

Client Alert

December 2019

OFAC Provides Guidance on Iran-related Transactions through Frequently Asked Questions

What Happened: On November 27, 2019, the Department of Treasury's Office of Foreign Assets Control (OFAC) published three new Iran-related Frequently Asked Questions (FAQs) and amended two existing FAQs.

The Bottom Line: Through the new and amended FAQs, OFAC (1) clarifies that not all of COSCO Shipping Tanker (Dalian) Co., Ltd., and COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co. subsidiaries or affiliates are subject to sanctions; (2) defines the types of activities that are considered "maintenance" under General License K; (3) authorizes US financial institutions to process transactions involving COSCO Shipping Tanker (Dalian) Co., Ltd., pursuant to General License K; (4) explains that non-US persons are generally not subject to sanctions for providing goods or services to non-Iranian persons sanctioned under Section 3 of Executive Order (EO) 13846; and (5) clarifies that insurance activities are subject to sanctions under the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA). Persons engaged in business in Iran should familiarize themselves with these FAQs and actively monitor the development of US sanctions toward Iran.

The Full Story:

On November 27, 2019, OFAC published Iran-related FAQs 805, 806 and 807 and amended FAQs 304 and 804. As further described below, FAQs 804, 806 and 807 define the scope of the sanctions toward COSCO Shipping Tanker (Dalian) Co., Ltd., and COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co., as well as the transactions and activities authorized by General License K. Amended FAQ 303 describes insurance activities that are subject to sanctions under IFCA's Section 1246(a)(1). Lastly, FAQ 805 clarifies that non-US persons are not generally exposed to sanctions for providing goods or services to a non-Iranian person sanctioned under Section 3 of EO 13846.

OFAC designated COSCO Shipping Tanker (Dalian) Co., Ltd., and COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co. to OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) under EO 13846, Reimposing Certain Sanctions with Respect to Iran, on September 25, 2019. Through amended FAQ 804, OFAC makes clear that the sanctions on these entities do not apply to their corporate parent. Further, the sanctions do not apply to their subsidiaries or affiliates, as long as such entities are not owned 50 percent or more by these blocked persons. Thus, FAQ 804 clarifies that US persons are not prohibited from dealing with COSCO Shipping Corporation Ltd., its non-blocked affiliates or its non-blocked subsidiaries provided that the transactions do not involve any persons on OFAC's SDN List or activities prohibited by OFAC regulations. FAQ 804 also explains that General License K authorizes all transactions and activities ordinarily incident and necessary to the maintenance or wind down of transactions involving COSCO Shipping Tanker (Dalian) Co. Ltd., pursuant to the conditions specified in the general license and described in FAQ 806.

Through FAQ 806, OFAC defines the types of activities that are considered "maintenance" under General License K. For example, OFAC explains that the authorization for maintenance includes transactions and activities ordinarily incident to the continued operations of US persons involving COSCO Shipping Tanker (Dalian) Co., Ltd., or any entity owned, directly or indirectly, by COSCO Shipping Tanker (Dalian) Co., Ltd.

Maintenance also generally includes transactions and activities incident to obtaining goods or services from, or providing goods or services to, entities covered by General License K, provided that these transactions are performed in a manner consistent with the general license. Additionally, the authorization for maintenance allows US persons to enter into contingent contracts for transactions consistent with General License K that extend beyond the general license's December 20, 2019, expiration, provided that performance after the expiration date is contingent on the performance being authorized, or not prohibited, by OFAC.

Further, FAQ 807 provides that US financial institutions may process transactions involving COSCO Shipping Tanker (Dalian) Co., Ltd., under General License K, so long as the transactions are ordinarily incident and necessary to the maintenance or wind down of transactions involving COSCO Shipping Tanker (Dalian) Co., Ltd., and are subject to the conditions of General License K. OFAC also notes that US financial institutions serving as intermediaries in transactions authorized by General License K would generally not be expected to conduct additional due diligence beyond that which is performed in the ordinary course of processing transactions.

Regarding the applicability of sanctions to non-US persons, FAQ 805 provides that non-US persons are generally not subject to sanctions for providing goods or services to non-Iranian persons sanctioned under Section 3 of EO 13846, which involves sanctions relating to Iran's automotive sector and trade in Iranian petroleum, petroleum products and petrochemical products. However, non-US persons should ensure that these transactions do not involve (1) prohibited transactions by US persons; (2) the knowing provision of significant support to an Iranian person on OFAC's SDN List; or (3) the knowing facilitation of a significant transaction for a person on OFAC's SDN List designated in connection with Iran's support for international terrorism, proliferation of weapons of mass destruction or other activities for which sanctions have been imposed.

Lastly, through amended FAQ 303, OFAC clarifies that various insurance activities are subject to sanctions under the IFCA. This includes knowingly providing insurance, reinsurance or underwriting services to or for any person designated in connection with Iran's support for international terrorism, proliferation of weapons of mass destruction or other activities for which sanctions have been imposed. Generally, however, the provision of insurance, reinsurance or underwriting services to non-Iranian persons on the SDN List is not sanctionable under Section 1246(a)(1) of the IFCA if the insurance activities are not to or for the benefit of any individuals or activities described above.

Thus, persons subject to US jurisdiction and engaging in activities related to the US sanctions toward Iran should familiarize themselves with and continue to monitor the sanctions and authorizations granted by the general licenses for which these and other FAQs provide additional clarity.

The economic sanctions practice at Hunton Andrews Kurth LLP will continue to closely monitor the development of this and other US sanctions matters. Please contact us if you have any questions or would like further information regarding the sanctions against Iran.

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