

KIRKLAND ALERT

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OFAC Issues New Iran Guidance

On June 8, 2016, the U.S. Department of Treasury Office of Foreign Assets Control (“OFAC”) issued new guidance in the form of frequently asked questions (“FAQs”) on the scope of sanctions relief available under the Joint Comprehensive Plan of Action (“JCPOA”). (See [January 2016 Kirkland Alert](#) for more details). The new FAQs address key areas of concern for U.S. companies and their affiliates, including recusal; changes to policies and procedures to permit foreign entities owned or controlled by U.S. parent companies to engage in Iran-related business that is newly authorized under General License H (“GL H”); and the extent to which a U.S. parent company may have any oversight of day-to-day business of foreign entities engaging in Iran-related business.

While these new FAQs provide helpful guidance for U.S. companies, many questions remain unanswered, and the decision to permit an owned or controlled foreign entity to engage in Iran-related business remains, in essence, an enterprise risk management decision. We have summarized below certain of the key takeaways from the new FAQs.

Recusal

- A U.S. person’s case-by-case abstention from votes on Iran-related business could violate the Iranian Transactions and Sanctions Regulations (“ITSR”) as a prohibited facilitation and/or a prohibited export of services.
- Non-U.S. entities, whether U.S.-owned or -controlled, should consider establishing a blanket recusal policy for U.S. person directors, senior managers, and other employees in relation to any Iran-related matters.

Policies and Procedures

- U.S. parent companies and their owned or controlled foreign entities may modify their policies and procedures more than once in order to permit the foreign entity to engage in Iran-related business authorized under GL H. However, any changes may not be with respect to, or in order to facilitate, any particular Iran-related transaction by the foreign entity.
- If a foreign entity is owned or controlled by multiple U.S. persons in the aggregate, each stakeholding company with an ownership interest in the foreign entity may modify its internal policies and procedures, and the policies and procedures of the foreign entity, to permit the foreign entity to engage in Iran-related business pursuant to GL H.

While these new FAQs provide helpful guidance for U.S. companies, many questions remain unresolved, and the decision to permit an owned or controlled foreign entity to engage in Iran-related business remains, in essence, an enterprise risk management decision.

- A U.S. parent company may alter its policies and procedures, and/or the policies and procedures of its owned or controlled foreign entity, in order to allow such foreign entity to establish a physical presence inside Iran.

General Business Oversight

- A U.S. parent company need not remove itself from all day-to-day operations of an owned or controlled foreign entity that does business in Iran under GL H. Rather, the U.S. parent company and its board members, senior management, and employees may continue to be involved in the foreign entity's day-to-day operations *with non-sanctioned jurisdictions*.
- A U.S. person may receive reports from a U.S.-owned or -controlled foreign entity that include details on transactions that the foreign entity conducted with Iran under GL H (including reporting on Iran-related transactions that the U.S. person must disclose to the U.S. Securities and Exchange Commission). However, U.S. persons may not attempt to influence or otherwise be involved with any Iran-related business decisions of such entities based on these reports.

The new FAQs also clarify certain points regarding financial and banking measures for U.S. financial institutions, including confirming that U.S. financial institutions may open or maintain correspondent accounts for third-country (*i.e.*, non-U.S., non-Iranian) financial institutions that do business with Iranian financial institutions that are not designated on OFAC's Specially Designated Nationals List.

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The United States, the EU and other countries scrutinize or regulate international business activities to advance priority national security, foreign policy and other objectives. If not addressed effectively, such governmental scrutiny or regulation can adversely impact business strategy and investment decisions, lead to significant individual and corporate civil and criminal penalties, and may even result in imprisonment for responsible persons.

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Non-U.S. entities, whether U.S.-owned or -controlled, should consider establishing a blanket recusal policy for U.S. person directors, senior managers, and other employees in relation to any Iran-related matters.

If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland authors or your regular Kirkland contact.

Mario Mancuso, P.C.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
www.kirkland.com/mmancuso
+1 202 879 5070

Joanna M. Ritcey-Donohue
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
www.kirkland.com/jritcey-donohue
+1 202 879 5980

Lucille Hague
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
www.kirkland.com/lhague
+1 202 879 5195

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