions against Iran. Both houses of Congress have passed, by overwhelming margins, a bill that would mandate additional sanctions against (1) the Iranian Revolutionary Guard Corps, (2) any person that contributes to the development of Iran’s ballistic missile program, (3) any person that contributes to human rights abuses committed against individuals in Iran, and (4) any person that contributes to the supply or transfer of arms to Iran. The bill also would impose additional sanctions targeting Russia and North Korea. President Trump signed the sanctions bill into law on Aug. 2.

Finally, on July 28, OFAC sanctioned six Iranian affiliates of the Shahid Hemmat Industrial Group, an entity that OFAC described as “central to Iran’s ballistic missile program” (see Press Release, U.S. Department of the Treasury, Treasury Sanctions Key Ballistic Missile Entities in Iran (Jul. 28, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0136.aspx>). In a press release, the Treasury Department stated that the new sanctions were imposed, in part, in response to Iran’s July 27 launch of a space launch vehicle, which employs “technologies that are closely related to those of an intercontinental ballistic missile.” Treasury Secretary Steve Mnuchin added that the sanctions designations “underscore the United States’ deep concerns with Iran’s continued development and testing of ballistic missiles and other provocative behavior.”

### **III. Conclusion**

The TransTel settlement is yet another reminder that sanctions compliance is critically important for financial institutions and non-financial institutions alike. Companies—in particular, non-financial institutions with U.S. operations—that fail to take notice of OFAC’s increasingly aggressive enforcement positions do so at the risk of multi-million-dollar enforcement actions. Further, in the current political climate, maintaining compliance with U.S. economic sanctions appears primed to become more—rather than less—challenging. For all of these reasons, a comprehensive understanding of current U.S. sanctions regulations, as well as OFAC’s recent enforcement posture, has never been more critical.