

CLIENT MEMORANDUM

OFAC Issues Additional Guidance on Financial Transactions and Due Diligence for Business Involving Iran

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On October 7, 2016, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") updated its "Frequently Asked Questions" ("FAQs") to provide additional guidance on Iran sanctions after Implementation Day of the Joint Comprehensive Plans of Action ("JCPOA"). OFAC amended the FAQs related to financial and banking matters and the risks of secondary sanctions to non-U.S. persons. More specifically, the updated FAQs provide additional guidance on the U.S. dollar transactions and appropriate due diligence by non-U.S. persons engaging in business involving Iran.

While some media reports suggest that OFAC's actions amounted to a further broad easing of sanctions, the guidance instead merely clarifies the measures that are currently in place to ease sanctions on Iran.

U.S. Dollar Transactions

OFAC revised two FAQs (C.7 and C.15) related to foreign financial institutions ("FFIs") and their use of U.S. dollar-denominated accounts and transactions. The original FAQs stated that FFIs could not clear U.S. dollar-denominated transactions involving Iran through U.S. financial institutions. OFAC now clarifies that FFIs, including foreign-incorporated subsidiaries of U.S. financial institutions, *may* process transactions denominated in U.S. dollars or maintain U.S. dollar-denominated accounts involving Iran, so long as the transactions do not involve, directly or indirectly, the U.S. financial

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system or any U.S. person, and do not involve any person on the OFAC List of Specially Designated Nationals and Blocked Persons (“SDN List”).

The FAQs clarify that FFIs and other non-U.S. persons can operate U.S. dollar-denominated accounts and conduct transactions in U.S. dollars involving Iran so long as the transactions are not processed through a U.S. bank and do not otherwise involve a U.S. person (including the foreign branches of U.S. banks) or an SDN. FFIs could potentially comply with these requirements through the use of foreign reserves held outside the United States or by keeping U.S. dollar transactions “on the books” without processing them through the U.S. financial system.

As a practical matter, however, most U.S. dollar-denominated transactions will continue to transit the U.S. financial system, and FFIs must be vigilant and ensure that suitable systems and controls are implemented to prevent the transmission of Iranian transactions to the U.S. financial system.

Due Diligence by Non-U.S. Persons

OFAC also clarified its expectations for non-U.S. persons conducting due diligence on customers and counterparties to avoid SDNs and the possible imposition of U.S. secondary sanctions by adding three new FAQs (M.10, M.11 and M.12).

The new FAQs make clear that it is not necessarily sanctionable for a non-U.S. person to engage in transactions with an entity that is not on the SDN List, but is minority owned, or controlled in whole or in part, by an Iranian or an Iran-related person on the SDN List. Separately, OFAC has repeatedly provided informal guidance that it also is not necessarily sanctionable for a non-U.S. person to engage in transactions with an entity that is *50 percent or more owned* by an Iranian or Iran-related person on the SDN List. Nonetheless, OFAC recommends exercising caution when engaging in transactions with such entities to ensure that such transactions do not involve an Iranian or an Iran-related SDN.

OFAC also addressed screening by non-U.S. persons of potential Iranian counterparties. The new FAQ clarifies that checking the SDN List is a “step that would generally be expected, but that is not necessarily sufficient” when screening Iranian counterparties. OFAC recommends that non-U.S. persons consult with local regulators on due diligence expectations in their domestic jurisdiction, as well as consider the best practices of their own industry. OFAC also suggests maintaining records documenting those due diligence efforts.

Finally, the new FAQs address the appropriate level of diligence for a non-U.S. financial institution on its customers’ Iranian customers. While conducting due diligence on its own customers would be considered a best practice, OFAC does not expect a non-U.S. financial institution to repeat the diligence its customers have performed on their Iranian customers, unless they have reason to believe the diligence is “insufficient.”

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Conclusion

As with OFAC's June FAQ update (as covered by Willkie Farr & Gallagher's June 10, 2016 client memorandum, "[OFAC Provides First Significant Guidance on Iran Sanctions Since Implementation Day](#)"), the current update continues to demonstrate the U.S. government's efforts to provide greater clarity on the changes to Iran sanctions pursuant to the JCPOA. Companies should review specific transactions and accounts that may involve Iran and/or Iranian entities to determine the potential application of U.S. and local sanctions, as well as to ensure that sufficient systems and controls are in place to prevent potential violations.

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