

CH-3003 Bern

A Mail

To all financial intermediaries subject to FINMA supervision

Reference: GB-M/M-GFK

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Risks in business dealings with Iran

Dear Sir/Madam,

With the adoption of **Resolution 1929** on 9 June 2010, the United Nations imposed additional sanctions on the Islamic Republic of Iran.¹ On the one hand, the existing sanctions were expanded to include other sanctioned persons, organisations and companies (collectively referred to below as “persons” for the sake of simplicity). On the other hand, further restrictions were placed on trading in specific goods and rendering of certain services. On 18 August 2010, the Ordinance on Measures Against Iran was adapted in line with the provisions of the Resolution under international law.²

As a result of the UN resolution, the EU and the U.S. also tightened their sanctions against the Iranian regime. However, in fleshing out the new sanctions the two went far beyond the binding provisions of the UN resolution. As a consequence, the legal and reputational risks of companies operating in the Swiss financial market were also heightened. The requirements to be satisfied by financial intermediaries subject to supervision by FINMA are defined under Point 1. Information on the respective laws enacted by the EU and the U.S. can be viewed under Point 2 below.

¹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/396/79/PDF/N1039679.pdf?OpenElement>.

² SR 946.231.143.6; <http://www.seco.admin.ch/themen/00513/00620/00622/02048/index.html?lang=en>.

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1 Requirements incumbent upon financial intermediaries

1.1 Embargo Act: Sanctions

FINMA requires that all financial intermediaries maintain strict compliance with the Embargo Act³ and the enacted Ordinance on Measures Against Iran based on it (hereinafter referred to as "Ordinance").⁴ Compliance with Art. 2 para. 2 of the Ordinance presupposes an ex ante examination of transactions. This sanctions screening complies with Annex 3 of the Ordinance and is to be performed with respect to the particulars of the remitter (originator) as well as of the beneficiary (payee). It should also be borne in mind that the reporting requirement pursuant to Art. 5 para. 1^{bis} of the Ordinance also applies to the subsidiaries and branch offices of the banks listed in Annex 5.

The following articles of the Ordinance are also of significance for financial intermediaries: Art. 1 para. 3 and para. 4, Art. 1a para. 3, Art. 1b and Art. 3b of the Ordinance.

For further information, please refer to the website of the State Secretariat for Economic Affairs (SECO): <http://www.seco.admin.ch/themen/00513/00620/00622/02048/index.html?lang=en>.

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1.2 Anti-Money Laundering Act: Duty of due diligence

Strict adherence is to be maintained to the provisions of the Anti-Money Laundering Act⁵ and the Anti-Money Laundering Ordinances with regard to identifying, mitigating and monitoring risks posed by money laundering and the financing of terrorism. The FATF has repeatedly pointed to the risks posed by Iran with regard to money laundering and terrorism financing and urged the member countries to advise their financial intermediaries to give special attention to business relationships and transactions with Iran (see <http://www.fatf-gafi.org/dataoecd/34/29/44636171.pdf>). FINMA is again calling upon financial intermediaries to bear in mind the statements of the FATF with regard to Iran in assessing the risks posed by money laundering and the financing of terrorism pursuant to the AMLA and the associated implementing regulations (see also <http://www.finma.ch/e/sanktionen/internationale-sanktionen/fatf-statements/meldungen-fatf/pages/aktuell-mitteilung-fatf-20090428.aspx>).

Furthermore, the FATF also urges its member countries to initiate measures to protect against engaging in **correspondent banking relationships** that are misused to circumvent or prevent countermeasures and risk mitigation practices. FINMA again calls upon banks to take the FATF statements pertaining to Iran into account when applying Art. 17 of the Anti-Money Laundering Ordinance (AMLO–FINMA 1)⁶ to their correspondent banking relationships with foreign financial intermediaries. Correspondent banking relationships with Iranian banks are to be treated as higher-risk business relation-

³ EmbA; SR 946.231.

⁴ Cf. footnote 2.

⁵ AMLA; SR 955.0.

⁶ AMLO-FINMA 1; SR 955.022.

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ships in terms of Art. 7 para. 3 AMLO-FINMA 1. Pursuant to Art. 17 para. 3 AMLO-FINMA 1, financial intermediaries are to engage in additional in-depth investigations, in particular as provided for by Art.17 para. 2 let. i AMLO-FINMA 1, and subject these correspondent banking relationships to intensive monitoring. When dealing with correspondent banking relationships when Iranian banks, the bank's executive management or, at minimum, one of its members must decide on whether the bank should enter into these relationships and conduct an annual review to determine whether they should be maintained (pursuant to Art. 22 para. 1 let. a AMLO-FINMA 1 in conjunction with Art. 9 of the Banking Ordinance⁷).

1.3 Banking Act, Stock exchange Act and Insurance Supervisory Act: Risk management

In addition, FINMA requires that banks, securities dealers and insurance companies assess the legal and reputational risks that ensue from cross-border operations and the respective foreign laws as provided for in Art. 9 BO, Art. 19 para. 3 of the Stock Exchange and Securities Trading Ordinance⁸ and Art. 22 of the Insurance Supervisory Act.⁹ The legal and reputational risks are to be accordingly mitigated and monitored. FINMA calls upon banks, securities dealers and insurance companies to ascertain whether they are subject to exposure with regard to U.S. and EU legal and reputational risks on account of their business operations to the extent that they are forced to comply with U.S. or EU embargo provisions. FINMA also expects banks, securities dealers and insurance companies affected to keep abreast of regulatory developments in this area.

2 Information on foreign sanctions

2.1 Sanctions imposed against Iran by the EU

Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:281:0001:0077:EN:PDF>

2.2 Sanctions imposed against Iran by the U.S.

Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA):

<http://www.hcfa.house.gov/111/MAR10505.pdf>

Sanctions programs of the United States Department of the Treasury:

<http://www.treas.gov/offices/enforcement/ofac/programs/>

⁷ BO; SR 952.02.

⁸ SESTO; SR 954.11.

⁹ ISA; SR 961.01.

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It should be noted that, under certain circumstances, CISADA has an extraterritorial effect, i.e. it may also impact financial intermediaries domiciled in Switzerland. For example, banks outside the U.S. may be refused correspondent banking services by American banks where they knowingly facilitate significant transactions or render significant financial services on behalf of U.S.-listed IRGC (Iranian Revolutionary Guard Corps) persons and entities or for U.S.-listed financial institutions in connection with Iran's proliferation activities. Sanctions may also be imposed against foreign companies for example for rendering financial and insurance services associated with the exploitation of petroleum resources in Iran, production of refined petroleum products in Iran, and exportation of refined petroleum products to Iran.

Yours sincerely,

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