

CLIENT ALERT

Halkbank Sanctions Indictment Highlights U.S. Compliance Risks for Non-U.S. Banks

November 21, 2019

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On October 15, 2019, TÜRKİYE HALK BANKASI A.S. (“Halkbank”), a Turkish bank majority owned by the Government of Turkey, was [indicted](#) by U.S. prosecutors in the Southern District of New York for its role in a scheme to violate and evade sanctions on Iran, including using U.S. banks to transfer Iranian funds. The indictment is the latest in a string of charges related to the scheme which has seen nine individual defendants charged (including former bank executives and the former Turkish Minister of the Economy), two of whom have been convicted. Halkbank’s situation lays bare the compliance risks for foreign banks transacting in U.S. dollars, regardless of any other nexus to the United States, and illustrates a number of steps non-U.S. banks can take to limit their risks of a U.S. enforcement action.

I. The Allegations Against Halkbank

The indictment, available [here](#), charges Halkbank with the following counts for its role in the scheme: conspiracy to defraud the United States,¹ conspiracy to violate the International Emergency Economic Powers Act (“IEEPA”),² bank fraud,³ conspiracy to commit bank fraud,⁴ money laundering,⁵ and conspiracy to commit money laundering.⁶ The

¹ 18 U.S.C. § 371.

² 50 U.S.C. § 1705; Executive Orders 12959, 13059, 13224, 13599, 13622, 13645; and 31 C.F.R. § 560.203-5; 31 C.F.R. § 561.203-5.

³ 18 U.S.C. § 1344.

⁴ 18 U.S.C. § 1349

⁵ 18 U.S.C. § 1956 (a)(2).

⁶ 18 U.S.C. § 1956 (h).

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indictment also includes asset forfeiture allegations.⁷ As a result of Halkbank's allegedly committing the offenses of conspiracy to violate IEEPA, bank fraud, and conspiracy to commit bank fraud, the indictment orders Halkbank to forfeit to the United States all property that constitutes or is derived from proceeds traceable to the aforementioned charges, including, but not limited to, a sum of money representing the amount of proceeds obtained as a result of the offenses. It is common for prosecutors to raise criminal fraud and money laundering charges in cases like these, given that criminal sanctions violations almost always involve some type of deception.

According to the indictment, Halkbank allegedly played a major role in illicitly transferring approximately \$20 billion dollars of Iranian funds in a scheme supported by several high-ranking officials within the Turkish government. Halkbank was the primary depository institution for the proceeds of Iran's sale of oil to Turkey, with funds accumulating in accounts at Halkbank held by the Central Bank of Iran and the National Iranian Oil Company ("NIOC"), due to U.S. sanctions on the use of proceeds from the sale of Iranian oil. According to the indictment, the scheme, which lasted from 2012 to 2016, involved Halkbank's use of U.S. banks to transfer Iranian funds and conceal the true nature of those funds through numerous methods, including by:

- allowing the proceeds of sales of Iranian oil and gas deposited at the bank to be used to buy gold to the benefit of the Government of Iran, which was then supplied to Iran;
- allowing the proceeds of sales of Iranian oil to be used to buy gold that was not exported to Iran, in violation of the "bilateral trade" rule;⁸ and
- facilitating transfers of Iranian oil revenue held at Halkbank reserves outside of Turkey, which were fraudulently designed to appear as purchases of food and medicine by Iranian customers that would fall into the humanitarian exception to certain sanctions against the Government of Iran.

Ultimately, the indictment states that the purpose and effect of the scheme was to create a pool of Iranian oil funds in Turkey and the UAE held by front companies in order to obscure any links with Iran. The funds were then used to make international payments on behalf of the Government of Iran and Iranian banks. In certain cases, these funds were transferred in U.S. dollars and passed through U.S. correspondent banks.

While there was no U.S. nexus to much of the activity described in the indictment, Halkbank appears to have engaged in the actions described above in order to provide billions of dollars' worth of services to the Government of Iran while misleading and deceiving the U.S. government in order to avoid the risk of U.S. secondary sanctions or, in other words,

⁷ 18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461.

⁸ The "bilateral trade rule," as written in the Iran Threat Reduction Act, states that proceeds from Iranian oil sales deposited in a foreign country can be used only for trade between that foreign country and Iran.

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the imposition of U.S. sanctions on Halkbank and its customers. Senior Halkbank officials lied to members of the Office of Foreign Asset Control (“OFAC”) and deliberately disguised transactions to deceive U.S. regulators and foreign banks.

Halkbank also was charged with conspiracy to violate and to cause a violation of the regulations issued under IEEPA for providing and causing others to provide financial services from U.S. banks to Iranian entities and the Government of Iran, in violation of the Iranian Transactions and Sanctions Regulations (the “ITSR”), at 31 C.F.R. § 560.204, without authorization from OFAC, as well as U.S. laws on bank fraud and money laundering. At least \$1 billion was transferred through U.S. financial institutions on behalf of NIOC, the Central Bank of Iran, and other Iranian entities in violation of the ITSR.

Additionally according to the indictment, the Turkish government was involved in the alleged scheme. Throughout the duration of the scheme described above, the indictment alleges that Turkey’s then Minister of the Economy, who has already been charged by U.S. prosecutors for his role in the scheme, was accepting bribes in exchange for hiding the scheme and protecting those involved. More egregious is the fact that after the arrest and release of key members of the scheme, Halkbank was reluctant to continue the scheme; however, according to the indictment, the then Prime Minister of Turkey and his associates instructed Halkbank to continue the scheme. The alleged involvement by members of the Turkish government adds another angle to an already politically charged environment. Turkish President Recep Tayyip Erdogan has repeatedly spoken out against both the investigation and the indictment of Halkbank and individuals who were allegedly involved in the scheme. As a result, this indictment could have far-reaching consequences for U.S.-Turkish relations even as Congress mobilizes to reimpose sanctions on Turkey in retaliation for its incursion into Syria.

II. Significant Risks for Foreign Financial Institutions

The indictment of Halkbank represents another example of major U.S. enforcement actions against non-U.S. banks for the violation of U.S. economic sanctions. The BNP Paribas settlement for \$8.9 billion in 2014 for conspiracy to violate IEEPA and the Trading with the Enemy Act is one of the most high-profile examples of U.S. enforcement actions.⁹ BNP Paribas admitted to knowingly and willfully moving over \$8.8 billion through the U.S. financial system on behalf of Sudanese, Iranian, and Cuban sanctioned entities. Additionally, within the last two years, Société Générale S.A.,¹⁰ Standard Charter Bank,¹¹ and UniCredit Group¹² have all settled, been fined, or pled guilty in relation to violations of U.S. sanctions laws.

This pattern of enforcement demonstrates that the sanctions compliance risks for foreign financial institutions should be as much a concern as for U.S. domestic banks, and that those risks exist, regardless of whether a U.S. nexus is involved

⁹ See OFAC Enforcement Information for June 30, 2014, available [here](#).

¹⁰ See OFAC Enforcement Information for November 19, 2018, available [here](#).

¹¹ See OFAC Enforcement Information for April 9, 2019, available [here](#).

¹² See OFAC Enforcement Information for April 15, 2019, available [here](#).

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in the transaction. Halkbank's scheme was designed not only to avoid OFAC enforcement for using U.S. financial institutions to export financial services to the Government of Iran in violation of the ITSR, but also to evade detection by OFAC and the U.S. government of activity that would be subject to secondary sanctions. Halkbank's involvement in the relevant activity would have carried the significant risk of sanctions, and several of the allegations are based on Halkbank's efforts to mislead the U.S. government in order to avoid the imposition of sanctions, rather than on a direct violation of U.S. sanctions regulations. The apparent extensive involvement of the Turkish government in the scheme is also notable, and demonstrates the U.S. government's willingness to enforce its laws against a foreign financial institution, even if the activity was endorsed by the institution's home government.

III. Steps for Foreign Banks to Take to Shore Up Compliance Programs

Foreign banks can take a number of steps to ensure that they are mitigating their risk of any deliberate or inadvertent violations of U.S. sanctions within their organizations. To begin, they should ensure that their compliance programs are benchmarked against OFAC's recently released [Framework for OFAC Compliance Commitments](#). Sanctions compliance programs should be routinely updated and should incorporate the following five essential components of compliance laid out in OFAC's compliance framework: (1) management commitment, where senior management demonstrates involvement with compliance and willingness to devote adequate resources to compliance; (2) risk assessment, including holistic reviews of the institution's sanctions risks; (3) internal controls, referring to the adoption and dissemination of clear internal policies and procedures that are actively enforced, resulting in the ability to flag and escalate potential sanctions issues as appropriate; (4) testing and auditing, referring to functions that test the effectiveness of the compliance program; and (5) training, tailored as needed to different groups of employees with appropriate frequency.

In particular, as part of a strong sanctions compliance program, foreign banks should ensure correspondent and customer relationships are regularly reviewed for sanctions risks. If a customer is deemed to be higher risk, banks should maintain formal processes for increased diligence and monitoring to ensure that these risks are mitigated effectively. Banks should also invest in compliance personnel, making sure that all existing personnel and new hires have adequate relevant experience and training so that compliance operations are up to standards. Finally, the Halkbank indictment highlights the need for foreign banks to consider the risks of undertaking activity subject to U.S. sanctions, even where no U.S. nexus exists.

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