

# Insight by Integro Advisers

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## IRAN SANCTIONS: SHOULD SOUTH FLORIDA FINANCIAL INSTITUTIONS WORRY?

By Alberto de la Portilla



Financial institutions in South Florida have historically focused their sanction risk compliance on jurisdictions, such as Venezuela and Cuba, that fall within the scope of their geography and customer base. However, the updated sanctions announced by the Trump Administration last month on Iran may present new complications for local banks, according to a leading expert on OFAC sanctions.

**Andy Fernandez**, an attorney in the Miami office of Holland & Knight, believes banks need to pay attention to the latest news on Iran. "Under the Obama Administration, there was the JCPOA (Joint Comprehensive Plan of Action), an agreement that various countries entered into with Iran to entice them to denuclearize. The big thing with Iran sanctions [prior to the JCPOA] was that it permitted the U.S. government to designate non U.S. entities and non U.S. institutions for facilitating significant transactions with the government of Iran. The Obama agreement provided relief against those sanctions," says Fernandez.

"But one of the first things [President Trump] did was withdraw the United States from the JCPOA and they basically re-designated all 400 people that were previously taken off the [Specially Designated Nationals] list and reimposed the threat of secondary sanctions." That was the first escalation, he says.

In January, the Trump administration stepped up pressure on Iran by issuing a new Executive Order that targets Iran's construction, manufacturing, textiles and mining sectors. It also permits the U.S. government to target other sectors, if necessary. Fernandez says this latest directive expands the purview of the sanctions and may lead to additional entities being designated by OFAC.

"For example, if you have a customer that is a Chilean entity, and that customer is involved in construction in Iran, or in the mining industry in Iran, when before there may have not have been a risk for that customer OFAC-wise because maybe they were private sector, now they are kind of within bullseye."

Fernandez warns that banks who have customers engaging in activity with the sectors in Iran targeted specifically by the United States have to be careful. OFAC has included a 90-day wind down period to address potential sanction-related activity identified by banks.

For years, Iranian entities and individuals have been tied to Latin America. Iran and Venezuela have maintained close relations dating back to the Chavez Government. The Iran-Venezuela Bi-National Bank was established as a joint venture between the Banco Industrial de Venezuela and the Export Development Bank of Iran to facilitate commercial activities between the two countries. In addition to previous commercial, military and industrial arrangements, last November, the two countries signed a partnership to cooperate on education, nanotechnology, biotechnology and engineering. There are now direct flights from Tehran to Caracas.

Iranian influence has also extended to other countries. Last summer, Iran's Foreign Affairs Minister met with Nicaragua's head of state in hopes of agreeing to "wide-ranging cooperation" between the two nations.

A recent article published by the U.S. Army University Press refers to Iranian efforts to infiltrate smuggling and drug trafficking operations through the tri-border area between Paraguay, Brazil, and Argentina.

Fernandez says banks need to be mindful as they work with their foreign correspondents, foreign operating companies, and foreign commercial companies. "If they detect that their Brazilian customer is doing business in Iran, the banks have to step back and say hold on, there is a new executive order that was issued that may be targeting these folks," says Fernandez.

Additionally, the return of secondary sanctions under the Trump Administration should be a concern as well. A recent article in Fortune discussed how China, which is very active in the Latin American region, is "more financially and politically enmeshed" with Iran than ever before. Additional entities targeted by OFAC in the future could be aimed at Chinese companies that are fronting for Iran.

## THE FUTURE OF THE BENEFICIAL OWNERSHIP RULE

by John S. Karansky, CAMS, CFE, CFSA, CBA



On May 11, 2018, the Beneficial Ownership Rule became effective requiring banks to develop policies and procedures to identify beneficial owner of legal entities. "Beneficial Ownership" is determined under a control prong and

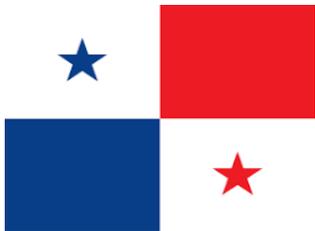
ownership prong.

Under control, the beneficial owner is a person that controls, manages or directs the legal entity. Under ownership, a beneficial owner owns 25% or more of a legal entity. Identification of a beneficial ownership under ownership is not required if a person owns less than 25%. Legal entity customers could have one to five beneficial owner(s) – one person under control and zero to four under ownership. Minimally, a bank is required to obtain the name, date of birth, address, and ID number for each beneficiary.

Banks figured that once they had complied with the "Beneficial Ownership" requirements, that would satisfy regulators on how a bank documented how it knows its customer. But as we have learned, nothing ever remains the same in the dynamic world of financial compliance.

In the 2<sup>nd</sup> quarter of 2019, the U.S. House of Representatives introduced Bill 2513 that would require companies to disclose beneficial ownership details to FINCEN directly and regularly report any change.

If the Bill becomes law, it will amend the Bank Secrecy Act with a section titled "Transparent Incorporation Practices" and will require companies to identify each beneficial owner by name, date of birth; address; and government identifying number. While the Bill exempts a number of entities from disclosure, many are already required to disclose. On October 22, 2019, the House of Representatives passed the "Corporate Transparency Act". While it is not clear whether the new Bill will pass the U.S. Senate, or signed into law by the President, positive comments were heard from the White House as it looks to continue to strengthen national security.



### COUNTRY FOCUS: PANAMA

Panama's dollar-based economy relies primarily on a well-developed services sector that accounts for more than three-

quarters of GDP. Services include operating the Panama Canal, logistics, banking, the Colon Free Trade Zone, insurance, container ports, flagship registry, and tourism. Panama is a center for offshore banking. However, the country's strategic geographic location, and status as a regional financial, trade, and logistics center make it a target for money launderers and tax evasion. In June 2019, the Financial Action Task Force placed Panama back on its international money laundering watchlist after key laws and regulations that were proposed to improve its AML enforcement failed to pass government approval in a timely fashion. In the Basel Institute's AML Index dated August 2019, Panama is ranked #34 on a list of 125 countries ranked from high to low in terms of AML risk. Nevertheless, Panama's FIU (Unidad de Analisis Financiero) has been a member of the Egmont Group since 1996.

Finally a review of the current OFAC SDN List identified more than 160 entities / individuals from Panama, as well as 17 relating to Cuba sanctions.

**Regulatory Framework:** The principal laws that governs banking is Ley No. 9 (February 1998) and Law No. 23 (April 2015) for AML. The latter establishes measures to identify, assess and understand money laundering and terrorist financing risks, mitigation controls, and facilitates international cooperation measures. The supervisory authorities have continued to modify controls and requirements since the enactment of the previous laws. For example in 2017, the Superintendent assumed oversight of MSBs and money remitters.

**Landscape:** According to the Superintendent of Banks in Panama, as of 2019, there are 47 domestic banks operating with general licenses, and 25 international licensed banks.

**AML Weaknesses:** The government has increased resources devoted to financial and non-financial sector regulators. However, Panama still lacks sufficient resources, including trained staff to effectively monitor whether entities, particularly Designated Non-Financial Business and Professions, comply with reporting requirements. FATF still considers the jurisdiction as having strategic AML deficiencies. There is also a high risk that legal entities permitted under Panama law may be used for illicit purposes.

**AML Strengths:** Panama has improved its compliance with international AML standards. Since 2018, the Superintendent has passed important updates to rules on bearer shares certifications and identification of owners/beneficiaries, red-flag guidance on terrorist financing, and covered entities for reporting purposes to include exchange bureaus and MSBs.

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