

## Update

# OFAC amends sanctions regulations to implement prohibitions on foreign entities owned or controlled by US persons

The United States Department of Treasury's Office of Foreign Assets Control ("OFAC") has published a final rule amending the Iranian Transactions Sanctions Regulations ("ITSR") to implement Section 218 of the Iran Threat Reductions and Syria Human Rights Act (10 August 2012) ("ITRA") and Executive Order 13628 (9 October 2012), which, in part, impose prohibitions upon foreign subsidiaries of US companies from knowingly engaging in transactions with Iran that would be prohibited by US Persons. (See our 18 September 2012 Sanctions Update, **US Executive Order 13622 and the Iran Threat Reduction and Syria Human Rights Act of 2012.**)

The amendments also implement other provisions of ITRA, as well as Executive Order 13622 (31 July 2012). These include (1) Sections 602 and 603 of ITRA, which provide an exception to the prohibitions in ITRA for authorized US intelligence activities and activities related to certain natural gas projects, (2) Section 5 of EO 13622, which blocks all property of persons (including foreign branches) who materially assist or provide support for the National Iranian Oil Company, the Naftiran Intertrade Company, or the Central Bank of Iran, and (3) Section 6 of EO 13622, which grants an exemption to Section 5 to persons conducting certain natural gas projects.

The following five ITSR amendments implement the ITRA and EO 13628 sanctions applicable to foreign subsidiaries of US companies:

1. New section (560.215) specifically prohibits foreign subsidiaries from knowingly engaging in any transaction directly or indirectly with the Government of Iran or a person subject to the Iranian Government that would be prohibited by the US apparent under the ITRS.
2. Section 560.555 grants a general license for otherwise prohibited activities under 560.215 that occur during a specified winding-down grace period. Under this section, from October 9, 2012 until March 8, 2013, foreign subsidiaries are allowed to engage in transactions that might otherwise violate new section 560.215 if such transactions are incidental and necessary to the winding down of the prohibited transactions. There is a caveat, however, in that no US

person, including the US parent company, can be involved in the transactions authorized by this general license.

3. Section 560.556 grants another general license, which authorizes foreign subsidiaries to engage in transactions that would otherwise be prohibited by new section 560.215 if such activities are authorized by a general license for US persons.
4. The rule amends several existing general licenses that currently apply to foreign subsidiaries of US persons to exclude from the scope of such authorizations any transactions that would be prohibited by any part of Chapter V of the CFR (OFAC regulations) if engaged in by a US person.
5. The rule amends the section 560.701 of Subpart G of the ITSR by adding a new paragraph that provides for the imposition of civil penalties on a US parent company of foreign subsidiary that violates Section 560.215, unless the US parent divests or terminates its business with the entity by February 6, 2012.

In addition to the foregoing, the final rule provides additional clarification on certain terms contained in the regulations. The term “owned or controlled” by a United States person means that the US person (i) holds a 50 percent or greater equity interest by vote or value in the entity; (ii) holds a majority of seats on the board of directors of the entity; or (iii) otherwise controls the actions, policies, or personnel decisions of the entity.

The rule defines “knowingly” to mean “that the person engages in the transaction with actual knowledge or reason to know.” The phrase “subject to the jurisdiction of the Government of Iran” means that the person “is organized under the laws of Iran or any jurisdiction within Iran, ordinarily resident in Iran, or in Iran, or owned or controlled by any of the foregoing.”

### Further information

If you would like further information on any issue raised in this update please get in touch with any of the key contacts listed on our sanctions microsite, [sanctions.clydeco.com](http://sanctions.clydeco.com) or contact:

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