

# U.S. Treasury Department Publishes New Guidance on Iran Sanctions Relief

June 9, 2016

International Trade Controls

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The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") yesterday published new [Frequently Asked Questions](#) ("FAQs") that help clarify the scope of certain measures taken by the United States in January to ease its sanctions against Iran in accordance with the Joint Comprehensive Plan of Action ("JCPOA"), the multilateral agreement signed in mid-July 2015 in which Iran agreed to accept certain limitations on its nuclear program in exchange for sanctions relief. In a [prior alert](#), we described this sanctions relief in detail, as well as concurrent guidance that OFAC issued addressing many of its aspects.

The new FAQs help clarify the scope of [General License H](#), a general license OFAC issued on January 16, 2016 that broadly authorizes non-U.S. companies owned or controlled by U.S. persons to trade and otherwise deal with Iran, subject to various restrictions. Of particular note, the new FAQs provide guidance on the extent to which U.S. persons may be involved in Iran-related business activities of non-U.S. subsidiaries under General License H and the types of Iran-related activities in which such non-U.S. entities may permissibly engage under General License H. They also provide guidance on the circumstances in which non-U.S. entities are considered owned or controlled by U.S. persons for purposes of the U.S. sanctions against Iran.

In addition, the new FAQs help clarify the scope of the general prohibition on U.S.-person involvement in Iran-related business of non-U.S. entities that are not owned or controlled by U.S. persons, including non-U.S. financial institutions.

## Guidance on Scope of General License H

The Iranian Transactions and Sanctions Regulations ("ITSR") generally prohibit U.S. persons and their owned or controlled non-U.S. subsidiaries from engaging in transactions with or for Iran, and from facilitating Iran-related activities of non-U.S. persons. However, General License H authorizes non-U.S. entities owned or controlled by U.S. persons to engage in most Iran-related business and activities. General License H does not authorize U.S. persons (including the U.S. parent of the authorized non-U.S. subsidiary) to participate in or facilitate such Iran-related activities, with certain defined and narrow exceptions.

One provision of General License H, for example, narrowly authorizes U.S. persons to engage in activities related to the establishment or alteration of policies and procedures of U.S. companies and their owned or controlled non-U.S. subsidiaries to the extent necessary to allow the non-U.S. subsidiaries to engage in Iran-related activities authorized under the general license. The new FAQs clarify that this license does not authorize only a one-time policy or procedure change; rather, U.S. persons may establish or alter operating policies and procedures multiple times, provided that the changes are not with respect to, or for the purpose of, facilitating a particular Iran-related transaction. The FAQs also make clear that such

policy/procedure changes may include changes intended to allow a non-U.S. subsidiary to establish a physical presence in Iran.

The new FAQs also provide the following guidance on whether and to what extent U.S. persons may permissibly be involved in the activities of non-U.S. subsidiaries that engage in Iran-related business under General License H:

- Unless authorized by OFAC, U.S. persons employed by or serving on the board of directors of a non-U.S. subsidiary generally must be recused or “walled off” from any Iran-related business. The subsidiary’s U.S. parent is authorized to establish or alter the subsidiary’s policies and procedures to allow for such recusals. In this regard, OFAC recommends adopting a “blanket recusal policy” for U.S. persons that covers any Iran-related business under General License H because case-by-case abstentions may, under certain circumstances, be considered prohibited facilitation and/or the export of services to Iran.
- If a non-U.S. subsidiary engages in both Iran-related business under General License H and business with non-sanctioned jurisdictions, the U.S. parent and its board members, senior management, and employees must not be involved in Iran-related business but may remain involved in the non-U.S. subsidiary’s day-to-day operations with non-sanctioned jurisdictions.
- It is permissible for a U.S. company merely to *receive* reports from its owned or controlled non-U.S. subsidiaries that include details regarding Iran-related transactions authorized under General License H, including as may be necessary to satisfy Securities and Exchange Commission reporting obligations. However, U.S. persons cannot attempt to influence Iran-related business decisions based on information contained in such reports.

OFAC has also clarified that General License H authorizes non-U.S. subsidiaries that are owned or controlled by U.S. persons to engage in transactions with individuals and entities on OFAC’s [E.O. 13599](#) List, if such activities are within the scope of the general license. The E.O. 13599 List identifies parties that meet OFAC’s definition of the “Government of Iran” or an “Iranian financial institution,” but which have been removed from OFAC’s separate List of Specially Designated Nationals and Blocked Persons (“SDN List”) in accordance with the JCPOA. U.S. persons, however, remain prohibited from engaging in virtually any dealings with parties on the E.O. 13599 List, or which are owned or controlled by the Government of Iran (even if such persons do not appear on the E.O. 13599 List), unless such dealings are licensed by OFAC.

### **Guidance on “Ownership and Control” by U.S. Persons**

The new FAQs clarify that OFAC generally considers a non-U.S. company to be “owned or controlled” by a U.S. person for purposes of the U.S. sanctions against Iran—and thus subject to the ITSR’s prohibitions on Iran-related dealings, but also authorized by General License H to engage in most Iran-related activities—if, in the aggregate, one or more U.S. persons hold(s) a 50 percent or greater equity interest by vote or value in the non-U.S. company or if one or more U.S. persons hold(s) a majority of seats on the board of directors of the non-U.S. company or otherwise control(s) the non-U.S. company’s actions, policies, or personnel decisions. However, a non-U.S. company that is publicly traded or whose ownership interests are otherwise widely dispersed is not automatically considered owned or controlled by a U.S. person if U.S. persons,

in the aggregate, passively hold more than 50 percent of the company but no one U.S. person holds a controlling share, though such an entity could still be considered U.S.-owned or controlled if one of the other criteria for ownership or control is met. In cases where multiple U.S. persons own or control a non-U.S. entity, OFAC also has clarified that U.S. persons are permitted to amend the policies and procedures of both the partial U.S. owners and the non-U.S. entity to the extent necessary to allow the entity to engage in otherwise permissible Iran-related activities under General License H.

### **Guidance for Financial Services Sector**

The new FAQs clarify that it is permissible for U.S. financial institutions to open or maintain correspondent accounts for, or otherwise transact business with, non-U.S., non-Iranian financial institutions that maintain correspondent banking relationships or transact business with Iranian financial institutions that are not on the SDN List. However, the FAQs also emphasize that non-U.S. financial institutions remain prohibited from routing Iran-related transactions through U.S. financial institutions or otherwise involving U.S. persons in such transactions unless the transactions are authorized by OFAC or exempt from U.S. sanctions; and non-U.S. financial institutions are encouraged to implement appropriate systems and controls to avoid engaging in these prohibited activities.

### **Guidance Related to U.S. Persons at Non-U.S. Entities**

The new FAQs also make clear that U.S. persons may permissibly serve on the board of directors or as senior managers of a non-U.S., non-Iranian entity, including a non-U.S. financial institution, that transacts business with Iranian persons that are not on the SDN List. Unless authorized by OFAC, however, such U.S. persons must be recused or “walled off” from the Iran-related business. As in circumstances where U.S. persons are employed by or serve on the board of a non-U.S. company that is owned or controlled by a U.S. person, OFAC recommends adopting a “blanket recusal policy” to allow for such recusals as opposed to case-by-case abstentions by U.S. persons. OFAC also clarifies that instituting such a policy would not be considered prohibited activity under the ITSR.

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We are following these developments closely and are well-positioned to advise companies on the impact of and compliance with sanctions laws and regulations. We will provide further updates on Iran sanctions relief as the situation develops.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade Controls team:

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