

International Trade Alert

August 25, 2017

Key Points

- This enforcement action highlights the heightened sanctions compliance and enforcement risk that companies face when engaging third-party consultants to perform due diligence on counterparties. U.S. persons must make clear to consultants providing services that due diligence must exclude work performed in Iran or by Iranian nationals ordinarily resident in Iran.
- Although the activities in question occurred prior to OFAC's issuance of GL-H, OFAC made clear that such activities would not have been authorized under GL-H, raising questions regarding whether companies relying on GL-H must ensure that the **benefit** of a transaction is not received by their U.S. parent company
- OFAC further uses this enforcement action to clarify limitations on the scope of permissible sanctions compliance guidance by legal and compliance professionals in accordance with OFAC's *Guidance on the Provision of Certain Services Relating to the Requirements of U.S. Sanctions Laws*, suggesting that providers of due diligence services should qualify any recommendations to conduct diligence on Iranian counterparties to ensure that such diligence does not involve U.S. prohibited importation of Iranian-origin services.



OFAC Puts Companies on Notice: Due Diligence in Iran Can Trigger Sanctions Violations

On August 10, 2017, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) announced that IPSA International Services, Inc. (IPSA) agreed to pay a \$259,200 civil settlement in connection with 72 apparent violations of the Iranian Transactions and Sanctions Regulations (ITSR). IPSA is a U.S. company that provides global investigative due diligence services for countries that run "citizenship by investment" programs. OFAC alleges that IPSA violated the ITSR when it benefited from imports of Iranian-origin services (Contract 1) and by facilitating payments made by its foreign subsidiaries related to Iranian-origin services (Contract 2).

Overview of Enforcement Action

According to the OFAC enforcement action, IPSA was involved in two contracts managed and performed by IPSA's foreign subsidiaries to conduct due diligence on Iranian nationals in Iran.

Both of the contracts at issue featured “Iranian-origin services” because IPSA’s foreign subsidiaries hired third parties to “validate” information that “could only be obtained or verified *within Iran*.”¹ This, in turn, meant that both contracts involved “Iranian-origin services” as defined under the ITSR, which is defined to include all services performed within Iran, or outside Iran by an entity organized under the laws of Iran or an Iranian citizen, national or permanent resident ordinarily resident in Iran.²

IPSA’s apparent violations arose under two separate theories of civil liability under Contract 1 and Contract 2. Under Contract 1, OFAC determined that IPSA **directly benefitted** from due diligence conducted in Iran, resulting in an impermissible “importation into the United States of . . . services of Iranian origin.”³ Notably, OFAC does not state whether, or to what extent, IPSA received information concerning the due diligence activities in Iran, which suggests that the **mere benefit** of those activities to IPSA was sufficient to qualify as an impermissible importation of Iranian services. Under Contract 2, OFAC determined that IPSA “reviewed, approved, and initiated” its foreign subsidiaries’ payments to providers of Iranian-origin services. This, according to OFAC, violated the prohibition against U.S. person facilitation under the ITSR.⁴

Heightened Risk Associated with Due Diligence Activities in Iran

This enforcement action highlights the heightened sanctions compliance and enforcement risks that companies face when conducting due diligence activities that involve Iran. In accordance with this enforcement action, companies should note that OFAC considers due diligence activities that occur within Iran as “Iranian-origin services” and may take enforcement action against U.S. persons that deal in such services **or benefit** from those services in the United States.

OFAC Comments on the Limits of General License H

OFAC used the enforcement action as an opportunity to comment on the limits of General License H. The activities in this case occurred in October 2012, well before OFAC issued GL-H. Nevertheless, OFAC used this enforcement action to clarify that “the conduct underlying the apparent violations “is not eligible for OFAC authorization under *existing licensing policy*”⁵ and noted that U.S. persons are allowed to engage in only limited activity under GL-H, while stressing that “the general prohibition of facilitation remains in place.”⁶

Finally, the enforcement action is also notable because OFAC clarified the limits of permissible sanctions compliance advice provided by legal and compliance professionals. OFAC cited its January 2017

¹ OFAC Enforcement Information (Aug. 10, 2017), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170810_ipsa.pdf (emphasis added).

² 31 C.F.R. § 560.306(c).

³ 31 C.F.R. § 560.201.

⁴ 31 C.F.R. § 560.208.

⁵ OFAC Enforcement Information (Aug. 10, 2017), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170810_ipsa.pdf (emphasis added).

⁶ *Id.*

Guidance on the Provision of Certain Services Relating to the Requirements of U.S. Sanctions Laws, which states that legal and compliance professionals may “conduct research to make a determination as to the legality of transactions under U.S. sanctions laws, provided there is no [unauthorized] importation of services.”⁷

In practice, legal and compliance professionals may recommend that clients conduct thorough due diligence on counterparties to ensure effective compliance with OFAC sanctions. Through this enforcement action, OFAC suggests that these recommendations should be qualified to ensure that the diligence conducted does not involve any prohibited importation of Iranian-origin services, such as through on-the-ground research in Iran.

⁷ OFAC Enforcement Information (Aug. 10, 2017), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170810_ipsa.pdf (emphasis added).

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