

# Client Update

## Implementation Day— Iran Sanctions Relief Now Effective

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On January 16, the International Atomic Energy Agency announced<sup>1</sup> that Iran had completed the necessary preparatory steps to mark “Implementation Day” under the Joint Comprehensive Plan of Action (“JCPOA”).<sup>2</sup> As a consequence, U.S. Secretary of State John Kerry<sup>3</sup> and EU High Representative Federica Mogherini,<sup>4</sup> confirmed that U.S. and EU sanctions relief under the JCPOA was now in effect.

The new sanctions relief covers:

- Lifting the majority of EU trade and finance-related restrictive measures;
- Ceasing application of most U.S. “secondary” sanctions;
- Authorizing non-U.S. persons owned or controlled by U.S. persons to engage in most Iran-related transactions;
- Removing many Iranian entities from the EU asset freeze list and U.S. sanctions list; and
- Authorizing U.S. persons to engage in civilian aircraft sales and support and import of Iranian-origin carpets and foodstuffs.

<sup>1</sup> IAEA Director General’s Statement on Iran (Jan. 16, 2016), <https://www.iaea.org/newscenter/news/iaea-director-general%E2%80%99s-statement-iran>.

<sup>2</sup> For additional background on the JCPOA, please see our prior Client Updates on Debevoise & Plimpton’s Sanctions Resource, <http://www.debevoise.com/thesanctionsresource>.

<sup>3</sup> Secretary of State’s Confirmation of IAEA Verification (Jan. 16, 2016), <http://www.state.gov/e/eb/rls/othr/2016/251284.htm>.

<sup>4</sup> Joint statement by EU High Representative Federica Mogherini and Iranian Foreign Minister Javad Zarif (Jan. 16, 2016), [http://eeas.europa.eu/statements-eeas/2016/160115\\_01\\_en.htm](http://eeas.europa.eu/statements-eeas/2016/160115_01_en.htm).

This relief gives effect to the specific commitments already outlined in the JCPOA, and the details of the sanctions relief are largely as expected. In one respect, however, the new authorization for non-U.S. entities owned or controlled by U.S. persons arguably is broader than anticipated and permits a wider range of Iran-related activities, including certain actions by U.S. persons, than may have been expected.

We first detail the U.S. sanctions relief. Then we review the EU's actions.

### U.S. SANCTIONS RELIEF

The United States took a number of different actions to implement its commitments under the JCPOA, as discussed below. The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") has issued detailed guidance as well as a set of frequently asked questions and answers about these changes.<sup>5</sup>

At the outset, it is worth emphasizing that the changes to U.S. sanctions apply principally to the Iran-related "secondary sanctions," which, as discussed further below, affect transactions by non-U.S. companies that occur outside the United States. Other than in the limited contexts discussed below, primary U.S. sanctions—which generally prohibit persons in the United States and U.S. companies and individuals anywhere in the world from dealing with Iran—remain in effect. In particular, transactions with Iran that involve the U.S. banking system (including "U-turn" transactions) remain strictly prohibited.

#### **Nuclear-Related Secondary Sanctions Suspended**

The United States has suspended "secondary sanctions" imposed due to concerns about Iran's nuclear program, although secondary sanctions against companies dealing with Iranian entities on the Specially Designated Nationals ("SDN") list and certain other secondary sanctions remain in force.

"Secondary sanctions" were rules adopted by the United States to apply sanctions primarily against non-U.S. companies and individuals that engage in significant dealings with Iran (including with respect to its energy, petrochemical, banking and other sectors). Under the U.S. secondary sanctions regime, non-U.S. persons and entities engaging in any of the sanctioned activities with Iran may be subject

<sup>5</sup> Office of Foreign Assets Control, JCPOA Implementation (Jan. 16, 2016), [https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/jcpoa\\_implementation.aspx](https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/jcpoa_implementation.aspx) (web notice including links to relevant documents).

to a number of restrictions imposed by the U.S. government, up to and including being restricted from accessing the U.S. financial and banking system and being prohibited from engaging in business with the United States. Faced with this threat, many non-U.S. companies that otherwise are not required to comply with U.S. sanctions determined to abstain from Iran-related transactions.

As of January 16, 2016, the United States has largely suspended the secondary sanctions imposed on Iran due to its nuclear program. This is a very important change, as it will allow Iran, among other things, to resume crude oil exports to many countries and once again to have access to the global banking system, as long as no U.S. financial institutions are involved. The secondary sanctions that have been suspended include those that relate to transactions by non-U.S. persons with:

- the financial, banking and insurance sectors (including sanctions on transacting with Iranian banks);
- the energy and petrochemical sectors (including sanctions aimed at reducing use of Iranian crude oil);
- the shipping sector;
- the automotive sector;
- metals and industrial exports; and
- certain nuclear transactions.<sup>6</sup>

Companies that supply nuclear materials to Iran's nuclear industry outside the UN-approved procurement channels may be subject to secondary sanctions. In addition, the secondary sanctions on non-U.S. companies that transact with Iranian individuals and entities on the SDN list remain in effect.

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<sup>6</sup> These changes were implemented through the activation of contingent waivers that had previously been issued by the State Department and by the issuance of a new Executive Order by the President. U.S. State Department, JCPOA Contingent Waivers (Oct. 18, 2015), <http://www.state.gov/e/eb/rls/othr/2015/248320.htm>; Executive Order—Revocation of Executive Orders 13574, 13590, 13622, and 13645 with Respect to Iran, Amendment of Executive Order 13628 with Respect to Iran, and Provision of Implementation Authorities for Aspects of Certain Statutory Sanctions (Jan. 16, 2016), <https://www.whitehouse.gov/the-press-office/2016/01/16/executive-order-revocation-of-executive-orders-with-respect-to-iran>.

The SDN list, however, has been purged of most entries related to Iran's nuclear program (see below). Many Iranian entities remain listed for other reasons, such as terrorism, missile technology proliferation or association with the Revolutionary Guard. This is illustrated, for example, by the United States' decision to add a number of Iranian entities to the SDN list for missile-proliferation reasons almost immediately after suspending nuclear-related sanctions. Other non-nuclear related secondary sanctions, principally those imposed on companies that supply certain items for military or police use in Iran, also remain in force.

### **Non-U.S. Entities Owned or Controlled by U.S. Persons Allowed to Transact Business with Iran**

The United States has authorized non-U.S. subsidiaries of U.S. companies to engage in most dealings with Iran, although restrictions on participation by the U.S. parent companies remain.

In 2012, U.S. primary sanctions were extended to non-U.S. entities owned or controlled by a U.S. person, such as foreign subsidiaries of U.S. companies. In the JCPOA, the United States committed to permitting non-U.S. entities owned or controlled by a U.S. person to engage in activities with Iran consistent with the JCPOA. Implementing this commitment, OFAC has issued Iran General License H,<sup>7</sup> effective January 16, 2016, which authorizes U.S.-owned or U.S.-controlled foreign entities to engage in most transactions that would otherwise have been prohibited.

Certain restrictions remain. Most significantly, the non-U.S. subsidiaries may not export, sell or supply any U.S.-origin goods, services or technology to Iran, nor may they engage in Iran-related transactions that involve the use of U.S. depository institutions or U.S.-registered broker-dealers to transfer funds. They also may not engage in transactions with the Iranian military or police or with Iranian entities on the SDN list, nor may they provide supplies to the Iranian nuclear industry outside the UN-approved channels.

Significantly, General License H also permits U.S. persons to engage in certain limited categories of activities with regard to non-U.S. subsidiaries that otherwise likely would be prohibited as "facilitation" under the U.S. sanctions laws. These activities include allowing U.S. persons to establish or alter policies

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<sup>7</sup> Office of Foreign Assets Control, Iran General License H (Jan. 16, 2016), [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran\\_glh.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glh.pdf).

to allow their foreign subsidiaries to do business with Iran, and permitting foreign subsidiaries and affiliates to use a U.S. parent's "automated and globally integrated" support systems such as email or document management systems in support of transactions with Iran. This license allows, in effect, U.S. parent companies to take the necessary steps to re-enable their non-U.S. subsidiaries to do business with Iran.

Apart from these limited authorizations, however, the United States has not lifted the prohibition on facilitation or approval by U.S. persons of transactions that they could not engage in directly. Therefore, non-U.S. subsidiaries and affiliates of U.S. companies, while allowed to conduct the specified transactions with Iran, must act independently of their U.S. parent companies in any Iran-related activities they choose to undertake. U.S. persons employed by or on the boards of directors of non-U.S. companies must continue to take care not to approve or facilitate transactions involving Iran.

### **Continued Application of Disclosure Requirements for Securities Issuers**

Section 13(r) of the Securities Exchange Act continues to require issuers with securities trading on U.S. exchanges to disclose certain transactions involving Iran in their annual and quarterly reports filed with the Securities and Exchange Commission ("SEC"), even if the transactions are not material. The disclosure requirement applies to knowing transactions by the issuer or its affiliates with the Government of Iran (defined to include entities owned or controlled by the Government of Iran), unless licensed, or with Iranian SDNs listed for nonproliferation or antiterrorism reasons. It also applies to transactions that fall within the scope of Section 5(a) of the Iran Sanctions Act ("ISA") as amended, which includes many types of transactions related to Iran's energy sector, as well as transactions falling under certain other provisions regarding facilitation of proliferation of weapons of mass destruction and human rights abuses.

Transactions related to the Iranian energy sector that fall within the scope of Section 5(a) of the ISA must continue to be reported by both U.S. and non-U.S. issuers listed on U.S. exchanges. Based on past guidance by the SEC staff, transactions by foreign subsidiaries of U.S. companies with the Government of Iran, if authorized by General License H (and as long as they are not transactions related to Iran's energy sector within the scope of Section 5(a) of the ISA), will not need to be disclosed under Section 13(r) because they have been licensed by OFAC. At this time, it appears that disclosure requirements with respect to issuers or affiliates of issuers not owned or controlled by U.S. persons would not be similarly exempted from reporting, because their transactions with the Government of Iran are not within the scope of General License H. The

reduction in the number of entities on the SDN list for nonproliferation reasons means that transactions with the delisted entities will no longer need to be reported under Section 13(r), if they are not energy-sector-related transactions within ISA Section 5(a) and are not sanctionable as involving facilitation of weapons proliferation or human rights abuses.

### **Nuclear-Related Designees Removed from U.S. Sanctions Lists, But Some Assets Remain Blocked**

The United States removed over 400 individuals and entities specified in the JCPOA from the SDN, Foreign Sanctions Evaders and the Iran Sanctions Act Lists. Those delisted include, among many others:

- The Central Bank of Iran and certain government departments, including the Ministry of Energy and the Ministry of Petroleum;
- Most Iranian financial institutions;
- Many shipping and trading companies;
- Numerous aircraft and vessels; and
- Many major Iranian energy companies and their foreign affiliates, including the Islamic Republic of Iran Shipping Lines (“IRISL”), National Iranian Oil Company (“NIOC”), Naftiran Intertrade Company (“NICO”) and National Iranian Tanker Company (“NITC”).

This de-listing of these 400 individuals and entities has different implications for U.S. and non-U.S. persons. Non-U.S. persons may deal with any of these individuals and entities without triggering secondary sanctions implications.

U.S. persons, however, may still be restricted from dealings with many of the delisted parties because they are owned or controlled by the Government of Iran (“GOI”) or are Iranian financial institutions. U.S. persons continue to be restricted in engaging in transactions with such entities and must continue to block any property of such entities. To help U.S. persons meet their continuing compliance obligations, OFAC will maintain a new list of entities (the Executive

Order 13599 List) that the U.S. government has identified as falling within the definition of the GOI or an Iranian financial institution.<sup>8</sup>

### Authorization for Limited U.S. Imports and Exports

Under the JCPOA, the United States agreed to permit exports from the United States to Iran of aircraft for commercial passenger service and related parts and services. However, there is no general license for such exports; specific licenses will have to be obtained from OFAC on a case-by-case basis. OFAC has issued a new Statement of Licensing Policy explaining the procedure for seeking such licenses.<sup>9</sup> The existing general license for exports of U.S.-origin food and medicine to Iran also remains in place.

OFAC will be issuing a general license authorizing the importation into the United States of Iranian-origin carpets and foodstuffs, including pistachios and caviar.<sup>10</sup> This restores an exemption from the U.S. embargo of Iran that existed prior to the ratcheting up of sanctions in response to Iran's nuclear program.

### EU SANCTIONS RELIEF

The majority of the civilian trade and finance-related restrictions of Council Regulation (EU) 267/2012 (as amended, "Regulation 267"), containing the EU's nuclear-related Iran sanctions program, are now terminated. As we have previously covered, these include:

- Oil and gas industry and naval equipment: Selling, supplying, transferring or exporting certain technology for the Iranian oil and gas industry or certain naval equipment, and providing associated financial and technical assistance;

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<sup>8</sup> Office of Foreign Assets Control, List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599 (Jan. 16, 2016), <https://www.treasury.gov/ofac/downloads/13599/13599list.pdf>.

<sup>9</sup> Statement of Licensing Policy for Activities Related to the Export or Re-Export to Iran of Commercial Passenger Aircraft and Related Parts and Services (Jan. 16, 2016), [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/lic\\_pol\\_statement\\_aircraft\\_jcpoa.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/lic_pol_statement_aircraft_jcpoa.pdf).

<sup>10</sup> The general license, to be codified as 31 C.F.R. § 560.534, will take effect only when it is published in the Federal Register. OFAC has said this publication will occur "as soon as practicable." The text of the pending general license can be found at [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/gj\\_statement\\_jcpoa.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/gj_statement_jcpoa.pdf).

- Iranian oil, petroleum products, petrochemical products and natural gas: Importing, purchasing or transporting Iranian oil, petroleum products, petrochemical products and natural gas (and, in the case of natural gas, entering into related swaps) and providing associated financial services, including insurance and reinsurance;
- Gold, precious metals and diamonds: Selling, supplying, transferring or exporting to, or purchasing from, the GOI and associated persons certain gold, precious metal and diamond products, and providing associated financial services;
- Nuclear-industry-related materials: Selling, supplying, transferring or exporting certain nuclear industry-related materials, such as graphite, and providing associated financial and technical assistance, but only to the extent that such activities are consistent with the JCPOA;
- Military goods: Trading in military goods, but only to the extent that such activities are consistent with the JCPOA;
- Iranian currency: Selling, supplying, transferring or exporting newly printed Iranian currency for the benefit of the Central Bank of Iran;
- Oil and gas project and petrochemical industry investment: Financing, investing in or entering into joint ventures with Iranian persons in relation to oil and gas industry projects or the petrochemical industry;
- Fund transfer restrictions: Transferring funds to or from Iran;
- Banking services: EU financial institutions opening bank accounts or establishing correspondent banking relationships with Iranian financial institutions, or establishing representative offices or entering joint ventures in Iran;
- Insurance services: Providing insurance for Iranian legal persons;
- Public bonds: Purchasing or selling public or public-guaranteed bonds to the GOI, Iranian companies or Iranian financial institutions, and providing certain associated assistance relating to such bonds;
- Shipping services: Providing bunkering, ship supply services and other services relating to vessels controlled by Iranian persons in certain circumstances, or providing a wide range of services for oil tankers and cargo

vessels which are Iranian flagged or owned, chartered or operated by Iranian persons; and

- Oil transport and storage vessels: Making available vessels to Iranian persons for the transport or storage of Iranian oil and petrochemical products.

Additionally, numerous Iranian individuals, companies and government entities have been removed from the EU asset freeze list, including many of the major Iranian state-owned oil and gas companies such as NIOC, as well as many Iranian banks and shipping companies.

### NEXT STEPS

Eight years from Adoption Day (October 18, 2015) or, if sooner, when the IAEA reports that all nuclear material in Iran remains in peaceful activities, additional sanctions relief will go into effect. The United States will terminate, or modify to terminate, the secondary sanctions that it suspended on January 16, 2016 and will remove additional persons from the U.S. sanctions lists. The EU will lift its remaining restrictions, which relate primarily to military and nuclear-industry-related activities.

### CONSEQUENCES FOR BUSINESS

The principal sanctions relief contemplated by the JCPOA is now in effect. For most non-U.S. companies, Iran is now open for business. However, important restrictions remain, including:

- U.S.-owned or -controlled entities must ensure sufficient independence in their Iran-related activities to ensure that their U.S. parent companies and affiliates do not engage in prohibited approval or facilitation of Iran-related transactions.
- The primary U.S. embargo on Iran continues in full force and prevents U.S. persons, including U.S. financial institutions, from directly or indirectly engaging in or supporting any business involving Iran. This means that all Iran-related business must continue to be screened from the U.S. financial system.
- Other concerns may arise from the U.S. secondary sanctions that remain in force, such as dealing with an Iranian person that remains, or is later placed, on the SDN list. Understanding Iranian partners will remain an important diligence step as companies consider the newly opened markets.

- Companies in countries other than the United States and EU member countries that have maintained sanctions on Iran will need to confirm that their countries' sanctions have been lifted before proceeding to do business with Iran.
- Mechanisms exist in the JCPOA for the “snap-back” of sanctions in the case of certain future events. Companies may need to be mindful of this risk.

We at Debevoise, in both our U.S. and European offices, are available to assist companies that have questions about sanctions compliance as they seek to explore new opportunities in Iran.

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