

Top 10 Things to Know About the Implementation of the Iran Nuclear Agreement

The EU and UN terminate most of their sanctions on Iran, while the US implements more limited changes to its longstanding embargo.

On January 16, 2016, the International Atomic Energy Agency ([IAEA](#)) verified that Iran had satisfied its nuclear-related commitments under the [Joint Comprehensive Plan of Action](#) (JCPOA). The report from the IAEA was the last step needed to reach “Implementation Day” under the JCPOA, and it cleared the way for an immediate easing of nuclear-related sanctions on Iran by the United Nations, the European Union, and the United States.

As forecast in our previous *Client Alerts* on [July 16, 2015](#) and [October 29, 2015](#), Implementation Day triggered the lifting of most EU and UN sanctions against Iran, but the core of US sanctions against Iran remain in place and will continue to pose significant legal restrictions and compliance challenges for US persons and firms and, in some cases, even non-US businesses. This client alert summarizes 10 key points concerning the impact of this historic development on global business and finance.

1. What is the difference between the “*primary*” US sanctions that largely remain in place and the “*secondary*” US sanctions that have been suspended or eliminated?

The distinction between so-called “primary” and “secondary” US sanctions is critical to understanding the impact of the US sanctions relief.

- Primary US sanctions are administered and enforced by the US Treasury Department’s Office of Foreign Assets Control ([OFAC](#)). These broad and longstanding prohibitions apply to (1) the activities of US persons, (2) non-US persons who cause US persons to violate the sanctions, and (3) transfers of US-regulated goods and technology to Iran. The term “US person” includes (a) entities organized under US law and their foreign branches, (b) US nationals and US lawful permanent residents (wherever located) and (c) any person (regardless of nationality) present in the US. The primary sanctions also apply to entities outside the US that are “owned or controlled” by a US person (e.g., foreign subsidiaries of US companies), but, as discussed below, OFAC has released a general license authorizing overseas subsidiaries of US entities to engage in a range of business activities with Iran.
- Secondary sanctions apply to non-US firms and individuals, even those that have no connection to the US. Over the past few years, the US expanded secondary sanctions targeting Iran, in an effort to deter non-US persons and companies from engaging in activities involving certain sectors of the

Iranian economy, including the energy, automotive, financial services, mining, shipbuilding and shipping sectors.

With the limited exceptions outlined below, the US did not ease primary sanctions on Implementation Day. Because the primary sanctions have been imposed primarily for anti-terrorism and human rights reasons, not due to concerns over Iran's nuclear program, these sanctions remain largely outside the scope of the JCPOA.

2. Which US secondary sanctions have been suspended?

As explained in the [guidance document](#) OFAC released on Implementation Day, the US suspended or eliminated some — but not all — secondary sanctions targeting Iran, including restrictions on:

- Certain financial and banking services
- The provision of underwriting services, insurance, or re-insurance and associated services
- Transactions with Iran's energy and petrochemical sectors and associated services
- Transactions with Iran's shipping and shipbuilding sectors as well as port operators and associated services
- Iran's trade in gold and other precious metals and associated services
- Trade with Iran in graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes and associated services
- The sale, supply, or transfer of goods and services used in connection with Iran's automotive sector and associated services

In its [FAQs](#), OFAC clarified that US persons cannot perform "associated services," unless specifically licensed by OFAC. OFAC has defined the term to covers any service — including technical assistance, training, insurance, re-insurance, brokering, transportation or financial service — necessary and ordinarily incident to the underlying activity for which sanctions have been lifted.

3. Which US secondary sanctions remain?

US secondary sanctions continue to apply to non-US persons who knowingly facilitate significant financial transactions with, or provide material or certain other support to: (1) Iranian parties on OFAC's list of [Specially Designated Nationals](#) (SDN List); (2) Iran's Islamic Revolutionary Guard Corps (IRGC) and its designated agents or affiliates; or (3) any other person on the SDN List designated under US executive orders relating to Iran's proliferation of weapons of mass destruction or Iran's support for international terrorism.

On Implementation Day, OFAC removed over 400 parties from the SDN List, the [Foreign Sanctions Evaders List](#) (FSE List), and the [Non-SDN Iran Sanctions Act List](#). Nonetheless, over 200 Iranian parties remain on the SDN List and are identified with the following designators: "Subject to Secondary Sanctions," IRGC or IFSR. SDNs that remain targets of US secondary sanctions include, for example, the IRGC, Quds Force, Ansar Bank, Bank Saderat, Mehr Bank and Mahan Air.

Notably, the US announced on Implementation Day that the US Treasury Department determined the National Iranian Oil Company (NIOC) is no longer an agent or affiliate of the IRGC. This determination permits non-US persons to engage in energy-trading activities with NIOC, as well as with Naftiran Intertrade Company (NICO) and the National Iranian Tanker Company (NITC), without facing risks under US secondary sanctions.

4. Which sanctions has the European Union lifted?

On Implementation Day, Council Regulations (EU) [2015/1861](#) and [1862](#) amended Council Regulation (EU) [267/2012](#) to revoke most EU sanctions against Iran. However, as emphasized in the [EU Information Note](#) published on January 16, 2016, some activities either remain prohibited or require prior authorization by the competent authority of the relevant EU Member State.

The EU has removed most sanctions, including restrictions targeting the Iranian oil, gas and petrochemical industries, the Iranian shipping, shipbuilding and transport sectors, and the provision of financial, banking and insurance services to Iran, along with restrictions related to the supply of gold, precious metals, banknotes and coinage, and certain enterprise resource-planning software. The EU has also lifted restrictions — including the prior notification and authorization requirements — on the transfers of funds between EU and Iranian persons or entities.

Some EU restrictions remain, including those relating to the export of sensitive goods and technology listed in Annexes I and II of Council Regulation (EU) [267/2012](#) (related to nuclear proliferation activities), Annex VIIA (enterprise planning software designed for nuclear or military use), Annex VIIB (graphite and raw or semi-finished metals) and the provision of associated services. These activities are not permitted without prior authorization from the relevant EU Member State. The EU arms embargo also remains in place, and other exports, including the export of goods contained in Annex III (the Missile Technology Control Regime list) and goods that could contribute to the development of nuclear weapon delivery systems, remain prohibited. The Iran human rights sanctions regime, which prohibits the export of equipment that might be used for internal repression or for monitoring telecommunications, also remains in place.

EU persons seeking to do business in Iran also need to recognize that dealings with certain counterparties remain prohibited. Various Iranian persons and entities, including certain Iranian banks, such as Ansar Bank, Bank Saderat Iran and Bank Saderat plc, Mehr Bank, Bank Sepah and Bank Sepah International, continue to be designated under the EU asset freeze sanctions. The EU prohibits making funds or economic resources available, directly or indirectly, to such designated persons.

5. What sanctions relief does JPOA implementation bring for US persons under the primary US sanctions?

With limited exceptions, the core of US primary sanctions remains in place. This means that US persons are generally precluded — absent OFAC authorization — from engaging in most transactions involving Iran or Iranian-origin products.

That said, implementation of the JCPOA introduces several changes to primary sanctions that will allow US persons to pursue certain authorized categories of transactions with Iran:

- ***Commercial Passenger Aircraft and Related Parts and Services.*** As expected, OFAC issued a [Statement of Licensing Policy](#), which paves the way for US persons and non-US persons (where there is a nexus to US jurisdiction, such as a foreign commercial aircraft with 10% or more US-controlled content) to apply for and receive OFAC licensing to export, reexport, sell, lease, or transfer commercial passenger aircraft and related parts and services to Iran. Any of the items licensed by OFAC must be used exclusively for commercial passenger aviation.

OFAC clarifies in its [FAQs](#) that “wide-body, narrow-body, regional, and commuter aircraft used for commercial passenger aviation” are eligible for specific licensing, while the following aircraft are not: “cargo aircraft, state aircraft, unmanned aerial vehicles, military aircraft, and aircraft used for general

aviation or aerial work.” OFAC also confirms that parties that secure OFAC authorization under this new licensing program generally do not require a separate license from the Department of Commerce for the export or reexport of the US-regulated commercial aircraft or aircraft parts or components. OFAC will also consider applications by US financial institutions to finance a specific sale of commercial passenger aircraft to Iran.

How quickly OFAC will process license applications under this new licensing program remains unclear, but history suggests that the approval process may not be speedy. Recently, the Iranian Transport Minister [announced](#) that Iran intends to purchase 114 civilian aircraft from Airbus.

- **Imports of Carpets and Foodstuffs.** Pursuant to a [new general license](#) that will become effective once published in the Federal Register in the coming days, US persons will be permitted to deal in Iranian-origin carpets and foodstuffs, including pistachios and caviar, and to import such Iranian-origin products into the US from Iran or third countries. The general license imposes restrictions on payment arrangements relating to purchases of such goods from Iran or third countries.

Implementation Day does not eliminate or otherwise expand existing OFAC authorizations that permit US parties to export or reexport agricultural commodities (including food), medicine, and medical supplies to Iran under general licenses or to apply for specific OFAC licensing to export or reexport medical devices to Iran.

6. Does OFAC now allow foreign subsidiaries of US companies to engage in non-sensitive trade with Iran?

Under certain circumstances, yes. For US-regulated parties, one of the most significant developments from Implementation Day is new OFAC [General License H](#), which allows non-US entities that are “owned or controlled” by a US person to engage in certain transactions with Iran, provided US persons are not involved in and do not approve or facilitate such transactions. Broadly speaking, this new general license effectively turns back the clock to pre-fall 2012, when the [Iran Threat Reduction and Syria Human Rights Act of 2012](#) (ITRA) effectively extended the primary sanctions to reach the activities of overseas subsidiaries of US companies.

While General License H is effective immediately, it includes several important limitations, and US companies and their foreign affiliates should carefully evaluate if and how foreign affiliates can proceed under the new authorization. Among other activities, General License H does *not* permit the following:

- Exports or reexports of goods, technology, or services from the US or by US persons to Iran that are prohibited under by [Section 560.204](#) of the Iranian Transactions and Sanctions Regulations (ITSR)
- Transfer of funds to, from, or through the US financial system (which would usually include US dollar-denominated trade involving non-US banks)
- Dealings with parties on the SDN List or other US blacklists, such as the FSE List
- Activities involving an item subject to the Export Administration Regulations ([EAR](#)) that are prohibited by or otherwise require a license under the EAR
- Transactions involving any military, paramilitary, intelligence or law enforcement entity of the Government of Iran, or any official, agent or affiliate thereof

In its [FAQs](#), OFAC notes that General License H does not allow US-owned or -controlled entities operating outside the US to: (1) ship any items from the US to Iran “if the items are destined for Iran or the Government of Iran at the time they leave the United States”; (2) ship from a third country to Iran items that have been exported from the US with knowledge or reason to know that the items are intended specifically for Iran, where the items are controlled for export from the US to Iran; or (3) ship from a third country to Iran items containing 10% or more US-controlled content with knowledge or reason to know that the items are intended specifically for Iran. OFAC confirms, however, that US-origin items classified “EAR99” (*i.e.*, not identified on the [Commerce Control List](#)) can be shipped by an overseas subsidiary to Iran, provided there was no knowledge or reason to know at the time of export from the US that the goods were intended specifically for Iran. This essentially turns back the clock to the “general inventory” principles that certain foreign subsidiaries of US companies observed pre-ITRA.

7. Can US persons engage in activities that allow overseas affiliates to proceed under General License H?

Yes, in limited circumstances. General License H permits activities of US persons “related to the establishment or alteration of operating policies and procedures of a United States entity or a U.S.-owned or -controlled foreign entity” to give effect to the general license. This permission is largely in response to concerns voiced to OFAC that any alteration by a US company of its previously-established worldwide policy not to engage in transactions or dealings with Iran might be viewed as a form of impermissible facilitation under ITSR [Section 560.208](#) and [Section 560.417](#).

In its [FAQs](#), OFAC explains that this authorization “is intended to cover the involvement of U.S. person board members, senior management, and employees” as well as US persons “who may be hired as outside legal counsel or consultants to draft, alter, advise, or consult on such operating policies and procedures.” OFAC also states that General License H allows US persons to provide training, advice, and counselling on new or revised operating policies and procedures. Consistent with the ITSR, OFAC states in its [FAQs](#) that General License H does not authorize US persons to get involved “in the ongoing Iran-related operations or decision making of its owned or controlled foreign entity engaging in activities with Iran authorized by [General License] H after these actions are taken.” This includes “approving, financing, facilitating, or guaranteeing any Iran-related transaction by the foreign entity.”

General License H provides an important authorization for US companies to “make available” to their foreign-owned or -controlled subsidiaries “any automated and globally integrated computer, accounting, email, telecommunications, or other business support system, platform, database, application, or server” necessary to process information related to authorized Iran transactions. The general license defines the terms “automated” as systems that operate “passively and without human intervention” (except for routine or emergency maintenance) and “globally integrated” as “available to, and in general use by” the US person and its foreign affiliates. As an example, the OFAC [FAQs](#) provide that it would be lawful for the Dubai-based subsidiary of a US company to use the company’s US-based enterprise resource planning (ERP) system to generate, in an automated fashion, a purchase order relating to activities with Iran consistent with General License H, but it would be impermissible for a US person to perform “data entry or internal processing for the creation of a customer record.”

8. What other Iran-related restrictions are important to keep in mind under US law?

In addition to the continuation of most US primary sanctions, there are other provisions of US law that could pose challenges for non-US persons that seek to engage in business in or with Iran. For instance, the US recently amended its [Visa Waiver Program](#) (VWP) — which allows nationals of 38 countries

(including most of Western Europe, Japan, Australia, New Zealand, Singapore and South Korea) to enter the US visa-free for up to 90 days as a business visitor or tourist — to require a travel visa issued by a US embassy or consulate abroad, if the VWP-eligible foreign traveler has visited Iraq, Iran, Syria or Sudan since March 2011, or if the traveler has dual-nationality with such countries. Although how this new requirement will be implemented and whether it can be waived remain unclear, VWP-eligible foreign travelers should be mindful that visits to Iran could impact their ability to travel quickly to the US in the future.

There is also a continuing risk of new sanctions on Iran for reasons unrelated to its nuclear program. For instance, one day after Implementation Day, [on January 17](#), OFAC [designated 11 parties](#) in Iran, Dubai and Hong Kong for their involvement in procurement activities in support of Iran's ballistic missile program. Those parties are off-limits to US persons, and dealings with such parties by non-US persons can subject them to penalties under US secondary sanctions.

9. What are some important aspects of Implementation Day for financial institutions?

For US financial institutions, Implementation Day provides virtually no relief or new opportunities, except for the ability to seek licensing from OFAC to finance a specific sale of commercial passenger aircraft to Iran. OFAC stresses in its Implementation Day [FAQs](#) that US financial institutions cannot participate in or support transactions by non-US parties that are no longer subject to US secondary sanctions, and that the once-available OFAC general license for so-called “U-turn” transactions that allowed US dollar clearing activities involving Iran is not being reinstated. OFAC has advised that “U.S. financial institutions continue to be prohibited from clearing transactions involving Iran, with the exception of transactions that are exempt or authorized by a general or specific license issued pursuant to the ITSR.”

In light of past aggressive US enforcement of sanctions violations, the extent to which non-US financial institutions are prepared to support transactions with Iran that are no longer targeted by US secondary sanctions remains to be seen. Indeed, in its guidance, OFAC has warned that “[a]fter Implementation Day, foreign financial institutions need to continue to ensure they do not clear US dollar-denominated transactions involving Iran through U.S. financial institutions, given that U.S. persons continue to be prohibited from exporting goods, services, or technology directly or indirectly to Iran, including financial services.”

The Society for Worldwide Interbank Financial Telecommunication (SWIFT), the Belgium-incorporated providers of secure financial messaging services, announced in a [press release on January 17](#) that Iranian banks which are no longer the target of EU sanctions will be automatically reconnected to SWIFT, following the completion of SWIFT's normal connection process. The US confirmed that it would not impose secondary sanctions on non-US persons that provide specialized financial messaging services to, or enable or facilitate direct or indirect access to such services for, the Central Bank of Iran or other banks in Iran, with the exception of those presently on the SDN List (*i.e.*, Ansar Bank, Bank Saderat, Bank Saderat PLC and Mehr Bank).

10. Can US or EU sanctions “snap back” into place?

The US can re-impose or “snap back” part or all of the sanctions relief brought about by the JCPOA if Iran fails to fulfil its obligations under the JCPOA. The JCPOA provides for a dispute resolution process that must be followed before re-imposing previously suspended sanctions, and this process could take up to 30 days (or longer if the parties agreed to an extension).

In its [FAQs](#), OFAC explains that the US would “make every effort to resolve any concerns” through this dispute resolution process, but OFAC is “unable to predict how far in advance notice will be given in the event that sanctions snap back.” OFAC further explained that the JCPOA “does not grandfather contracts signed prior to snapback,” and, therefore, transactions conducted after a snapback “could be sanctionable to the extent they implicate activity for which sanctions have been re-imposed.”

[Council Regulation \(EU\) 2015/1861](#) does not contain specific provisions that enable the EU to “snap back” previous sanctions in the event that Iran fails to comply with its obligations under the JCPOA. However, recital 6 to Council Regulation (EU) 2015/1861 notes that the EU’s commitment to lifting its nuclear-related sanctions in accordance with the JCPOA is without prejudice to its right to reintroduce sanctions in the event of Iran’s “significant non-performance” of its commitments under the JCPOA. The [EU Information Note](#) clarifies that, before sanctions can be re-introduced, all avenues under the dispute resolution mechanism that the JCPOA provides must have been exhausted. In the event that EU sanctions are re-introduced, recital 7 to Council Regulation (EU) 2015/1861 states that the EU would provide “adequate protection for the execution of contracts concluded in accordance with the JCPOA while sanctions relief was in force.” This point is echoed in the Information Note.

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