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U.S. Government's \$619 Million Settlement With ING Bank and Increased Sanctions on Iran Present New Challenges for Non-U.S. Banks

ING Bank N.V., a Dutch financial institution, has agreed to pay \$619 million in a settlement with the Treasury Department's Office of Foreign Assets Control (OFAC), the Department of Justice (DOJ) and the Manhattan District Attorney. The settlement is the result of OFAC's investigation into an alleged ING Bank conspiracy to violate state and federal laws by illegally moving billions of dollars through the U.S. financial system on behalf of persons and entities subject to U.S. sanctions. The enforcement actions against ING come against a backdrop of increasing enforcement and aggressive new extraterritorial measures aimed at third-country banks that deal with U.S. sanctions targets.

ING: Largest-Ever Sanctions Penalty The U.S. government accused ING Bank of employing a practice often referred to as "stripping," the removal or concealment of the country of origin of a financial transaction in order to circumvent international sanctions. Specifically, ING Bank admitted to processing or facilitating financial transactions from Iran, Cuba, Libya, Burma and Sudan through U.S. financial institutions by intentionally removing references to sanctioned countries or parties.

Under the terms of the settlement, ING Bank agreed to forfeit a total of \$619 million, to be paid among OFAC, DOJ, the New York District Attorney's Office, and any other federal, state, or county claim authorized to collect penalties from ING. In addition, OFAC formally ordered ING Bank to create and maintain wide-ranging policies and procedures to prevent the recurrence of violations. See [here](#) for more information.

Additional Enforcement in the Middle East ING Bank's penalty is the largest in a string of enforcement actions against non-U.S. banks. Shortly after the ING settlement, a bank in the United Arab Emirates paid \$800,000 to settle alleged violations of OFAC's sanctions, again through the alleged stripping of sanctions-related transaction data from transactions reaching U.S. institutions. These bank-stripping cases follow earlier settlements against Credit Suisse AG, Lloyd's, and others.

As OFAC and the DOJ continue to increase scrutiny on international financial transactions by non-U.S. banks, new U.S. laws are currently being phased in, along with pending legislation that financial institutions must be aware of. These new laws make non-U.S. banks subject to harsh U.S. sanctions for dealing with Iran.

U.S. National Defense Authorization Act for Fiscal Year 2012 (NDAA) The NDAA (which broadly authorized U.S. defense funding) contained section 1245, aimed at pressuring third-country banks to refuse significant or energy-related transfers with Iran. Section 1245 imposes sanctions on non-U.S. financial institutions from countries that do not significantly decrease the purchase of Iranian petroleum and petroleum products. These sanctions, which became fully effective June 28, 2012, include:

- Prohibiting or imposing strict conditions on maintaining a correspondent account or a payable-through account for non-U.S. financial institutions in the United States. if the non-U.S. financial institution knowingly conducts or facilitates any significant financial transaction with any Iranian financial institution prohibited by the Treasury Department.
- Prohibiting non-U.S. financial institutions from engaging in a financial transaction for the sale or purchase of petroleum or petroleum products from Iran.

The Secretary of State has provided limited exemptions to banks from 20 countries to facilitate petroleum trades, but those exemptions are set to expire by the end of this year.

The Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA) The NDAA built on similar banking restrictions adopted last year in CISADA. Under this Act, the Treasury Department may prohibit or impose strict conditions on non-U.S. financial institutions that maintain either correspondent accounts or payable-through accounts within the United States for violating CISADA provisions. CISADA prohibits non-U.S. financial institutions from facilitating:

- Any significant transaction for any financial institution whose property is likewise blocked under U.S. law
- Iran's Revolutionary Guard Corps, or agents, who are sanctioned under U.S. law
- Any efforts of the government of Iran (including efforts of Iran's Revolutionary Guard Corps or its agents) to acquire or develop weapons of mass destruction or their delivery systems
- The efforts of the government of Iran to provide support for organizations designated as foreign terrorists, or to support acts of terrorism

Domestic financial institutions that maintain either correspondent accounts or payable-through accounts within the United States for non-U.S. financial institutions will be subject to heightened regulations. CISADA requires domestic financial institutions to:

- Perform an audit on activities governed by the Act that may be carried out by the non-U.S. financial institution
- Report to the Treasury on transactions or other financial services provided with respect to governed activity
- Certify, to the best knowledge of the domestic financial institutions, that the non-U.S. financial institution is not knowingly engaging in any such activity
- Establish due diligence policies, procedures, and controls reasonably designed to detect whether the Secretary of the Treasury has found the non-U.S. financial institution to knowingly engage in any such activity

For more information: [click here](#) and [here](#).

The NDAA and CISADA are only heralds for things to come as the U.S. government increases financial pressure on Iran. New Iranian sanctions are currently pending in Congress. Included among them is the expansive Iran Threat Reduction Act of 2011.

Iran Threat Reduction Act of 2011 The Iran Threat Reduction Act of 2011 changes how sanctions are imposed, imposing liability upon U.S. parent companies for the transactions between their non-U.S. incorporated subsidiaries and Iran. A few of the many new measures likely to be included are:

- Expanding the current menu of sanctions, available to the president under the Iran Sanctions Act, to authorize measures against corporate officers, principals or controlling shareholders in a sanctioned firm. This "veil-piercing" pressure toward individual officers of third-country companies marks another new frontier for U.S. sanctions policy.

- Amending CISADA to ensure that U.S. financial sanctions imposed on UN-designated entities reach those persons acting on behalf of, at the direction of, or owned or controlled by, the designated entities.
- Amending the Securities and Exchange Act of 1934 to require issuers whose stock is traded on U.S. exchanges to disclose whether they or their affiliates have knowingly engaged in various prohibited activities. It would require the president to initiate an investigation into the possible imposition of sanctions as specified, and to make a sanctions determination within six months.

Additional sanctions or broadening of USA PATRIOT Act restrictions on Iran's energy and financial services sector are likely as well.

(For more information, see our earlier release [here](#) and [here](#).)

Non-U.S. financial institutions and domestic financial institutions with international subsidiaries should assess their activities within Iran and other U.S.-sanctioned countries, and ensure that their procedures and policies comply with U.S. regulations. The penalties leveled against ING Bank serve as a warning to the rest of the global banking community. Reed Smith will continue to monitor the legislation and other sanctions activities, and would be happy to discuss how the current or proposed sanctions may impact your operations. Please contact Matt Thomas, Leigh Hansson, Mike Lowell, Len Bernstein, or your usual Reed Smith contact with any questions.