

Client Alert

January 19, 2016

Navigating Iran Sanctions after JCPOA's Implementation Day

The announcement by the International Atomic Energy Agency on January 16, 2016, that the Government of Iran has satisfied its commitments under the Joint Comprehensive Plan of Action ("JCPOA"), has triggered "Implementation Day" and the lifting of Iran sanctions as detailed in the JCPOA. This extraordinary event offers tremendous opportunities for Iran to reengage with the global economy and for non-U.S. companies to engage in business with Iran. In sum, as of Implementation Day:

- The European Union ("EU") has lifted the substance of its economic and financial sanctions imposed in relation to the Iranian nuclear program and only a limited number of restrictive measures, including the listing of certain individuals and entities, will remain in effect under the EU Iran sanctions regime.
- The U.S. Government has lifted "secondary" Iran sanctions, that is, U.S. sanctions applicable to non-U.S. persons engaging in Iranian transactions even when there is no U.S. nexus to the transaction. U.S. primary Iran sanctions applicable to U.S. persons (*i.e.*, U.S. companies, U.S. citizens, and permanent resident aliens wherever located) will remain in effect, as will the prohibition on the use of the U.S. financial system, including overseas branches of U.S. banks, to effect Iran-related transactions. Under a General License, foreign subsidiaries of U.S. companies will be permitted to engage in certain business activities with Iran so long as there is no U.S. person involvement and no use of the U.S. financial system.

Given this legal framework, as outlined in our previous communications regarding the JCPOA¹, certain sanctions risks will remain even after Implementation Day and, as a result, non-U.S. companies should continue to conduct due diligence checks prior to (re)entering into business activities with Iran.

The lifting of EU sanctions (as described in more detail below) will have an immediate and broad impact on the business opportunities for trade between EU companies and Iran, because the U.S. sanctions relief is primarily focused on lifting "secondary" Iran sanctions. These secondary sanctions were implemented beginning in 2010 in an attempt to deter non-U.S. persons from trading with Iran and dramatically raise the cost to Iran of continuing with its nuclear weapons development plan. Most of these sanctions will be terminated, and the United States will also remove from the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") list of Specially Designated Nationals and Blocked Persons ("SDNs") certain specifically identified Iranian entities and persons.

However, certain U.S. secondary sanctions will remain in place with respect to activities that materially contribute to the ability of Iran to develop weapons of mass destruction and support acts of terrorism, as will the prohibition on the use of the U.S. financial system, including overseas branches of U.S. banks, to effect Iran-related transactions. Furthermore, the prohibition on exporting and reexporting from a third country to Iran, directly or

¹ Morrison & Foerster LLP Client Alert. "[Iran Sanctions: Change is Coming, But Risks and Uncertainties Remain](#)" (August 6, 2015).

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indirectly, any U.S. origin good (or goods containing U.S. origin components valued at 10%), technology, or services that have been exported from the United States will remain in effect.

OFAC has issued extensive formal guidance clarifying U.S. sanctions relief under the JCPOA and related implementation actions, including amending the SDN list to remove the entities covered by the JCPOA. The Council of the EU has also published a detailed guidance paper outlining the scope of the EU sanctions relief in compliance with the JCPOA as well as the EU sanctions not affected by the JCPOA, which will remain in effect and need to be considered when engaging in business with Iran. The supportive tone of the Government of the United Kingdom (UK) towards the EU guidance has been reiterated in the UK guidance published by the Foreign and Commonwealth Office in the form of frequently asked questions.

EXTENT OF U.S. SANCTIONS RELIEF

Under its JCPOA commitments, the U.S. Government has lifted various secondary sanctions, including those summarized below and services associated with the JCPOA-covered activities. As a result of these measures, the sanctions noted no longer apply to non-U.S. persons. However, it is important to emphasize that this sanctions relief does not apply to, and the United States will continue to enforce, sanctions against non-U.S. persons under other U.S. sanctions authorities, including those used to address Iran's support for terrorism, support for persons involved in human rights abuses in Syria or for the Government of Syria, and/or support for persons threatening the peace, security, or stability of Yemen, human rights abuses, and ballistic missile programs.

As of Implementation Day, the U.S. government has lifted:

Financial and Banking Measures: Sanctions on transactions with certain financial institutions and individuals and entities identified as SDNs, including: the Central Bank of Iran ("CBI") and other specified Iranian financial institutions; the National Iranian Oil Company ("NIOC"); Naftiran Intertrade Company ("NICO"); National Iranian Tanker Company ("NITC"); and other specified individuals and entities. Also lifted are sanctions with respect to transactions involving Iranian Rials, bilateral trade restrictions on Iranian funds held abroad (including limitations on transfer), sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt (including government bonds), and sanctions on providing financial clearing services to the CBI and certain identified Iranian financial institutions.

Insurance Measures: Sanctions on the provision of underwriting services, insurance, or reinsurance in connection with activities consistent with the JCPOA.

Energy and Petrochemicals: Sanctions intended to reduce Iran's crude oil sales, including limitations on the quantities sold and the nations permitted to purchase Iranian crude oil, and sanctions on investment, including participation in joint ventures, goods, services, information, technology, and technical expertise and support for Iran's oil, gas, and petrochemical sectors. Also lifted are sanctions on transactions involving Iranian petroleum, petrochemical products, and natural gas and Iran's energy sector, including sanctions on transactions with NIOC, NICO, and NITC.

Shipping, Shipbuilding, and Port Sectors: Sanctions on transactions with Iran's shipping and shipbuilding sectors and port operators including Islamic Republic of Iran Shipping Lines, South Shipping

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Line, and NITC, along with the port operators of Bandar Abbas. This covers non-U.S. persons that: own, operate, control, or insure a vessel used to transport crude oil, petroleum products (including refined petroleum products), petrochemical products, or natural gas (including liquefied natural gas) to or from Iran; operate a port in Iran; or engage in activities with, or provide financial services and other goods and services used in connection with, the shipping and shipbuilding sectors of Iran or a port operator in Iran, including port services, such as bunkering and inspection, classification, and financing.

Gold and Other Precious Metals: Sanctions on Iran's trade in gold and other precious metals, including related services such as financial transactions and security, insurance, and transportation activities.

Software and Metals: Sanctions on trade with Iran in graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes in connection with activities consistent with the JCPOA, including trade with identified SDNs.

Automotive Sector: Sanctions on the sale, supply, or transfer of goods and services used in connection with Iran's automotive sector.

SANCTIONS RELIEF FOR U.S. PERSONS

The JCPOA also commits the U.S. government to license certain Iran-related activities of U.S. persons. Consistent with this commitment, on January 16, 2016, OFAC issued General License H permitting non-U.S. entities owned or controlled by U.S. persons to engage in certain Iran-related transactions and a Statement of Licensing Policy for commercial passenger aircraft.

General License H: The Iran Threat Reduction and Syria Human Rights Act of 2012 included a provision prohibiting an entity owned or controlled by a U.S. person from engaging in transactions, directly or indirectly, with Iran and any person subject to the jurisdiction of the Government of Iran that would be prohibited if undertaken by a U.S. person. General License H now expressly authorizes such transactions and also permits U.S. persons to establish operating procedures to implement the activities covered by this General License.

In addition, General License H also authorizes a U.S. person to make available to its owned or controlled non-U.S. entities that may be engaged in Iran-related transactions any "automated" and "globally integrated" computer, accounting, email, telecommunications, or other business support system, platform, database, application, or server necessary to store, collect, transmit, generate, or otherwise process documents or information related to the Iran transactions of the non-U.S. owned or controlled entity. It is important to note that the reference to "automated" systems means systems that operate passively and without human intervention to facilitate the flow of data between and among the U.S. person and its owned or controlled non-U.S. entities. Also, "globally integrated" is defined to cover business support systems that are available to, and in general use by, the U.S. person's global organization. However, this authorization does not extend to cover any systems used to transfer funds through the U.S. financial system.

Commercial Passenger Aircraft: OFAC will license, on a case-by-case basis, U.S. persons and, where there is a U.S. jurisdictional nexus, non-U.S. persons to export, re-export, sell, lease, or transfer to Iran commercial passenger aircraft, spare parts, and components for exclusively civil aviation end-use and to provide associated

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services, including warranty, maintenance, and repair services and safety-related inspections, for all the foregoing activities, provided that licensed items and services are used exclusively for commercial passenger aviation. Such licenses will include conditions to ensure that licensed activities do not involve, and no licensed aircraft, goods, or services are re-sold or re-transferred to, any person on the SDN List or other sanctioned parties (such as individuals and entities listed on the Department of Commerce's Denied Persons List).

CONTINUATION OF U.S. PRIMARY SANCTIONS AND TARGETED SANCTIONS ON NON-U.S. PERSONS

It is important to note that, except as provided for under the JCPOA and the express OFAC Guidance on the JCPOA implementation, the "primary" sanctions—those sanctions that apply directly to U.S. persons—will remain in full force and effect. These sanctions generally prohibit U.S. persons from engaging in or facilitating (defined very broadly by OFAC) any transaction in which Iran or an Iranian SDN has an interest. For example, if a European subsidiary of a U.S. person is to engage in an Iran transaction as authorized by General License H, the U.S. parent company cannot be involved in that transaction (except to the limited extent provided for under General License H), nor can any U.S. citizen/permanent resident working at the European subsidiary. Similarly, no U.S. origin goods (or goods containing U.S. origin components valued at 10%), technology, or services may directly or indirectly be exported or reexported to Iran by a non-U.S. subsidiary of a U.S. persons or any other non-U.S. person.

As mentioned, the U.S. Government has maintained in place sanctions directly applicable to non-U.S. persons with respect to activities that materially contribute to the ability of Iran to develop weapons of mass destruction and support acts of terrorism. In fact, on January 17, 2016, the day after Implementation Day, OFAC added to the SDN list Iranian and other persons and entities under the Iran ballistic missile proliferation sanctions. It is quite clear that the U.S. government will continue to actively enforce such sanctions.

EXTENT OF EU SANCTIONS RELIEF

The EU sanctions relief, effective January 16, 2016, removes a broad range of restrictive measures and permits in particular the following activities to be carried out with Iran:

Financial, Banking and Insurance Measures: Financial transfers to and from Iran are permitted and do not need prior authorization, to the extent that the Iranian persons, entities or bodies involved are not listed on the remaining EU lists of designated persons, entities, or bodies. It is important to note that certain Iranian banks and financial institutions will continue to be listed under the EU sanctions regime against Iran. It is also permitted to provide insurance and reinsurance services for non-listed Iranian persons, entities, or bodies.

Oil, Gas and Petrochemical Sectors: It is permissible to import, purchase, swap and transport crude oil and petroleum products, gas, and petrochemical products from Iran, and to export equipment or technology to be used in Iran for business activities in this industry.

Software: Trade with software and related services are permitted, but remain subject to a licensing requirement if the software is designed for use in nuclear or military industries. Authorization may be obtained from the competent EU Member State authorities.

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Other Activities Affected by the EU Sanctions Relief: The broad range of released activities also concerns the shipping, shipbuilding and transport sectors, as well as the trade with gold and other precious metals, banknotes and coinage. With regard to metals, however, the trade with graphite and raw or semi-finished metals to any Iranian person, entity, or body remains subject to an authorization requirement.

De-Listing of Persons, Entities and Bodies: A certain number of persons, entities and bodies will be de-listed from the applicable EU sanctions lists and their assets will be unfrozen. EU persons will therefore also be permitted to make funds and economic resources available to these de-listed natural or legal persons, as well as to entities under their control.

CONTINUATION OF CERTAIN EU SANCTIONS

Although the substance of the EU economic and financial sanctions against Iran are lifted, certain restrictive measures continue to apply and a limited number of natural or legal persons will remain listed under the EU sanctions regime against Iran.

In particular, the EU arms embargo and restrictive measures related to missile technology and on specific nuclear-related transfers and activities continue to apply, resulting in a set of prohibited activities and certain authorization requirements. Some of these restrictions, such as the arms embargo, will only be lifted following Transition Day as defined by the JCPOA (i.e., October 18, 2023).

Further, restrictive measures imposed by the EU in connection with human rights violations, support of terrorism or for other reasons will continue to have effect. This includes an asset freeze and visa ban on a number of individuals and entities listed under any of the remaining EU sanctions regimes. Finally, as a matter of course, EU companies engaging in business with Iran also have to comply with the general EU and EU Member States' export control regimes in addition to the limited number of specific export restrictions under the remaining EU sanctions regime against Iran.

"SNAP-BACK" RISK AND POLICY CHANGES

While the implementation of sanctions relief promises to create tremendous potential for Iran trade and investments, the JCPOA does contain a "snap-back" provision that permits the U.S. and EU to reimpose sanctions if Iran does not continue to honor its JCPOA commitments. The applicable EU sanctions regime and EU Council guidance paper, however, clarify that any reintroduction of EU sanctions will not apply with retroactive effect. The United States has also made a similar commitment not to retroactively impose sanctions for legitimate Iran transactions undertaken after Implementation Day. Companies will have a certain period of time to discontinue their activities in Iran in case of an EU sanctions "snap-back." In addition, it is important to note that many of the U.S. sanctions relief provisions are being implemented by Presidential Executive Orders. A new U.S. President may have a different policy view of the JCPOA and seek to revise or limit certain of the JCPOA provisions. As a result, companies engaging in Iranian business activities should be mindful to structure their agreements with Iranian entities to permit an appropriate exit should sanctions be reimposed.

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