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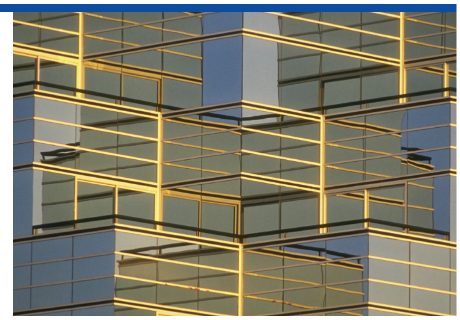

OFAC Issues Revised Guidance on Aggregation of Ownership Interests

On August 13, 2014, the US Treasury Department's Office of Foreign Assets Control (OFAC) issued revised guidance with respect to the "50% Rule," which established that an entity owned 50% or more, directly or indirectly, by a blocked party would be considered blocked by operation of law. The revised guidance establishes that aggregated ownership interests in an entity that total 50% or greater by one or more blocked persons are sufficient for that entity to be blocked by operation of law. OFAC also indicates that this revised guidance will be applied, as described below, to entities designated on the List of Specially Designated Nationals and Blocked Persons (SDN List) as well as entities included on the Sectoral Sanctions Identification List (SSI List).

Background on OFAC's 50% Rule

The SDN List is a list of parties designated pursuant to Executive Orders or regulations administered by OFAC. All property and interests in property of any party on the SDN List in the possession or control of a US Person,[1] or within the United States, is considered blocked and may not be dealt in.

On February 14, 2008, OFAC issued guidance to clarify the reference to "interests in property." In this guidance, OFAC set forth a presumption that a designated party has an interest in all entities in which it has, directly or indirectly, a 50% or greater ownership interest. Consequently, such entities would be considered blocked by operation of law.

Revised Guidance on the 50% Rule: Aggregation of Ownership Interests

Until August 13, 2014, OFAC informally had advised parties that an entity owned 50% or greater *in the aggregate* by multiple blocked parties, each holding a less than 50% ownership interest, *would not* be considered blocked by operation of law.

On August 13, 2014, OFAC issued revised guidance stating that "any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person." This revised guidance applies to all of OFAC's sanctions programs that involve designation of individuals or entities on the SDN List and supersedes the prior informal advice.

1 A US Person is defined to include any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

White & Case LLP
701 Thirteenth Street, NW
Washington, DC
20005-3807
United States
+ 1 202 626 3600

White & Case LLP
Avocats-Advocaten
62 rue de la Loi Wetstraat 62
1040 Brussels
Belgium
+ 32 2 219 16 20

OFAC has further indicated that this also applies to entities designated on the SSI List pursuant to the Ukraine-related sanctions. Entities owned in the aggregate, directly or indirectly, 50% or more by one or more SSI-designated entities will themselves be subject to the applicable prohibitions under the Directives issued by OFAC,[2] which are not full blocking prohibitions.

As noted, this is a departure from past practice and increases the compliance burden on companies conducting due diligence regarding their business transactions. The consequences of the change in guidance may be particularly pronounced for counterparties to transactions involving joint ventures that have two or more blocked parties as their members. Although this revised guidance is relevant for all of OFAC's sanctions programs, its implementation likely will have an immediate and particularly notable impact on the Ukraine-related sanctions program. More information about the Ukraine-related sanctions, including the SSI List is available here. Companies should monitor closely any measures imposed by the United States to ensure compliance. Penalties for noncompliance can be severe. We will continue to track and report on any additional sanctions developments.

2 The Directives are available here.

Richard J. Burke
Partner, Washington, DC
+ 1 202 626 3687
rburke@whitecase.com

Nicole E. Erb
Partner, Washington, DC
+ 1 202 626 3694
nerb@whitecase.com

Kristina Zissis
Counsel, Washington, DC
+ 1 202 626 3636
kzissis@whitecase.com

Claire A. DeLelle
Counsel, Washington, DC
+ 1 202 626 6485
claire.delelle@whitecase.com

Cristina Brayton-Lewis
Associate, Washington, DC
+ 1 202 729 2407
cbraytonlewis@whitecase.com

Tanya Hanna
Associate, Washington, DC
+ 1 202 637 6294
thanna@whitecase.com

James R.M. Killick
Partner, Brussels
+ 32 2 239 2552
jkillick@whitecase.com

Sara Nordin
Associate, Brussels & Geneva
+ 32 2 239 2576
snordin@whitecase.com

Genevra Forwood
Associate, Brussels
+ 32 2 239 2537
gforwood@whitecase.com

Charlotte Van Haute
Associate, Brussels
+ 32 2 239 2623
cvanhaute@whitecase.com

Fabienne Vermeeren
Regional Director Europe—International Trade Services, Brussels
+ 32 2 239 2606
fvermeeren@whitecase.com