



## **US TREASURY DEPARTMENT UPDATES GUIDANCE ON DUE DILIGENCE AND USD-DENOMINATED TRANSACTIONS**

*October 2016*

The Office of Foreign Asset Control (“OFAC”) has recently updated its explanatory document known as ‘Frequently Asked Questions Relating to the Lifting of Certain U.S Sanctions under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day’ (the “FAQ”). Among other things, the amended FAQ provides additional guidance to non-US persons seeking to carry out due diligence on a potential Iranian counterparty. It also brings some very welcome clarity to non-US financial institutions looking to enter into USD-denominated transactions with Iranian entities who are not on the (Specially Designated National) SDN List.

### **Due Diligence**

Prior to the update in October 2016, OFAC recommended that a non-US person wishing to trade with an Iranian entity should carry out sufficient due diligence so as to ensure that such a person is not knowingly engaging in transactions with persons on the SDN List, such as the IRGC. It was also recommended that such persons document the steps taken to carry out the due diligence. However, little guidance was provided to help entities understand what amounts to sufficient due diligence and whether it is necessary to establish that the proposed Iranian counterparty is not itself owned by an entity on the SDN List.

OFAC has now confirmed that when conducting due diligence, checking whether the potential Iranian counterparty is on the SDN List is a good first step, although it may not, in itself, be sufficient. Non-US persons should be mindful of their internal risk-assessment and compliance procedures which would be based on the best practices of the industry in which they operate. It is also recommended that non-US persons ensure compliance with any guidance that has been issued by a domestic regulator. In the UK context,

this would include any EU sanctions that are in place and in particular, the EU guidance on “ownership and control”. Again, the need to maintain records of due diligence efforts has been emphasised in the recent update.

However, quite usefully, the amended FAQ now clarifies that a non-US person will not necessarily be sanctioned where it transacts with an Iranian entity that is minority owned or controlled (in whole or in part) by an entity on the SDN List. Still, non-US persons should remain cautious to ensure that such transactions do not involve Iranian or Iran-related persons on the SDN List which may trigger US secondary sanctions.

### ***Summary of recommended practical steps to take:***

- Check the US and EU lists;
- Check World Check or similar (most law firms have access and this will often reference a US or EU listing but also reference links with a listed person or entity);
- Request counterpart evidences its directors and shareholders, including ultimate shareholders;
- Include a clause in your contract in which counterpart confirms the contract will not involve any person or entity subject to US or EU sanctions and that the counterpart is not owned or controlled by a listed person;
- If any director or shareholder is listed on the US or EU lists consider further due diligence;

### **USD-Denominated Transactions**

Under the amended FAQ, non-US financial institutions (including foreign-incorporated subsidiaries of US financial institutions) are allowed to process USD-denominated transactions or maintain USD-denominated accounts that involve, among others, Iran or persons ordinarily



resident in Iran. This is subject to the proviso that such transactions or account activities do not (either directly or indirectly) involve the US financial system or any US person, and does not involve any person on the SDN List.

However, non-US financial institutions are still required to ensure that they do not process USD-denominated transactions that involve Iran through the US financial system or otherwise involve US financial institutions.

***Practical Impact:***

Many non-US banks have been seeking clarification from US enforcement agencies and the amended FAQ represents a very helpful and welcome step. However, clarification on other

issues may be required by some banks before they become involved in Iranian-related business in a meaningful way.

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