



FinCEN Issues Final Rule Imposing a Prohibition on the Opening or Maintaining of Correspondent Accounts for or on behalf of, FBME Bank Ltd.

On July 29, 2015, FinCEN published in the Federal Register a Final Rule imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME Bank Ltd. (FBME) under the fifth special measure of Section 311 of the USA PATRIOT Act, with an effective date of August 28, 2015.

On August 27, 2015, the United States District Court for the District of Columbia granted FBME's motion for a preliminary injunction and enjoined the Final Rule from taking effect. On November 6, 2015, the court granted FinCEN's motion for voluntary remand to allow for further rulemaking proceedings.

On November 27, 2015, FinCEN published in the Federal Register a Notice to re-open the Final Rule for 60 days to solicit additional comment in connection with the rulemaking, particularly with respect to the unclassified non-protected documents that supported the rulemaking, and whether any alternatives to the prohibition on the opening or maintaining of correspondent accounts for FBME would effectively mitigate the money laundering and terrorist financing risk associated with FBME. FinCEN also made available for comment on www.regulations.gov the unclassified, non-protected material that FinCEN considered and intended to rely upon during the rulemaking proceeding.



After re-opening the comment period, FinCEN considered all of the special measures available to it under Section 311, as well as conditions rather than a prohibition under the fifth special measure, and concluded that a prohibition under the fifth special measure is the appropriate choice. Accordingly, FinCEN is issuing a final rule imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME in place of the rule published on July 29, 2015. FinCEN's imposition of a prohibition under the fifth special measure will guard against the international money laundering and terrorist financing risks that FBME poses to the U.S. financial system. This rule will take effect 120 days from the date of publication in the Federal Register.

The above development adds credit to the action taken on July 21, 2014 by the Central Bank of Cyprus (CBC) issuing a decree announcing that it would formally place FBME's Cyprus branch "under resolution,"* allowing the CBC to take numerous unilateral measures to protect FBME's depositors and the subsequent revocation of the license of the Bank by the CBC.

CBC identified "*serious and systemic*" AML failures—failures to comply with applicable AML laws that resulted in an "*inadequate and ineffective*" AML system. The CBC fined FBME €1.2 million in December 2015 for these AML deficiencies. These deficiencies contributed to the CBC's conclusion that the lack of robust AML controls at FBME's Cyprus branch increases the risk that the branch's services can be used by criminals for the purpose of money laundering and/or terrorist financing. FinCEN shares this concern. Banks with weak AML controls, like FBME, can become a



magnet for illicit actors seeking to hide their identity and the illicit nature of their activities. Indeed, the illicit activity at FBME, including holding an account for an alleged Hezbollah associate and the Tanzanian company he managed, illustrates this vulnerability.

It is a matter of outmost public interest protecting the credibility of the Cyprus banking system from such illicit financial activity and requires CBC to ensure that banks with severely deficient AML controls, like FBME, do not have access to the financial system. CBC, once it licenses a bank, supervises the activities of a branch in the Republic. Branches of banks established in a third country are subject to the same obligations as locally incorporated banks, with respect to their organisation, their operating conditions, accounting and prudential standards. Branches are, therefore, subject to the CBC's regulations designed to safeguard the interests of customers, the principle being that users of banking services must be protected in the same way, whether the services are provided by a locally incorporated bank or by a branch of a foreign institution

In fact by establishing a bank-client relationship with the Branch, customers are bound by the standard terms and conditions of the Branch which are subject to applicable consumer protection, exchange control, fiscal, money laundering and central banking laws and regulations of the Republic of Cyprus and the European Union. Similarly by opening an account and placing funds on deposit with the Branch customers take advantage of certain protections offered to Cypriot customers such as Directive 2014/49/EU on Deposit Guarantee Schemes and are deemed to have submitted themselves to Cypriot banking law and regulation including the Resolution Law.

The District Court of Nicosia will next week continue hearing the case brought before it, where the CBC and the Resolution Authority seek to appoint a Special Liquidator to the parent undertaking of the Cyprus branch, namely the FBME Tanzanian. The owners of the bank have challenged the petition, arguing that such move is illegal.

*** Our law firm has been appointed (such appointment having been approved by the Central Bank of Cyprus) as the special legal counsels (both litigation and consultancy) to the appointed Special Administrators of FBME Bank (Cyprus Branch).**

For further information on this topic please contact **Dr. Pavlos Neofytou Kourtellos** at P. N. KOURTELLOS & ASSOCIATES LLC, by telephone (+357 25 745575) or by fax (+357 25 755525) or by e-mail (pnk@kourtelaw.com)

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