

International Trade Alert

February 25, 2014

One More List: OFAC's Foreign Sanctions Evaders List

On February 6, 2014, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) published notice that it was listing eleven named parties as "Foreign Sanctions Evaders," pursuant to Executive Order 13608 (May 1, 2012) (the "FSE" list) (see <http://www.treasury.gov/ofac/downloads/fse/fselist.pdf>). The action reflects new focus by OFAC on its authority to sanction individuals and entities determined by the U.S. government to have violated, attempted to violate, conspired to violate or caused to violate U.S. sanctions against Syria or Iran. U.S. persons and companies are prohibited from engaging in transactions with parties included on the FSE list unless the transaction qualifies for an exemption from OFAC sanctions under the International Emergency Economic Powers Act (IEEPA), or is otherwise specifically licensed by OFAC. Furthermore, the prohibition may in effect extend to foreign subsidiaries and controlled affiliates to the extent there is U.S. parent company involvement in their transactions. While not previously a focus of OFAC enforcement, this development underscores the need for companies to add the FSE list to the collection of other restricted-party lists that must be covered in routine compliance screening. However, the FSE list is not currently incorporated into the Consolidated Screening List made available by the U.S. government at www.export.gov. Consequently, companies must take care to ensure that their screening practices, whether conducted manually or in reliance on commercial screening software services, covers this list.

Who is on the FSE List?

The FSE list implements presidential Executive Order 13608, "Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria." Pursuant to the Executive Order, the list identifies parties that the U.S. government has determined:

1. have violated, attempted to violate, conspired to violate or caused a violation of U.S. sanctions against Syria or Iran, including sanctions imposed under counter-proliferation or counter-terrorism authorities;
2. have facilitated deceptive transactions for or on behalf of persons subject to U.S. sanctions against Syria or Iran; and/or
3. are owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, such entities or persons.

Under the Executive Order, and for purposes of the FSE list, facilitating a "deceptive transaction" includes withholding or obscuring from other parties and/or regulators the involvement and identity of any person subject to U.S. sanctions against Iran or Syria.

What is Prohibited?

Broad sanctions prohibitions preclude U.S. persons from engaging in activities involving parties included on the FSE list. General prohibitions bar U.S. persons from providing or procuring goods or services, including financial services, or technology to or from a listed person without specific prior authorization from OFAC, unless the transaction is otherwise exempt from regulation under the IEEPA statute. Although an FSE's property is not "blocked" as a matter of law under this OFAC regime (except where such parties are also listed as SDNs or otherwise subject to blocking under other OFAC sanctions programs), OFAC advises that U.S. persons must obtain OFAC authorization to provide, procure or receive property, or services related to that property, to or from an FSE (see http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx#fse). U.S. financial institutions are required to obtain OFAC authorization before allowing the operation of a listed person's bank account, and before allowing the receipt or provision of related wire transfers to such accounts. These restrictions are not limited to transactions involving Iran or Syria. Rather, once on the FSE list, these provisions bar U.S. persons from engaging in activity of almost any kind involving an FSE, even if it is entirely unrelated to Syria or Iran.

What are the Implications for U.S. Companies and Persons?

As with other OFAC restricted-party lists, U.S. persons and their subsidiaries or controlled entities outside the United States are effectively prohibited from engaging in "transactions" or activities with FSEs on a strict liability basis. U.S. parties that engage in transactions with an FSE are subject to potential OFAC enforcement and penalties under the IEEPA statute.

What Does This Mean for You?

U.S. companies and persons must take actions necessary to ensure that they screen effectively against, and do not engage in activities involving, parties included on the FSE list. Moreover, companies may need to review activities screened and initiated prior to February 6, 2014 that have not yet been completed to the extent that FSEs might be involved. OFAC guidance on the FSE list clearly indicates that there is no "grandfathering" allowance for transactions initiated prior to the listing of an FSE. Where a potential transaction is in process at the time of a listing, U.S. persons are required to terminate and/or cease dealings with the FSE-listed party immediately unless and until otherwise exempted or specifically licensed by OFAC. In practical terms, it is important for companies relying on third-party vendor screening services to check with their providers to ensure that the FSE list is incorporated into automated screening procedures for restricted-party screening. Companies should run test screenings against parties included in the FSE list to verify and document confirmation that their screening safeguards cover this list effectively. Companies and persons relying on manual screening by use of the Consolidated Screening List at www.export.gov should, in addition, consult the FSE list on OFAC's website as part of going-forward practices, as long as the FSE list is not incorporated into the Consolidated Screening List.

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