

Memorandum

Is Iran Open for Business? Most “Secondary Sanctions” Lifted but the Situation Remains Largely Unchanged for U.S. Persons

January 19, 2016

Overview

In a move that opens the door for non-U.S. companies to engage in transactions with or in Iran, on January 16, 2016, the U.S. scaled back economic sanctions against Iran. As a result:

1. Non-U.S. persons, including non-U.S. entities, may now, with limited exceptions discussed below, do business with or in Iran without risk of sanction.
2. Foreign subsidiaries of a U.S. parent company are also allowed, with some exceptions, to do business in or with Iran without violating economic sanctions.
3. However, U.S. persons remain largely prohibited from doing business in or with Iran because the bulk of the U.S. trade embargo of Iran remains in place for U.S. persons.

The E.U. and U.N. also significantly pared back their Iranian sanctions regimes. Combined, these changes allow non-U.S. persons to engage in most dealings with Iran without implicating U.S., E.U. or U.N. sanctions. Nevertheless, U.S. persons largely remain barred from transacting in or with Iran.

Implementation Day

On January 16, the International Atomic Energy Agency (“IAEA”) certified that Iran had achieved key milestones regarding its nuclear program as set forth under the Joint Comprehensive Plan of Action (“JCPOA”) entered into between the P5+1 (the United States, China, France, Russia, the United Kingdom and Germany), the E.U. and Iran in July of 2015. The verification by the IAEA gave rise to “Implementation Day,” which automatically triggered relaxation of certain sanctions against Iran by the U.S., E.U. and U.N.

Lifting of U.S. Secondary Sanctions Targeting Iran

The relaxation of U.S. economic sanctions against Iran is, with a few exceptions, limited to non-U.S. persons. Before this change, non-U.S. persons that did business in or with Iran risked being targeted by so-called “secondary sanctions,” which could be applied by the U.S. Government to any person or entity, even if there was no U.S. nexus. Imposition of secondary sanctions could previously have barred non-U.S. persons from doing business in or with the U.S., or resulted in additional sanctions. Now, most secondary sanctions that previously applied to non-U.S. persons have been lifted. This means that non-U.S. persons can do business with Iran without risk of sanction, apart from the restrictions set forth below.

Certain secondary sanctions remain. Non-U.S. persons still risk secondary sanctions if they engage in dealings with Iranian or Iranian-related persons or entities on the sanctions lists maintained by U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”), including the lists of Specially Designated Nationals or Blocked Persons (“SDNs”). This means that the U.S. Government can still impose sanctions on a non-U.S. person that engages in dealings with an Iranian SDN, even if that non-U.S. person has no nexus to the U.S. (no U.S. affiliates, no U.S. employees, no dealings in U.S. goods or services, etc.).

To mitigate against this risk, all businesses should continue to screen transactions against OFAC-maintained lists. New SDNs may be added to the lists at any time, as occurred the day following Implementation Day when eleven new SDNs were added for helping to supply Iran’s ballistic missile program. Dealing with Iran-related SDNs still presents risks for non-U.S. persons.

Non-U.S. Subsidiaries or Affiliates of U.S. Persons May Now Do Business with Iran

The biggest change for U.S. persons is the issuance of General License H by OFAC. General License H authorizes entities that are owned or controlled by U.S. persons or entities, but established or maintained outside of the United States, to do business with Iran, subject to some restrictions discussed further below. General License H also contains specific authorizations that remove practical impediments that would otherwise exist for non-U.S. subsidiaries planning to do business with Iran. Previously, U.S. persons risked being sanctioned for altering policies and procedures of non-U.S. subsidiaries to make it possible for the non-U.S. business to engage in Iran. U.S. persons also risked sanctions if their global corporate technology systems were used in connection with dealings in or with Iran. General License H now specifically allows for these actions by U.S. persons. U.S. persons cannot participate in or assist or facilitate dealings by subsidiaries and affiliates with Iran.

Despite the breadth of General License H, some restrictions remain in place for U.S.-owned or -controlled businesses. In dealing with Iran or its citizens, non-U.S. entities owned or controlled by U.S. entities still may not, among other things, export or re-export U.S. goods, services or technology to Iran; transfer funds to,

from or through a U.S. depository institution or securities broker or dealer; or transact with those on OFAC's lists of SDNs or FSEs.

Little Changes for U.S. Persons and Entities

For U.S. persons, much remains the same. The broad embargo prohibiting U.S. persons from trading with Iran remains in place. Implementation Day brought two limited benefits to U.S. persons. *First*, OFAC issued general licenses that authorize the importation of Iranian-origin carpets and certain foodstuffs (such as caviar and pistachios) into the U.S. *Second*, OFAC issued a statement of favorable licensing policy pursuant to which OFAC will generally authorize transactions for the sale of commercial passenger aircraft and related parts and services to Iran. Transactions ordinarily incident to these and other licensed transactions are also allowable, including incident financial transactions. Notably, reporting obligations of issuers under Section 13(r) of the Exchange Act remain unchanged, and US issuers must still publicly disclose a broad range of Iran-related dealings if engaged in by a US issuer or any of its affiliates.

Lifting of E.U. and U.N. Sanctions

E.U. and U.N. sanctions targeting Iran were largely lifted for many sectors of the economy, including finance, banking, shipping, energy and insurance. Most business activities with Iran are allowed to resume with relatively little restriction by E.U. or U.N. sanctions. However, certain proliferation-related E.U. sanctions remain in place, as do certain E.U. restrictive measures related to the human rights situation in Iran and support for terrorism.

Caveat

The JCPOA contains “snap-backs” which could cause the automatic re-imposition of sanctions if Iran fails to continue to meet its obligations under the JCPOA. The U.S. has advised that a snap-back may occur at any time should a dispute arise under the JCPOA, and that such a snap-back would not include exceptions for pre-existing contracts. For U.S. persons and entities, the situation is likely to remain the same until “Transition Day,” which may not come until 2023.

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