



JUNE 2011

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OFAC & The Iranian Sanctions Regime

Dear Clients and Friends:

As a result of the continuing economic and political instability in Iran, many Iranian-Americans are attempting to sell their remaining assets in Iran, including residential, commercial or agricultural real estate that they did not sell prior to moving to the United States. Others are seeking to go through the Iranian legal system to reclaim real estate assets that were seized by the government after the Islamic Revolution.

These activities may run afoul of the sanctions established by the U.S. government, which flatly prohibit certain types of transactions and require U.S. persons to obtain a specific license to engage in transactions relating to real and personal property located in Iran. Many Iranian-Americans also do not know that these restrictions and licensing requirements also apply to investment in Iran, or that the definition of investment under the applicable law covers activities they would not expect to be subject to these regulations. U.S. law requires U.S. persons to obtain a special license from OFAC to engage in any of the transactions that fall within the scope of the Iranian sanctions.

This newsletter provides a general overview of this issue and how you can protect yourselves and your assets.

GENERAL BACKGROUND OF IRANIAN SANCTIONS

Over the past three decades, the United States government has put in place a comprehensive sanctions regime directed at the Islamic Republic of Iran. These sanctions programs are administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). The Iranian sanctions are implemented through a body of regulations governing trade and other activities. This body of regulations includes, among others, the Iranian Transactions Regulations (the "ITR"), the Iranian Assets Control Regulations, and the Iranian Financial Sanctions Regulations. The ITR, in particular, is very broad, and applies to commercial, personal, humanitarian and other activities.

PROHIBITED TRANSACTIONS AND LICENSING REQUIREMENTS

The Iranian sanctions programs present numerous pitfalls for individuals in the United States who may not realize that their activities fall within the scope of transactions restricted by the regulations. U.S. persons are prohibited from engaging in any transactions related to goods or services of Iranian origin, or goods or services owned or controlled by the Iranian government unless they first obtain a special license from OFAC to engage in such transactions. The prohibited transactions include investment, purchase, sale, transport, swap, financing, and brokering transactions relating to such goods.

The purchase or sale of real estate or other property fall within the scope of the regulations, as does the hiring of an attorney or broker to assist with such a transaction. Engaging in any of these activities without a license from OFAC is a violation of U.S. law. Hiring an attorney to pursue legal claims relating to confiscated real estate would similarly require licensing from OFAC. Each of these

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activities would be subject to the licensing requirements because the transactions involve dealing in goods (*i.e.*, the real estate or other property) and services (*i.e.*, the services of the attorney or broker) of Iranian origin.

A broad range of investment activities is also subject to special OFAC licensing requirements. These activities include the purchase of assets such as an investment property, investment in Iranian business, and the commitment or lending of funds in Iran. Opening an account in an Iranian bank and depositing funds can also constitute a prohibited new investment. Even if you believe your particular transaction should not be considered "investment" or otherwise falls outside the regulations, you should not proceed without a license or other advance written authorization from OFAC.

Money transfer activities may also be subject to the Iranian sanctions and it is not advisable to use informal money transfer providers, such as "Havalehdars" to move funds from Iran to the U.S. In recent years, the U.S. government has begun focusing greater attention on "Havaleh" through individuals, in part because of links to money laundering schemes and other illegal activities. Havalehdars have been the subject of criminal charges and the recipients of funds have been questioned and risked exposure to criminal penalties. OFAC instead recommends private individuals seeking to transfer personal funds to send such money from private, non-sanctioned banks in Iran to specific non-Iranian and non-U.S. financial institutions in third countries that will then facilitate transfer to banks in the U.S.

WHO IS SUBJECT TO THESE RESTRICTIONS?

The Iranian sanctions regulations apply to all "United States persons." For purposes of these regulations, "U.S. persons" includes U.S. citizens and Permanent Residents (*i.e.*, Green Card holders), regardless of the country in which they actually work or reside. "U.S. persons" also includes those who are physically present in the United States, even if they are not U.S. citizens or Permanent Residents. Iranian or third-country citizenship will not exempt an individual from the applicable regulations if they meet the criteria described above.

WHAT ARE THE PENALTIES?

Violations of the ITR and the other regulations relating to Iran are subject to both civil and criminal penalties. While OFAC has some discretion in determining the penalties for such violations, they can be quite substantial. Violations are subject to civil penalties of up to the greater of \$250,000 or twice the value of the subject transaction, and subject to criminal penalties (for willful violations) of up to \$1 million and up to 20 years in prison.

HOW DO I OBTAIN A LICENSE?

One can apply for what is known as a "Specific License" in order to obtain authorization for a particular transaction. Applying for an OFAC license is both time-consuming and complicated, and it may take several months before a license is approved. However, OFAC generally maintains a favorable licensing policy on activities related to the liquidation of personal assets in Iran. There are no particular forms for the OFAC license application, so it can be difficult for someone without experience in this area to understand how the process works and what information to provide. It is critical to present a thorough and transparent package of information and materials, in a clear and organized format.

CONCLUSION

If you need to sell assets in Iran or would like to reclaim property in Iran, an attorney who is experienced in this area can guide you through the licensing process and help you prepare an effective application. An attorney can also advise you as to the appropriate steps to take before and after receiving a license to ensure that the proceeds of your transaction do not pass through any sanctioned Iranian financial institutions and are not rejected by your bank in the U.S. If you are involved in a transaction that you believe may violate the regulations described

above, an attorney can help you determine whether a violation has actually occurred, and advice as to the appropriate course of action to come into compliance with U.S. law.

About Us:

The Ben-Cohen Law Firm, PLC is located in Century City, and was founded by Pedram Ben-Cohen, who is an Attorney-at-Law and Certified Public Accountant licensed by the State of California. We handle a wide variety of tax-related matters including taxpayer disputes with the IRS and Franchise Tax Board, estate planning, and income tax planning. Our passion is the practice of Tax Law which is reflected in our mission to solve your tax problems and minimize your tax liability in a cost efficient manner.

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