

Obstacles to compliance with due diligence obligations in transactions and business relationships with Iran as a result of evasive transactions

Re: BaFin Circulars nos. 13/2008 (GW), 6/2009 (GW), 2/2010 (GW), 7/2010 (GW) and 10/2010 (GW)

reference number:

GW 1-GW 2001-2008/0003

Bonn/Frankfurt a.M.,

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In the light of recent developments, I wish to inform you of circumstances preventing German credit institutions, financial services institutions and payment institutions from complying with their due diligence obligations in business dealings with Iran.

Based on the determinations and assessments made by the Financial Action Task Force on Money Laundering (FATF), business activities and transactions from and to Iran entail high risks in terms of money laundering and the financing of terrorism. This is why I urged you, in my aforementioned Circulars, to take measures to contain these risks:

Accordingly, enhanced customer due diligence requirements apply to business relationships with and/or any financial transactions conducted by or with natural or legal persons resident or domiciled in Iran, as well as to any financial transactions executed via bank accounts held in Iran. These more stringent requirements also apply to the determination of the “beneficial owner” pursuant to section 1 (6) in conjunction with section 3 (1) no. 3 of the Money Laundering Act (Geldwäschegesetz – GwG).

Wherever there are doubts concerning a customer’s identity, the origin of assets, or the identity of a beneficial owner, the corresponding business relationship may not be established or continued or a transaction may not be executed.

I have information indicating that Iranians wishing to make payments to the EU are now effecting cross-border transfers from the Iranian payer to a recipient in the EU by first forwarding them to a(n) (intermediate) recipient resident or domiciled in one of the Gulf States (e.g. Dubai). Often, these intermediate recipients that subsequently transfer the payments received to the actual final recipient and/or his financial institution in Germany are so called “exchange trading firms” that function as transmittal agent on behalf of the real payer.

The intention pursued in splitting up transactions along the payment chain is to conceal the identity of the actual payer and thus hide the Iranian connection of these payments.

The payment scheme described above essentially disables most of the safeguards and control measures of German institutions, as the (computer-based) monitoring systems usually respond to the country code “Iran” and then trigger manual follow-up processing of payments from or to Iran.

I would therefore like to point out that all institutions must adapt their in-house safeguards and control mechanisms for financial transactions from and to and business relationships with Iran, including their in-house (computer-based) monitoring systems, to properly take account of such evasive transactions in order to comply with the enhanced due diligence requirements for business dealings with Iran as stipulated by BaFin’s aforementioned Circulars. The institution obliged to perform due diligence may find indications for such evasive transactions in the payment transaction as such and/or the business activities of a given customer. In order to be able to recognise such indications, the existing (computer-based) monitoring systems might have to be adjusted. If any evasive transactions are identified, appropriate measures must be taken due to the high risk involved.