

Superior Essex Inc.
Policy and Guidelines for Doing Business in Iran
(Updated June 2021)

1. Introduction

This document describes the policy and guidelines of Superior Essex Inc. (the “**Company**”) as regards its dealings and its foreign subsidiaries’ dealings with Iran or other entities that conduct business in Iran.

Iran is subject to a long-standing comprehensive embargo. As such, U.S. persons are generally prohibited from engaging in any transactions with Iran without authorization from the U.S. Department of Treasury’s Office of Foreign Assets Control (“**OFAC**”) and/or the U.S. Department of Commerce’s Bureau of Industry and Security (“**BIS**”). Furthermore, Iran is the target of many “Secondary Sanctions” that penalize non-U.S. persons for engaging in transactions with Iran. These secondary sanctions target a broad array of industries, including Iran’s energy, shipping, and automotive sectors, among others. A violation of these sanctions can result in significant criminal penalties against the Company and individuals.¹

With Iran designated as a U.S. embargoed country, U.S. persons may not do business with Iran or any person residing in Iran without specific U.S. government authorization (which is only reserved for limited circumstances). U.S. persons are defined as any person or entity that is a U.S. national or resides in the United States (meaning all of the Company’s foreign nationals who work for the Company in the United States would also be considered a U.S. person). This general embargo relating to U.S. persons dealing with Iran, or those transactions that have a U.S. nexus, are known as “Primary Sanctions.” Thus, the Company, and its foreign subsidiaries that it owns or controls, are also prohibited from transacting business with Iran, absent authorization from the OFAC.²

Primary Sanctions

Under *primary sanctions*, U.S. persons are prohibited from engaging in the following actions or transactions, among other things:

- the export, re-export, sale, or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods, technology, or services to Iran;

¹ Under the Obama Administration, the United States and Iran agreed to the Joint Comprehensive Plan of Action (“**JCPOA**”) wherein Iran committed to cease certain nuclear activities in exchange for the U.S. lifting certain secondary sanctions. Meanwhile, the E.U., China, and Russia also agreed to lift most sanctions on Iran. However, on May 8, 2018, President Trump announced that the United States would withdraw from the JCPOA and re-impose secondary sanctions that the U.S. had previously lifted under the JCPOA. As such, non-U.S. companies would be potentially sanctionable by the U.S. government if they engaged in any proscribed transactions involving Iran. Furthermore, the Trump Administration also expanded secondary sanctions on Iran’s metals, energy, defense, and financial sectors, and imposed sanctions on various individuals and entities in China, Russia, Turkey, and other countries for engaging in certain transactions with Iran. In a reversal of the previous administration’s posture, the Biden Administration has expressed its desire to rejoin the JCPOA and has formally offered to reengage in negotiations with Iran. Nonetheless, the Biden Administration has also stated that sanctions will not be lifted unless Iran ceases its enrichment of uranium, which Iran resumed after the United States withdrew from the JCPOA.

² See 31 C.F.R. 560.215; see also [621 | U.S. Department of the Treasury](#); [644 | U.S. Department of the Treasury](#)

- the importation of goods or services from Iran; and
- the facilitation by a U.S. person of transactions by a foreign person that the U.S. person would otherwise be prohibited from engaging in under U.S. sanctions against Iran.

Secondary Sanctions

Secondary sanctions are designed to punish non-U.S. actors that engage in certain transactions related to specified sectors of the Iranian economy. In addition, a non-U.S. person who engages in a significant transaction with certain Iranian parties on OFAC's Specially Designated Nationals and Blocked Persons List ("**SDN List**") — which, as discussed below, OFAC expanded on November 5 — could lead to U.S. secondary sanctions. Secondary sanctions relating to Iran are drawn from a predefined menu of penalties. These include a prohibition on foreign exchange transactions subject to U.S. jurisdiction; the denial of Export-Import Bank assistance; the denial of U.S. export licenses; the denial of certain loans from US financial institutions; a ban on US government procurement; and blocking sanctions or designations as SDNs.

Under U.S. sanctions against Iran, foreign subsidiaries of U.S. companies are subject to the same restrictions as would apply to the U.S. parent company. Thus, a foreign subsidiary and its U.S. parent could have exposure under the Iranian sanctions even if the transaction is legal in the country where the foreign subsidiary is located.

Furthermore, U.S. persons are often prohibited from "facilitating" transactions by non-U.S. persons with sanctioned persons or destinations. For example, to the extent affiliated entities share resources, such as a shared IT or administrative function, there is a risk that a U.S. person could become involved in a prohibited transaction.

2. Secondary Sanctions

In a National Security Presidential Memorandum ("**NSPM**"), President Trump on May 8, 2018, announced that the United States was withdrawing from the multilateral nuclear accord that the United States had entered into with Iran under the Obama Administration known as the Joint Comprehensive Plan of Action ("**JCPOA**"), and stated his reasons for doing so. President Trump made clear that the sanctions waived by the prior administration would be re-imposed, including secondary sanctions on non-U.S. entities that engage in certain trade with Iran. The announcement was timed and coordinated with OFAC-issued guidance on when particular sanctions go back into effect, clarifying that the United States will re-impose all nuclear-related sanctions lifted under the JCPOA after a wind-down period of either 90 or 180 days, depending on the activity.

The key changes include the following:

- **Revocation of "General License H". "General License H" has been fully revoked. Entities owned or controlled by a U.S. person (i.e., foreign subsidiaries of US companies) are again subject to the general embargo.**
- **Re-imposition of "secondary sanctions."**

On August 6, 2018, U.S. secondary sanctions were re-imposed on:

- the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran;

- the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt;
- conducting or facilitating significant transactions related to the purchase or sale of Iranian Rials or the maintenance of significant funds or accounts outside Iran denominated in Iranian Rials;
- the sale, supply or transfer to or from Iran of graphite, raw or semi-finished metals such as aluminum and steel, coal and software for integrating industrial purposes; and
- engaging in, conducting or facilitating a significant transaction for the sale, supply or transfer to Iran of significant goods or services used in connection with the Iranian automotive sector.

On November 4, 2018, U.S. secondary sanctions were re-imposed on:

- engaging in, conducting or facilitating a significant transaction for the purchase, acquisition, sale, transport or marketing of petroleum, petroleum products, petrochemical products or natural gas from Iran;
- exporting, selling or providing refined petroleum products or petrochemical products to Iran;
- investment, including participation in joint ventures, and supplying goods, services, information, technology or technical expertise or support for Iran's oil, gas or petrochemical sectors;
- assisting, providing goods or services in support of, or knowingly conducting or facilitating a significant financial transaction on behalf of any Iranian person on the U.S. SDN list or any persons whose property is blocked;
- assisting or providing goods or services in support of the National Iranian Oil Company ("NIOC"), Naftiran Intertrade Company ("NICO"), or the Central Bank of Iran;
- providing significant support to, or other goods or services in support of a person determined to be part of the energy, shipping and shipbuilding sectors of Iran or to operate a port in Iran, or to an Iranian person on the U.S. SDN list (OFAC has indicated that routine payments (including port, docking or cargo handling fees) paid for the loading or unloading of non-sanctioned goods at Iranian Ports would not be sanctionable activity, provided no U.S. SDN listed entities are involved and these payments do not materially exceed standard industry rates);
- providing underwriting services or insurance or reinsurance with respect to or for the benefit of, any U.S. SDN listed entity, any activity in the energy, shipping, and shipbuilding sectors in Iran or for the sale, supply or transfer to or from Iran of graphite, raw or semi-finished metals and software for integrating industrial processes; and
- The provision of specialized financial messaging services to CBI and Iranian financial institutions (e.g., SWIFT)

On November 5, 2018, OFAC added more than 700 individuals, entities, vessels, and aircraft to its SDN list, freezing their assets in the United States, prohibiting their dealings with U.S. persons, and creating secondary sanctions exposure for non-U.S. persons continuing to do business with them.

In light of the above, non-U.S.-based businesses should be prepared to address/evaluate the following questions:

- Do you conduct business with or in the U.S.? Non-U.S. persons become subject to U.S. restrictions while they are physically present in the U.S. Thus, if for instance, a French

executive traveling in the U.S. conducts a transaction via email with a person in Iran, the French executive would be committing a violation of U.S. sanctions.

- Do you distribute or resell U.S.-origin goods? U.S. origin goods “re-exported” (i.e., exported from a foreign destination) remain subject to U.S. jurisdiction and to any applicable export controls. Thus, if a German distributor resells U.S.-origin electronics to Iran, this could result in a violation of U.S. sanctions and export controls violation and expose Company, the German distributor, as well as its U.S. supplier, to penalties under U.S. sanctions against Iran and U.S. Export Administration Regulations (“EAR”).
- Do you use U.S.-origin technology? If so, there are limits on whom outside or within the company this technology may be shared with, depending on the nationality of the person in question.
- If you are a manufacturer, do you use U.S.-origin content in your goods? If so, your goods could potentially be subject to U.S. jurisdiction depending on how much U.S.-origin content is used and the nature of the U.S.-origin content.

While this is not an exhaustive list of the factors that should be analyzed in determining one’s exposure under U.S. sanctions and export controls, the list above provides some of the basic questions that should be considered. Given the complexity of these restrictions, determining precisely what restrictions apply to your business often requires the assistance of specialized legal counsel. Given the extensive extraterritorial reach of U.S. sanctions and export controls, and its relevance to a broad range of industries, manufacturers, and service providers, all Company-related businesses (both U.S. and non-U.S.-based) must take stock of their potential exposure under U.S. sanctions and export controls. These prohibitions apply broadly and include, but are not limited to:

- U.S. persons cannot assist foreign companies with logistics or quality issues relating to Iranian transactions.
- U.S. persons cannot assist foreign companies with specific sale or purchasing strategies relating to Iranian transactions or the market.
- U.S. persons cannot approve an Iranian transaction (whether it is reviewing the creditworthiness or sales volumes).
- U.S. persons cannot assist with hiring, vetting or otherwise engaging a consultant to help its foreign subsidiaries (or foreign companies generally) expand into the Iranian market.

3. Policy

U.S. Employees of the Company

U.S. persons, including *all citizens, dual citizens, lawful permanent residents, and entities organized under U.S. law*, must comply with U.S. economic sanctions in all their activities, *anywhere in the world*.

This prohibition extends not only to direct engagement in transactions that would violate U.S. economic sanctions, but also to indirect involvement, via approving, guaranteeing, *or in any way facilitating* such transactions by others, including when the others are foreign persons acting outside the United States. OFAC interprets these prohibitions liberally to cover any transaction that “touches” U.S. soil, including by movement of funds through a financial institution in the United States.

Foreign companies, therefore, need to closely monitor for contracts requiring payment in U.S. dollars (which will entail dollar clearance activity through a bank in the United States), shared services provided from a location within the United States (such as processing of invoices, hosting of data, etc.), or even offering software as a service (or for download) from United States servers.

Foreign companies, therefore, need to be aware of board members, directors, or employees who hold U.S. citizenship or U.S. green cards, and also management, marketing, referral, or shared service and support functions that may occur in, or with support from, the United States or U.S. expats.

U.S. goods made or sold by the Company

Exports and re-exports of goods that are subject to U.S. export laws (typically goods manufactured in the United States, or containing more than a *de minimis* amount of controlled U.S. content), generally also must comply with restrictions imposed by U.S. economic sanctions. Failure to comply may trigger enforcement not only by OFAC, but also by the Department of Commerce's Office of Export Enforcement ("OEE"), which shares jurisdiction with OFAC in these cases due to the incorporation of many economic sanctions restrictions into the EAR.

Foreign companies, therefore, need to be aware of suppliers in the United States, or that are located outside the United States but supply U.S. origin goods, or goods that are produced with more than a *de minimis* amount of U.S. content. To guard against inadvertent violations, foreign companies, including the non-U.S. subsidiaries of U.S. companies, should consider asking whether the goods they purchase outside the United States are subject to U.S. export controls, and pay close attention to information provided by suppliers.

U.S. ownership or control of non-U.S.-based subsidiaries

Generally, under most OFAC-administered sanctions programs, foreign subsidiaries organized outside of the U.S. that are owned or controlled by U.S. companies are not directly required to comply with U.S. economic sanctions regulations provided that no other nexus with the U.S. jurisdiction exists in a particular transaction (although such entities may need to take extra precautions to ensure no involvement by U.S. persons).

However, U.S. sanctions regulations on Iran (and Cuba) expressly require compliance by foreign entities that are owned or controlled by U.S. persons.

Foreign companies that are owned or controlled by U.S. individuals, funds, or other entities, therefore, need to exercise special care to avoid direct or indirect dealings involving parties that are located or incorporated in Iran, or are owned or controlled by such parties, or that are part of the government of Iran, or owned or controlled by the same (e.g., government entities such as embassies, or government-owned companies wherever located). Foreign companies should also be prepared to terminate all preexisting business involving Iran if they are acquired by a U.S. entity, and to undergo stringent due diligence inquiries in the context of any proposed M&A activity.

Facilitation

Facilitation of a prohibited export transaction by a company owned or controlled by a U.S. person (such as the Company) violates OFAC sanctions. Facilitation is a broad concept and can include numerous activities. Examples include referring a prohibited transaction to a foreign subsidiary, legal planning, decision making, designing, ordering or transporting goods, providing financing or insurance and other activities.

Given the potential for liability, the Company will not alter its operating policies or procedures (including the procedures of affiliates) to permit a foreign affiliate to enter into a transaction that would be prohibited if performed directly by the Company or from the United States. The Company also will not refer to a foreign person any purchase orders, requests for bids or other business opportunities to which the Company could not directly respond.

4. Penalties

U.S. companies can be held liable for its or any of its foreign subsidiary's violation of U.S. sanctions. In addition, these are strict liability offenses, meaning that it does not matter if the violation was accidental or unintentional. A violation of these Iranian regulations may lead to administrative and financial penalties to the Company, e.g., a revocation of export privileges, in addition to millions of dollars in penalties as well as penalties to the individual, e.g., monetary fines, potential imprisonment, and loss of employment. Non-compliance with this policy or applicable laws and regulations may result in disciplinary actions, including termination.

Additionally, U.S. sanctions violations can have other negative implications on a foreign company's business beyond mere payment of fines, including triggering red flags during due diligence by prospective partners, investors, acquirors, and financiers, putting companies in breach of contractual obligations to their banks, and create a disadvantage or disqualification in bidding for contracts.

5. Contact

In summary, U.S. economic sanctions against Iran present significant risks for foreign companies, including non-U.S. based subsidiaries of U.S. companies. As a result, as OFAC recently reiterated that the U.S. government strongly encourages organizations subject to U.S. jurisdiction, ***as well as foreign entities that conduct business in or with the United States, U.S. persons, or using U.S.-origin goods or services***, to employ a risk-based approach to sanctions compliance, and to mitigate their sanctions risk exposure by developing, implementing, and routinely updating a robust sanctions compliance program.

Any questions, issues, or suspicions about the legality of any potential transactions by the Company's foreign subsidiaries must be immediately directed to the Legal Department before any action is taken. The Legal Department will direct you to available resources to guide you through the applicable laws/regulations, which may include consultation with outside counsel.