



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

SETTLEMENT

This settlement agreement (the "Agreement") is made by and between the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the British Arab Commercial Bank plc and its subsidiaries and affiliates worldwide (collectively referred to hereafter as "Respondent" or "BACB").

I. PARTIES

1. OFAC administers and enforces economic sanctions against targeted foreign countries, regimes, terrorists, international narcotics traffickers, and proliferators of weapons of mass destruction, among others. OFAC acts under Presidential national emergency authorities, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction.

2. The British Arab Commercial Bank plc is a commercial bank organized under the laws of the United Kingdom (UK), and headquartered in London, UK. BACB does not maintain offices, conduct business, or otherwise maintain a presence under U.S. jurisdiction.

II. APPARENT VIOLATIONS

3. OFAC conducted an investigation of BACB in connection with 72 payments processed to or through the United States or involving a U.S. financial institution in apparent violation of the Sudanese Sanctions Regulations, previously found at 31 C.F.R. Part 538 (SSR).

4. OFAC determined that BACB did not voluntarily self-disclose the Apparent Violations, and that the Apparent Violations constitute an egregious case.

III. FACTUAL STATEMENT

5. Between September 21, 2010 and August 27, 2014, BACB processed 72 bulk funding payments totaling \$190,700,000 related to Sudan. During this time, BACB operated USD accounts on behalf of at least seven Sudanese financial institutions, including the Central Bank of Sudan. BACB actively solicited USD business from Sudanese banks, and processed these USD transactions via an internal book transfer process involving a nostro account maintained at a foreign bank (Bank B). These transactions were not processed to, or through the U.S. financial system. The process to fund its USD nostro account at Bank B, however, did involve transactions processed to or through U.S. financial institutions in apparent violation of U.S. economic sanctions administered and enforced by OFAC which prohibited U.S. persons, including U.S. financial institutions, from processing such transactions.

6. On or about December 23, 2014, BACB notified OFAC of an internal investigation it had begun in September 2014 pertaining to possible historical violations of OFAC-administered sanctions regulations.

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7. The bank retained external counsel and a consultant to assist with the investigation of historical and current transactions (referred to herein as “the Transaction Review”), and in its January 7, 2015 correspondence to OFAC, BACB stated that it preliminarily identified certain transactions that “*OFAC has viewed in other contexts as potentially problematic.*” Through a series of subsequent written submissions, in-person meetings, and telephone calls, BACB and its representatives provided information and documentation to OFAC regarding: (1) historic cover payments with U.S. correspondent banks; (2) transactions BACB processed for sanctioned parties; (3) foreign exchange deals, involving internal book transfers and transactions; (4) letters of credit and other trade finance activity, conducted under BACB’s name and using industry-accepted payment practices; and (5) bulk funding and internal book transfers performed via Bank B.¹

8. In January 2000, Bank A opened a U.S. dollar nostro account for BACB. An internal BACB memorandum from the BACB Treasury Administration dated January 11, 2000, noted that the “account has been open[ed] for the *exclusive purpose* of facilitating US Dollar transactions for Sudanese Customers.” BACB actively used this account through at least June 2007.

9. The BACB account with Bank A was used to receive USD from Sudan with the routing of payments to other banks that maintained USD accounts with Bank A. The USD received into BACB’s account with Bank A were used to fund BACB’s nostro accounts with other financial institutions.

10. BACB used its nostro account with Bank B, and established this account in 2006, to effect USD payments related to Sudan in a manner that used the U.S. financial system to transfer the funds to cover these transactions executed outside the United States.

11. Several managers along with a member of the Compliance Department within BACB were aware of this funding arrangement, and how it would attempt to circumvent the U.S. sanctions regulations. They believed, however, all Sudanese transactions, including the inflow of USD to its nostro account at Bank B would be processed outside the United States via funding from BACB accounts in Europe. The activity on the Bank B nostro was similar in nature to the activity processed on the Bank A nostro account. By 2007, BACB management knew the purpose served by the Bank A nostro account, and therefore had that prior knowledge going into the nostro account relationship with Bank B.

12. On June 26, 2007, Bank A informed BACB in writing that it had “decided to stop its dealings with Sudanese banks” and that it would “not be able to process any more transfers to/from your [BACB’s] account versus Sudanese accounts with us.” On the same day, BACB convened a meeting (including the BACB Head of Risk, Deputy Head of Risk, Manager, Treasury & Loans Administration, and Regional Manager for Sudan) to discuss Bank A’s decision to stop facilitating transactions involving Sudanese banks.

¹ The identity of certain financial institutions involved in the activity described in this settlement agreement are anonymized as they are not the subject of the present investigation.

13. In the same meeting report, BACB stated that one option to recover from Bank A's decision to close the USD bank accounts of its Sudanese bank clients would be to "follow where the Sudanese banks take their business," and two BACB employees suggested that since "the main consumer of Sudanese oil is [located in the country of Bank B], it is possible that the business may move towards [certain] banks that we already have a relationship with i.e. [Bank B]."

14. While Bank B agreed to open an account for BACB on July 31, 2006, and BACB stated that the USD nostro account was used "primarily to facilitate Sudanese and Syrian business." BACB opened the USD nostro account because it believed that the transactions would not implicate U.S. jurisdiction. At the time of opening the account BACB received assurances from Bank B that it had "an internal USD clearing system and [could] settle USD in [the country of Bank B] without going through New York [i.e., the United States]." On January 11, 2007, the same day that BACB learned of Bank B's internal settlement mechanism, BACB's Head of Operations proposed internally to utilize BACB's USD nostro account with Bank B as "our default method for routing all future USD payments into [the country of Bank B]." Six months later, after Bank A's June 2007 decision to cease its business with Sudanese banks, BACB began conducting a significant amount of its Sudan-related business via Bank B.

15. By processing the Sudan-related transactions in the manner described, BACB and Bank B ensured that the USD transactions with its Sudanese clients occurred outside of the United States and without knowledge of BACB's or Bank B's USD correspondents. However, the method by which BACB funded its nostro account utilized the U.S. financial system and multiple U.S. financial institutions.

16. BACB funded its Bank B nostro account by routing periodic, USD-denominated wire transfers in large amounts into the account (i.e., "bulk funding" transactions or "USD inflows"). At the start of this practice in 2006, prior to Bank A closing BACB's account, BACB sourced the USD inflows from its accounts at Bank C and Bank D — both U.S. financial institutions located in New York. Later in 2006, BACB shifted the direct source of the USD inflows to the Bank B nostro account to a BACB's account(s) at a non-U.S. financial institution, Bank E, and in 2014 BACB utilized a separate non-U.S. financial institution, Bank F, to fund the Bank B nostro account. Funds transfers moving BACB's funds from its account at Bank E to its account at Bank B were processed by Bank E's USD correspondent, Bank G, and Bank B's USD correspondent, Bank B's New York Branch, both of which are located in New York.

17. The Sudan-related payments BACB processed outside of the United States (i.e., via Bank B's "internal USD clearing system") were financed by bulk funding transactions that Bank E and Bank F routed through multiple U.S. financial institutions. To effect the bulk funding transactions, BACB instructed Bank E and Bank F, where BACB held USD accounts, to transfer funds from these accounts held outside the United States to BACB's USD account with Bank B. To accomplish the movement of these funds from accounts in Europe to Bank B's country, the funds transited both the sending and receiving banks' U.S. correspondent banks, located in the United States. In the case of funds originating from BACB's account with Bank E,

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the funds transited both Bank E's U.S. correspondent (Bank G) and Bank B's U.S. correspondent (Bank B's New York Branch) before ultimately landing at Bank B for further credit to the BACB USD account. In the case of funds originating from BACB's account with Bank F, the funds transited both Bank F's U.S. correspondent (Bank F's New York Branch) and Bank B's U.S. correspondent (Bank B's New York Branch) before ultimately landing at Bank B for further credit to the BACB USD account.

18. After bulk funding its USD nostro at Bank B, BACB processed payments on behalf of its Sudanese clients through its nostro account and on Bank B's books. For transactions where USD flowed from Sudan to Bank B's country (e.g., a purchase of goods by a Sudanese client), BACB debited its Sudanese client's account on BACB's books in London and credited the same amount to the internal ledger account for BACB's nostro account at Bank B. BACB then instructed Bank B to debit BACB's nostro account and credit the account of the party from Bank B's country, who also maintained an account with Bank B. For transactions where USD flowed from Bank B's country to Sudan (e.g., a sale of goods by a Sudanese client), Bank B debited its home country client's account and credited the same amount to BACB's nostro account entirely on its books in the country of Bank B. Bank B then instructed BACB to credit the account of a Sudanese party who maintained an account with BACB, which BACB would accomplish by debiting the internal ledger account of its nostro with Bank B and crediting the Sudanese beneficiary customer.

19. Furthermore, emails demonstrate that BACB managers were aware the Bank B bulk funding procedure was done in an effort to circumvent and evade U.S. sanctions regulations.

20. On July 7, 2014, one week after BNP's settlement with OFAC, BACB senior management made the decision to reevaluate its Sudanese USD transactions and to "not undertake any going forward."

21. On August 27, 2014, Bank B notified BACB that in accordance with its "internal compliance policies," BACB's USD nostro account "must not be used to facilitate payment originated, directly or indirectly, by any Sudanese entity." BACB requested clarification as to whether this requirement applied also to "bank-to-bank payments where the Sudanese [*sic*] financial institution is covering their account in your books," but Bank B did not respond to the

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inquiry. Approximately two weeks later, on September 15, 2014, Bank B closed BACB's USD nostro account.

22. OFAC identified 72 bulk funding transactions totaling \$190,700,000 that BACB processed through the United States between September 21, 2010 and August 27, 2014 that corresponded with several hundred Sudan-related payments totaling slightly more than \$190,700,000, which BACB processed during the same date range.

As a result of the activities described above:

23. BACB violated the SSR by exporting services to Sudan when it processed 72 bulk funding transactions totaling \$190,700,000 to support U.S. dollar transactions for Sudanese clients between September 21, 2010 and August 27, 2014. BACB appears to have violated section 538.205 of the SSR when it directly or indirectly exported financial services from the United States to Sudan by bulk funding its Bank B nostro account through the United States.

24. BACB cooperated fully with OFAC's investigation into these apparent violations by expending a significant amount of resources to investigate the associated conduct. BACB produced the requisite documentation to OFAC and the other investigating agencies. The institution responded to numerous follow-up requests from OFAC and the other investigative agencies in a timely and efficient manner. The bank executed statute of limitations tolling agreements with OFAC, and extended the tolling period on multiple occasions.

25. OFAC did not issue a penalty or Finding of Violation against BACB in the five years preceding the earliest date of the transactions giving rise to the apparent violations.

26. The base penalty for the apparent violations is \$381,400,000. In consultation with BACB's domestic regulator, the United Kingdom's Prudential Regulation Authority, OFAC determined that the bank's operating capacity was such that it would face disproportionate impact if forced to pay the proposed penalty amount. As such, OFAC considered this under General Factor K in its Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, Appendix A, and amended its proposed settlement amount.

(The transactions described in paragraph 22 above are collectively referred to hereafter as the "Apparent Violations.")

IV. TERMS OF SETTLEMENT

OFAC and Respondent agree as follows:

27. In consideration of the undertakings of Respondent in paragraph 28 below, OFAC agrees to a settlement in the amount of \$228,840,000, and OFAC agrees to release and forever discharge Respondent, without any finding of fault, from any and all civil liability in connection with the Apparent Violations, as described in paragraphs 5-26, or any activities that were subject to OFAC's investigation, arising under the legal authorities that OFAC administers. In view of the Respondent's operating capacity, the fact that it has represented that it

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ceased the conduct described above, and its entering into this settlement agreement, Respondent's obligation to pay OFAC such settlement amount shall be suspended up to \$4,000,000.

28. In consideration of the undertakings of OFAC in paragraph 27 above, Respondent agrees and represents:

- A. Within fifteen (15) days of the date Respondent receives the unsigned copy of this Agreement, to:
- (i) sign, date, and mail an original signed copy of this Agreement to: Alexandre Manfull, Sanctions Compliance and Evaluation Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Respondent should retain a copy of the signed Agreement and a receipt or other evidence that shows the date that Respondent mailed the signed Agreement to OFAC; and
 - (ii) pay or arrange for the payment to the U.S. Department of the Treasury the amount of \$4,000,000. Respondent's payment must be made either by electronic funds transfer in accordance with the enclosed "Electronic Funds Transfer (EFT) Instructions," or by cashier's or certified check or money order payable to the "U.S. Treasury" and referencing COMPL-2015-212138. Unless otherwise arranged with the U.S. Department of the Treasury's Bureau of the Fiscal Service, Respondent must either:
 - (1) indicate payment by electronic funds transfer, by checking the box on the signature page of this Agreement; or
 - (2) enclose with this Agreement the payment by cashier's or certified check or money order.
- B. To waive (i) any claim by or on behalf of Respondent, whether asserted or unasserted, against OFAC, the U.S. Department of the Treasury, and/or its officials and employees arising out of the facts giving rise to the enforcement matter that resulted in this Agreement, including but not limited to OFAC's investigation of the Apparent Violations, and (ii) any possible legal objection to this Agreement at any future date.
- C. **Compliance Commitments:** In view of the bank's operating capacity, the fact that it ceased the conduct described above, and the bank's agreement to enter into this settlement, OFAC agrees to suspend the balance of the base penalty amount of insofar as (1) Respondent has terminated the conduct described above and (2) Respondent has established, and agrees to maintain for at least five years following the date this Agreement is executed and certify as such on an annual basis, for a period of five years, starting from 180 days after the date the Agreement is executed, sanctions compliance measures that are designed to minimize the risk of recurrence of similar conduct in the future.

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Specifically, OFAC and Respondent understand that the following compliance commitments have been made:

a. Management Commitment:

- i. Respondent commits that senior management has reviewed and approved Respondent's sanctions compliance program.
- ii. Respondent commits to ensuring that its senior management, including senior leadership, executives, or the board of directors, are committed to supporting Respondent's OFAC compliance program.
- iii. Respondent commits to ensuring that its compliance unit(s) are delegated sufficient authority and autonomy to deploy its policies and procedures in a manner that effectively controls Respondent's OFAC risk.
- iv. Respondent commits to ensuring that its compliance unit(s) receive adequate resources—including in the form of human capital, expertise, information technology, and other resources, as appropriate—that are relative to Respondent's breadth of operations, target and secondary markets, and other factors affecting its overall risk profile.
- v. Respondent commits to ensuring that Senior Management promotes a "culture of compliance" throughout the organization.

b. Risk Assessment:

- i. Respondent represents that it will conduct an OFAC risk assessment in a manner, and with a frequency, that adequately accounts for potential risks. Such risks could be posed by its clients and customers, products, services, supply chain, intermediaries, counter-parties, transactions, and geographic locations, depending on the nature of the organization. The risk assessment will be updated to account for the root causes of any apparent violations or systemic deficiencies identified by Respondent during the routine course of business.
- ii. Respondent represents that it has developed a methodology to identify, analyze, and address the particular risks it identifies. The risk assessments will be updated to account for the conduct and root causes of any apparent violations or systemic deficiencies identified by Respondent during the routine course of business, for example, through a testing or audit function.

c. Internal Controls:

- i. The Respondent has designed and implemented written policies and procedures outlining its sanctions compliance plan. These policies and procedures are relevant to the organization, capture Respondent's day-to-day operations and procedures, are easy to follow, and designed to prevent employees from engaging in misconduct.
- ii. The organization has implemented internal controls that adequately address the results of its OFAC risk assessment and profile. These internal controls should enable Respondent to clearly and effectively identify, interdict, escalate, and report to appropriate personnel within the organization transactions and activity that may be prohibited by OFAC. To the extent information technology solutions factor into Respondent's internal controls, Respondent has selected and calibrated the solutions in a manner that is appropriate to address Respondent's risk profile and compliance needs, and Respondent routinely tests the solutions to ensure effectiveness.
- iii. Respondent commits to enforcing the policies and procedures it implements as part of its sanctions compliance internal controls through internal or external audits.
- iv. Respondent commits to ensuring that its OFAC-related recordkeeping policies and procedures adequately account for its requirements pursuant to the sanctions programs administered by OFAC.
- v. Respondent commits to ensuring that, upon learning of a weakness in its internal controls pertaining to sanctions compliance, it will take immediate and effective action, to the extent possible, to identify and implement compensating controls until the root cause of the weakness can be determined and remediated.
- vi. Respondent has clearly communicated the sanctions compliance plan's policies and procedures to all relevant staff, including personnel within the sanctions compliance function, as well as relevant gatekeepers and business units operating in high-risk areas (e.g., customer acquisition, payments, sales, etc.) and to external parties performing sanctions compliance responsibilities on behalf of Respondent.
- vii. Respondent has appointed personnel to integrate the sanction compliance program's policies and procedures into Respondent's daily operations. This process includes consultations with relevant business units, and confirms that Respondent's employees understand the policies and procedures.

d. Testing and Audit:

- i. The Respondent commits to ensuring that the testing or audit function is accountable to senior management, is independent of the audited activities and functions, and has sufficient authority, skills, expertise, resources, and authority within the organization.
- ii. Respondent commits to ensuring that it employs testing or audit procedures appropriate to the level and sophistication of its sanctions compliance program and that this function, whether deployed internally or by an external party, reflects a comprehensive and objective assessment of Respondent's OFAC-related risk assessment and internal controls.
- iii. Respondent commits to ensuring that, upon learning of a confirmed negative testing result or audit finding pertaining to its sanctions compliance program, it will take immediate and effective action, to the extent possible, to identify and implement compensating controls until the root cause of the weakness can be determined and remediated.

e. Training:

- i. Respondent commits to ensuring that its OFAC-related training program provides adequate information and instruction to employees and, as appropriate, stakeholders (for example, clients, suppliers, business partners, and counterparties) in order to support Respondent's sanctions compliance efforts.
- ii. Respondent commits to providing OFAC-related training with a scope that is appropriate for the products and services it offers; the customers, clients, and partner relationships it maintains; and the geographic regions in which it operates.
- iii. Respondent commits to providing OFAC-related training with a frequency that is appropriate based on its OFAC risk assessment and risk profile and, at a minimum, at least once a year to all relevant employees.
- iv. Respondent commits to ensuring that, upon learning of a confirmed negative testing result or audit finding, or other deficiency pertaining to its sanctions compliance program, it will take immediate and effective action to provide training to relevant personnel.
- v. The Respondent's training program includes easily accessible resources and materials that are available to all applicable personnel.

f. Annual Certification:

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- i. On an annual basis, for a period of five years, starting from 180 days after the date the Agreement is executed, a senior-level executive or manager of Respondent will submit a certification confirming that Respondent has implemented and continued to maintain the sanctions compliance measures as committed above.
 - D. Should OFAC determine, in the reasonable exercise of its discretion, that Respondent appears to have materially breached its obligations or made any material misrepresentations under Subparagraph C (Compliance Commitments) above, OFAC shall provide written notice to Respondent of the alleged breach or misrepresentations and provide Respondent with 30 days from the date of Respondent's receipt of such notice, or longer as determined by OFAC, to determine that no material breach or misrepresentations has occurred or that any breach or misrepresentation has been cured.
 - E. In the event OFAC determines that a material breach of, or misrepresentation in, this Agreement has occurred due to a failure to perform the Compliance Commitments, OFAC will provide notice to Respondent of its determination and whether OFAC is re-opening its investigation. The statute of limitations applying to the Apparent Violations shall be deemed tolled until a date 180 days following Respondent's receipt of notice of OFAC's determination that a breach of, or misrepresentation in, this Agreement has occurred.
 - F. Should the Respondent engage in any violations of the sanctions laws and regulations administered by OFAC—including those that are either apparent or alleged—OFAC may consider Respondent's sanctions history, or its failure to employ an adequate sanctions compliance program or appropriate remedial measures, associated with this Agreement as a potential aggravating factor consistent with the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, Appendix A.
29. This agreement does not constitute a final agency determination that a violation has occurred, and shall not in any way be construed as an admission by Respondent that Respondent engaged in the Apparent Violations.
30. This Agreement has no bearing on any past, present, or future OFAC actions, including the imposition of civil monetary penalties, with respect to any activities by Respondent other than those set forth in the Apparent Violations.
31. OFAC may, in its sole discretion, post on OFAC's website this entire Agreement and/or issue a public statement about the factors of this Agreement, including the identity of any entities involved, the settlement amount, and a brief description of the Apparent Violations.
32. This Agreement consists of 11 pages, and expresses the complete understanding of OFAC and Respondent regarding resolution of OFAC's enforcement matter involving the

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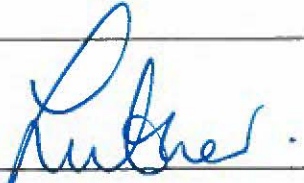
Apparent Violations. No other agreements, oral or written, exist between OFAC and Respondent regarding resolution of this matter.

33. This Agreement shall inure to the benefit of and be binding on each party, as well as its respective successors or assigns.

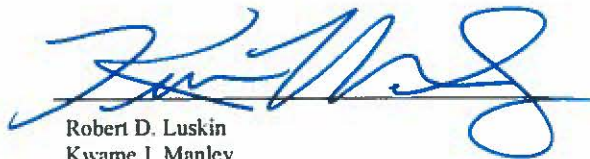
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Respondent accepts the terms of this Settlement Agreement this 3rd day of September 2019.

Signature



Susannah L. Alier
BACB Chief Executive



Robert D. Luskin
Kwame J. Manley
PAUL HASTINGS LLP
Counsel to BACB

- Please check this box if you have not enclosed payment with this Agreement and will instead be paying or have paid by electronic funds transfer (see paragraph 2(A)(ii) and the Electronic Funds Transfer Instructions enclosed with this Agreement).

Date:

September 3, 2019 

Andrea M. Gacki
Director
Office of Foreign Assets Control