

US Sanctions... Challenges and Risks

By **Dr. Ghazi Wazne**

The Hezbollah International Financing Prevention Act of 2015 (H.R. 2297) was issued by the United States on December 18, 2015 and its implementation rules adopted in mid-April 2016.

The law aims at further tightening the financial embargo against Hezbollah and drying up its financing sources by curbing its financial transactions and denying it access to the international financial system in general and specifically the American system. The Act not only targets Hezbollah but also its institutions and members and all those who deal with the party and its service providers. Furthermore, the Act expands the designation of Hezbollah from a “terrorist organization” to a “significant foreign narcotics trafficker and a significant transnational criminal organization”.

The Act includes a list of blocked persons issued by the Office of Foreign Assets Control (OFAC) where approximately one hundred names of persons and institutions are designated as blocked and subject to freezing measures. The law also imposes sanctions against foreign banks that refuse to comply with its measures by preventing them from corresponding with US banks in addition to imposing civil and criminal sanctions of a value not exceeding USD 250,000 for civil sanctions and USD 1 million and imprisonment for criminal sanctions for each violation.

The visit of the Assistant Treasury Secretary Daniel Glaser to Lebanon aimed at clarifying the US sanctions law against Hezbollah. The visitor also sent a firm message on the necessity for banks

to comply with the law and its implementing regulations covering all currencies including the Lebanese Pound and all individuals including Lebanese MPs and ministers and banks around the world. The visitor reassured, at least in form, that the law was not targeting a specific Lebanese component namely the Shia (whose deposits total approximately 50 billion dollars) or the Lebanese banking sector. In fact, Glaser hailed the efforts of the Governor of the Central Bank (BDL) and the Bank's performance and expressed the United State's commitment to financial stability in Lebanon. However, the visit was troubling in substance, since the law includes a political dimension and is used as a tool to put pressure on Hezbollah by destabilizing and threatening its nurturing environment or close circle to isolate the party.

Based on all the above mentioned, Lebanese banks now have the duty to comply with the US sanctions law in order to preserve the safety of the banking sector as the backbone of the national economy and the main financier of both the public (nearly USD 38 billion) and private (nearly USD 55 billion) sectors. Compliance is also necessary for Lebanese banks to remain part of the international financial system and preserve the savings of Lebanese nationals especially that the Lebanese economy is heavily dollarized. In fact, the Lebanese Pound is pegged to the US Dollar and 65% of the banking sector deposits are in dollar (USD 100 billion approximately) with a large share of those deposits being at correspondent banks. It is also to note that 70% of Lebanon's imports are in dollar (approximately USD 14 billion) in addition to the remittances of its expats totaling approximately USD 7.5 billion annually and its foreign debt (USD 26 billion). Not to mention the Central Bank reserves in foreign currencies (USD 37 billion) and the presence of Lebanese banks in European, African and neighboring countries (33 countries).

The following observations can be made regarding the US sanctions law against Hezbollah:

- This law impinges on national, monetary and financial sovereignty since it bans financial transactions in all currencies including the Lebanese Pound and with all Hezbollah members including MPs (13 Hezbollah MPs) and ministers (2 Hezbollah ministers).
- The law was implemented in a random, arbitrary, discretionary and overzealous manner by some Lebanese banks. In fact, they targeted persons, institutions and social, charity and humanitarian organizations close to Hezbollah or belonging to the same circle but that were not designated on the OFAC list. This may be justified by fears among Lebanese banks from US sanctions after the closure of the Lebanese Canadian Bank (LCB) and the hefty fines that were imposed on big European banks (USD 9 billion on BNP). Political reasons may also be behind such measures taken by Lebanese banks.
- The implementation of the US law is not based on cooperation agreements or financial conventions signed between the US and the Lebanese State. It is also not based upon international financial standards and regulations of the FATF. In fact, this law was imposed on Lebanese banks since they have to deal with correspondent banks residing in New York, which have to abide by American laws.

In this sense, one could say that the US sanctions law is an American law that is implemented at an international scale by anyone dealing in US dollars (65% of international financial transactions are carried out using the dollar, compared to 22% of international transactions using the euro).

- The OFAC list takes into account political considerations although the main goal of OFAC regulations is to “internationally combat money laundering, terrorism financing, narcotics trafficking and tax evasion”.

The US sanctions law entails many challenges and risks that may threaten social, economic and financial stability. That is why Lebanese authorities should take measures to contain this law, absorb its negative effects and contribute to overcoming its challenges. This can be done on two levels:

1- Technically by:

- Expanding the powers of the Special Investigation Commission (SIC): The Banque du Liban (BDL) took numerous steps to limit the arbitrary and discretionary character of measures taken by banks when implementing the law, by clarifying and containing Circular 137 that gave banks large powers. In fact, according to the new guidelines of the BDL, banks shall not take any action regarding any account before 30 days of notifying the SIC whose powers were expanded. The SIC now has the right to access the debit and credit movements of accounts without being faced with requirements of banking secrecy. The requirement to notify the SIC does not apply to persons or institutions designated on the OFAC list.
- Ensuring more communication between political forces, namely between Hezbollah and the BDL governorship to diffuse tensions and solve any technical issues especially those linked to closing accounts of charity, social, educational and healthcare institutions (well aware and positive communications between the BDL governor and Hezbollah led to preventing the closure of accounts of humanitarian and healthcare institutions such as the Rassoul El Aazam Hospital and *Al-Mabarrat Charity Association* to avoid an acute social crisis that would threaten national stability).
- Resorting to the US Treasury to obtain any clarifications in case of confusion in interpreting some articles of the American law.
- Protecting banking secrecy as a main feature and strength of our banking sector especially in light of the current tendency in the international financial system towards abolishing it. The Governor of the BDL was able to secure agreements with the US Treasury to balance between lifting banking secrecy and complying with the American law.

2- Politically:

- Political and monetary authorities (the Prime Minister, Minister of Foreign Affairs, Minister of Finance, Governor of the BDL) and mainly political authorities who dealt

lightly or indifferently with the US sanctions law, should communicate with US authorities in order to:

- Avoid targeting financial transactions originating from the Lebanese State or the Treasury linked to its financial policy or public expenditure such as salaries and allocations, social expenditures, municipal funds (around 200 municipalities include members from Hezbollah), and funds of educational, charity institutions and hospitals... Furthermore, these transactions are not classified as significant and cannot be considered financing of Hezbollah. The Lebanese State has also proven its commitment towards international financial laws and regulations by recently adopting four laws on anti-money laundering and combating terrorism financing, the mandatory cross-border declaration of cash and the exchange of tax information with the EU. Lebanon also applies the FATCA law and is considered by the FATF as meeting all international requirements.
 - Avoid targeting financial transactions carried out in Lebanese pounds whenever they are transparent, their origin and purpose known and if they are not related to the financing of Hezbollah, trafficking of narcotics or terrorism financing. Lebanese banks showed full cooperation in this regard with US procedures and full compliance with laws and regulations of the international financial system.
- The Lebanese Ministry of Foreign Affairs should be mobilized, since the designation of persons on the OFAC list takes place in coordination between the US Treasury and Department of State.
 - The Lebanese Prime Minister (given the presidential vacuum) should send an official letter to the American President who can, according to the sanctions law, waive or delay the application of a prohibition imposed on persons or institutions unjustly designated or that have declared that they are no longer engaging in prohibited activities. Such waiver also applies when the President receives reliable assurances from the government with jurisdiction over the institution that it will not engage in such activity in the future.

Finally, the Lebanese government should cooperate with a reputable law firm in the United States to defend its rights.

It is feared that the US sanctions law would lead to:

- The development of a parallel cash-based banking sector, especially for commercial and real estate operations, negatively impacting on the Lebanese banking performance and economy.

- Harming the interests of persons, institutions or associations carrying out legal financial activities but being targeted by these American measures because they are affiliated or close to Hezbollah.
- A decline in incoming financial flows due to the increased banking supervision over financial transactions and the discretionary actions of some banks against the accounts of specific categories.

The “Verdun bombing” targeting a major Lebanese bank is naturally condemned and aims at causing discord, destabilizing the economy and threatening social stability. Therefore, it is necessary for Lebanese parties to be calm and wise and work together to implement a containment mechanism to mitigate the effects of the American law and preserve stability.

The US sanctions law is mandatory for Lebanese banks although it is a purely political law, used as a tool to put pressure on Hezbollah by destabilizing its environment and isolating it. We also expect that the list of blocked entities and persons will be expanded in the upcoming period, further threatening social stability.

Therefore, it is crucial for Lebanese authorities to mobilize their resources at the international level to alleviate the consequences of this law by trying to balance between the national interest and the requirements of the international financial system.

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