

US Issues Additional Guidance Regarding Iran Sanctions Relief

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On June 8, 2016, the US further clarified the scope of the sanctions relief provided to Iran as of January 16, 2016 (known as “Implementation Day”) under the Joint Comprehensive Plan of Action (JCPOA).¹ The Department of the Treasury Office of Foreign Assets Control (OFAC) issued the guidance in the form of additional Frequently Asked Questions (FAQs) contained in OFAC’s Frequently Asked Questions Relating to the Lifting of Certain US Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day.²

OFAC provided guidance on the sanctions relief related to financial and banking measures with respect to transactions by US financial institutions with non-US financial institutions that engage in certain Iran-related transactions, as well as transactions by non-US entities with Iran-related business that have US persons³ as board members or senior managers. In addition, OFAC further clarified the scope of General License H: Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person (General License H). We summarize the additional guidance in the new OFAC FAQs below.

Financial and Banking Measures (FAQs C.15 and C.16)

As of January 16, 2016, certain financial and banking sanctions were relieved under the JCPOA for non-US persons. Secondary sanctions⁴ no longer apply to non-US persons who engage in financial and banking transactions with certain Iranian individuals and entities, including parties removed from OFAC’s List of Specially Designated Nationals and Blocked Persons (“SDN List”). However, US primary sanctions largely remain in place, which means that US persons, including US financial institutions, continue to be broadly prohibited from engaging in transactions involving Iran.

¹ Please find our recent client alerts on Implementation Day EU and US Sanctions Relief [here](#) and [here](#).

² See Frequently Asked Questions Relating to the Lifting of Certain US Sanctions Under the JCPOA on Implementation Day (FAQs) [here](#).

³ 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, or any person in the United States.

⁴ The US maintains two categories of sanctions on Iran. The first type—often referred to as “primary” sanctions—covers the traditional sanctions generally applicable to transactions involving US persons, which restrict most activities involving US persons and Iran. The second type—often referred to as “secondary” sanctions—comprises measures the United States imposes against non-US persons for engaging in certain “sanctionable activity” involving Iran, primarily affecting non-US persons.

Given the prohibitions that remain on Iran-related transactions for US persons, the two new FAQs related to financial and banking measures provide guidance for complying with the restrictions on US persons when non-US persons engage in Iran-related transactions.

Restrictions on US and Non-US Financial Institutions

OFAC provided the following guidance regarding the restrictions on Iran-related activities for US and non-US financial institutions:

- US financial institutions can transact with, including by opening or maintaining correspondent accounts for, non-US, non-Iranian financial institutions that maintain correspondent banking relationships or otherwise transact with Iranian financial institutions that are not on the SDN List.
- Non-US financial institutions remain prohibited from routing Iran-related transactions through US financial institutions or involving US persons in such transactions, unless the transactions are exempt from regulation or authorized by OFAC, and they should have appropriate systems and controls in place to ensure compliance.

US Persons as Board Members /Senior Managers

In addition, OFAC also provided guidance related to US persons holding a board or senior management position with a non-US, non-Iranian entity engaged in Iran-related transactions:

- The presence of one or more US persons on the Board of Directors or serving as a senior manager of a non-US, non-Iranian entity does not necessarily preclude that entity from transacting with Iranian persons not on the SDN list.
- However, unless authorized by OFAC, such US persons must be walled off or “ring-fenced” from Iran-related business. OFAC recommends that non-US entities establish a blanket recusal policy to wall off US person directors, senior managers, and other employees from Iran-related business rather than recusing individuals on a case-by-case basis. A blanket policy, unlike case-by-case recusal, would not be considered a prohibited facilitation and/or export of services under OFAC’s Iranian Transactions and Sanctions Regulations (“ITSR”).
- If the national laws of the non-US entity prohibit recusal of US persons, OFAC recommends that the non-US employer consult with their counsel and/or seek OFAC’s guidance.

Foreign Entities Owned or Controlled by US Persons (FAQs K.14-22)

Starting on Implementation Day, General License H authorized non-US entities that are owned or controlled by a US person (“US-owned or –controlled foreign entities”) to engage in activities with Iran that are consistent with the JCPOA and US law. The new FAQs provide further guidance regarding the scope of relief provided under General License H.

Ownership or Control

For purposes of the ITSR and General License H an entity is “owned or controlled” by a United States person if the US person: (1) holds a 50 percent or greater equity interest by vote or value in the entity; (2) holds a majority of seats on the board of directors of the entity; or (3) otherwise controls the actions, policies, or personnel decisions of the entity.

OFAC clarified in the FAQs that for purposes of assessing ownership or control, with certain exceptions, it would consider ownership interests by multiple US persons on an aggregated basis. Consequently, as a general matter, an entity established or maintained outside the United States is considered owned or controlled by a US person if one US person holds, or, on an aggregated basis, multiple US persons hold a 50 percent or greater equity interest by vote or value in the entity, or if one US person holds, or, on an aggregated basis, multiple US persons hold a majority of board seats. OFAC stated that, a determination as to whether one or more US persons “otherwise control(s)” the actions, policies, or personnel decisions of a foreign entity is a fact-specific, case-by-case determination, but that it would consider the aggregated ownership interests held, and indicia of control exercised, by all relevant US persons.

If the foreign entity is publicly traded or the ownership interests are widely dispersed, OFAC would not regard the entity to be owned or controlled by a US person if US persons, on an aggregated basis, passively hold more than 50 percent of the shares of such entity, but no one US person holds a controlling share in the company. However, a foreign entity could be considered US-owned or controlled to the extent one or more of the other criteria for ownership or control are met.

Activities Authorized by General License H

OFAC also clarified in the FAQs that General License H authorizes or permits the following activities:

- A US parent is authorized to alter its policies and procedures, and/or the policies and procedures of its owned or controlled foreign entity, to allow the US-owned or -controlled foreign entity to establish a physical presence inside Iran, and alterations can be made more than one time as long as the changes are not with respect to, or for the purpose of, facilitating any particular Iran-related transactions by the entity.
- Where multiple US persons, in the aggregate, own or control a foreign entity, the US persons are authorized to amend the policies and procedures of both US companies that own a portion of the entity and those of the US-owned or -controlled foreign entity.
- A US-owned or -controlled foreign entity is authorized to engage in transactions with individuals and entities on the Executive Order 13599 List that are within the scope of General License H.
- A US person may receive reports from its owned or controlled foreign entity that detail transactions conducted pursuant to General License H, including reporting on transactions that the US person is required to disclose to the Securities and Exchange Commission, but the US person remains prohibited from engaging in Iran-related activities of the foreign entity and cannot attempt to influence the Iran-related business of the entity based on such reports.
- Where a US parent company's owned or controlled foreign entity engages in transactions with Iran and non-sanctioned countries, the US parent and its board members, senior management and employees may continue to be involved in the foreign entity's transactions with non-sanctioned jurisdictions.

Further Clarifications

In addition, OFAC provided the following additional clarifications regarding General License H:

- US-owned or -controlled foreign entities are subject to the prohibitions of the ITSR to the extent activities are not covered by General License H, but they are not considered "US persons" under the ITSR.
- US persons employed by or serving on the board of directors of a US-owned or -controlled foreign entity (or any other foreign entity) must be recused or "walled off" from all Iran-related business of that entity, except for certain limited activities with respect to Iran that are authorized by General License H, and this recusal policy (which OFAC again recommends should be a blanket recusal policy for the reasons discussed above) can be accomplished through the establishment or alteration of policies and procedures of their owned or controlled foreign entities.

The new FAQs provide further guidance regarding compliance with the US sanctions that remain in place after Implementation Day. Companies looking to do business in Iran should monitor future developments closely, and exercise caution to ensure compliance with all applicable sanctions.

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