

Client Alert

International Trade & Litigation Practice Group

January 19, 2016

For more information, contact:

Christine E. Savage
+1 202 626 5541
csavage@kslaw.com

Jeffrey M. Telep
+1 202 626 2390
jtelep@kslaw.com

Iain MacVay
+44 20 7551 2127
imacvay@kslaw.com

Sajid Ahmed
+44 20 7551 2128
sahmed@kslaw.com

Mark T. Wasden
+1 202 626 5529
mwasden@kslaw.com

Jane Y. Cohen
+1 202 661 7842
jcohen@kslaw.com

Shannon Doyle Barna
+1 202 626 5607
sbarna@kslaw.com

Marcus Sohlberg
+41 22 591 0811
msohlberg@kslaw.com

King & Spalding
Geneva
7 Quai du Mont Blanc
CH-1201 Geneva
Switzerland
Tel: +41 22 591 0800
Fax: +41 22 591 0880

London
125 Old Broad Street
London EC2N 1AR
United Kingdom
T: +44 20 7551 7500
F: +44 20 7551 7575

Washington, D.C.
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4707
Tel: +1 202 737 0500
Fax: +1 202 626 3737

www.kslaw.com

Implementation Day Arrives For Iran Agreement

On January 16, 2016, the International Atomic Energy Agency (“IAEA”) announced that Iran has fully implemented its nuclear-related commitments described under the Joint Comprehensive Plan of Action (“JCPOA”) bringing about Implementation Day under the agreement. The JCPOA is an agreement between the EU, the P5+1 countries (China, France, Russia, the United Kingdom, the United States, and Germany) and Iran under which the EU and the P5+1 countries provided Iran sanctions relief in exchange for commitments from Iran to scale back its nuclear program. Implementation Day, the second stage of the JCPOA, obligates the United States and the EU to cease the application of a number of nuclear-related sanctions against Iran.

The main impact of Implementation Day in the United States is to cease the application of certain types of nuclear-related secondary sanctions to non-U.S. persons (*i.e.*, individuals who are not U.S. citizens or permanent residents, companies that are not incorporated in the United States, and persons who are not located in the United States). U.S. companies also will see some limited sanctions relief as a result of Implementation Day, as specific licenses may be issued by the U.S. Government for certain transactions involving commercial passenger aircraft, and the importation into the United States of Iranian carpets and foodstuffs may be authorized under a general license. Non-U.S. companies that are owned or controlled by a U.S. company also will be able to engage in more activities involving Iran under a new general license.

The EU sanctions relief will have broader impact, as many of the nuclear related sanctions were withdrawn entirely on Implementation Day.

Below is a summary of the various actions taken and guidance published by the Office of Foreign Assets Control (“OFAC”) to implement U.S. commitments under the JCPOA, as well as actions taken by the EU.

The Effect of Implementation Day on the U.S. Sanctions

Removal of Entities from Sanctions Lists

OFAC removed a number of individuals and entities from the Specially Designated Nationals and Blocked Persons List (“SDN List”), the Foreign Sanctions Evaders List (“FSE List”) and the Non-SDN Iran Sanctions Act List (“NS-ISA List”), effective immediately. A full list of the parties

removed is available [here](#). Also, the Department of State took separate action on Implementation Day to remove the legal basis for the listing of certain individuals and entities. OFAC will publish a notice of the removal actions in the Federal Register. As a result of the removals, non-U.S. persons are no longer subject to secondary sanctions for engaging in transactions with the individuals and entities removed from the lists. Other sanctions related to correspondent and payable-through accounts for non-U.S. financial institutions will no longer apply to transactions with the removed individuals and entities.

Individuals and entities that have been removed from the SDN List, FSE List, and NS-ISA List, but that still meet the definition of the Government of Iran or an Iranian financial institution, remain blocked pursuant to Executive Order 13599. Executive Order 13599, issued on February 5, 2012, blocks the property of the Government of Iran and Iranian financial institutions. U.S. persons may not engage in transactions with any such individual or entity, even though they no longer appear on the sanctions lists specified above. OFAC has created a new list, known as the **13599 List**, to help U.S. persons identify the persons that have previously been identified by OFAC as the Government of Iran or as an Iranian financial institution and thus remain blocked. OFAC also clarified that the 13599 list is designed to assist U.S. persons in identifying blocked entities, but is not exhaustive. In other words, U.S. persons are required to block persons that are not included on the 13599 List but that are either the Government of Iran or an Iranian financial institution. Non-U.S. persons will not be subject to secondary sanctions for engaging in transactions with persons on the 13599 List, provided that no individuals who remain or are placed on the SDN List are involved, and no proscribed transactions are involved.

Ceasing the Application of Certain U.S. Sanctions on Activities by Non-U.S. Persons

The **Guidance Relating to the Lifting of Certain U.S. Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day** (“Guidance”) issued by OFAC specifies the activities *by non-U.S. persons* that are no longer sanctionable as of Implementation Day:

- Financial transactions between non-U.S. persons and certain entities, including the Central Bank of Iran and other specified financial institutions, the National Iranian Oil Company (“NIOC”), Naftiran Intertrade Company (“NICO”), and the National Iranian Tanker Company (“NITC”). U.S. financial institutions still may not process any payments for transactions related to Iranian oil.
- Financial and banking actions taken by non-U.S. persons, including conducting significant transactions related to the purchase or sale of Iranian rials; providing U.S. banknotes to the Government of Iran; transferring Iranian revenues held abroad; purchasing, subscribing to, or facilitating the issuance of, Iranian sovereign debt; and providing financial messaging services to the Central Bank of Iran and other designated financial institutions. Non-U.S. persons may engage in financial and banking transactions with the Central Bank of Iran without being exposed to sanctions, and non-U.S. financial institutions may open or maintain correspondent accounts for Iranian financial institutions that have been removed from the SDN List or issue credit cards to non-SDN Iranian nationals. Ansar Bank, Bank Saderat, Bank Saderat PLC, and Mehr Bank remain on the SDN List, and thus non-U.S. persons will remain subject to sanctions for providing financial messaging services to these institutions. U.S. dollar-denominated transactions involving Iran may not be cleared through U.S. financial institutions.
- Sanctions on non-U.S. persons for the provision of underwriting services, insurance, or re-insurance in connection with activities permitted under the JCPOA. OFAC will not impose sanctions on a non-U.S. person for payment of an insurance or reinsurance claim arising from an incident that occurred prior to Implementation Day, provided that the underlying activity would not be sanctionable at the time of the payment and the transaction does not involve persons on the SDN List. Non-U.S. persons also may provide underwriting

services, insurance, or reinsurance to NITC or Islamic Republic of Iran Shipping Lines (“IRISL”) vessels or vessels owned by non-U.S. persons when chartered by NITC or IRISL.

- Certain activities by non-U.S. persons in the energy and petrochemical sectors, including investing in Iran’s oil, gas, and petrochemical sectors; purchasing, acquiring, selling, transporting, or marketing petroleum, petrochemical products and natural gas from Iran; exporting, selling, or providing refined petroleum products and petrochemical products to Iran; transactions with certain entities in the energy sector such as NIOC, NICO, and NITC. Non-U.S. persons are no longer subject to sanctions for investing in Iran’s oil, gas, or petrochemical sectors (including through participation in joint ventures), provided that the transactions do not involve prohibited conduct (*i.e.*, conduct that would be prohibited under the designation authorities and secondary sanctions that remain in place after Implementation Day) or persons remaining on the SDN List. U.S. financial institutions still may not process payments related to Iranian oil.
- Transactions by non-U.S. persons with Iran’s shipping and shipbuilding sectors and port operators, including transactions with the IRISL, NITC, South Shipping Line, and the port operators of Bandar Abbas. The relaxation in shipping sanctions does not extend to the prohibitions under Section 211(a) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (“TRA”), which allows the United States to impose sanctions on persons that knowingly sell, lease, or provide a vessel, or provide insurance or reinsurance or any other shipping service for the transportation to or from Iran of goods that could materially contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism. For example, transactions by non-U.S. persons with Tidewater Middle East Co. remain sanctionable because of Tidewater’s association with Iran’s Islamic Revolutionary Guard Corps (“IRCG”).
- Trade by non-U.S. persons in Iran’s gold and other precious metals. “Precious metals” includes silver, gold, base metals or silver clad with gold, not further worked than semi-manufactured, platinum, iridium, osmium, palladium, rhodium, ruthenium, base metals clad with platinum, not further worked than semi-manufactured, and waste and scrap of precious metals or of metal clad with precious metals. Non-U.S. persons are no longer subject to sanctions for buying these metals from or selling them to Iran.
- Trade by non-U.S. persons with Iran in graphite and raw or semi-finished metals, such as aluminum and steel, coal, and software for integrating industrial processes, provided that the trade is in connection with activities consistent with the JCPOA. Transactions involving the following are considered to be inconsistent with the JCPOA: (1) persons on the SDN List, including the IRGC; (2) transfers of such materials or software for use in the military or ballistic missile programs of Iran; and (3) transfers that have not been approved by the procurement channel established by the JCPOA if the transfer of the item is subject to the procurement channel. U.S. export controls continue to apply to exports and reexports by U.S. persons or from the United States to Iran or the Government of Iran, as well as reexports by non-U.S. persons of items with 10 percent or more export-controlled U.S. content to Iran or the Government of Iran, if undertaken with knowledge or reason to know that the reexportation is intended specifically for Iran or the Government of Iran.
- The sale, supply, or transfer of goods and services by non-U.S. persons used in connection with Iran’s automotive sector, provided that the transactions do not involve persons on the SDN List or conduct that remains prohibited under designation authorities and secondary sanctions which remain in place after Implementation Day. U.S. auto manufacturers continue to be prohibited from exporting or reexporting U.S.-origin finished vehicles or auto parts to Iran, and non-U.S. persons may not reexport goods from a third country to Iran that have been exported from the United States.

- Associated services for the authorized activities by non-U.S. persons listed above also are authorized. The term “associated services” means 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 pursuant to the JCPOA. U.S. persons are generally prohibited from providing associated services in connection with activities involving Iran; however, U.S. persons may be authorized by OFAC to provide such services in connection with activities authorized pursuant to a specific license or general license.

The United States also will cease efforts to reduce Iran’s crude oil sales, including limitations on the quantities of Iranian crude sold, the jurisdictions that can purchase Iranian crude oil, and how Iranian oil revenues can be used. As a result, the restrictions on Iranian oil revenues held abroad are now lifted, and secondary sanctions no longer apply to non-U.S. persons who purchase, acquire, sell, transport, or market Iranian crude oil, provided that the transactions do not involve conduct that remains prohibited under designation authorities and secondary sanctions that remain in place after Implementation Day or persons on the SDN List.

U.S. Sanctions That Will Continue To Apply

The Guidance issued by OFAC makes clear that the U.S. domestic trade embargo and export controls remain in place, as does Iran’s status as a state sponsor of terrorism. This means that U.S. persons remain prohibited from engaging in transactions involving Iran unless authorized by OFAC under specific license or pursuant to a general license. These restrictions also apply to non-U.S. entities owned or controlled by U.S. persons. See the discussion below of General License H issued by OFAC that authorizes certain transactions by non-U.S. entities owned or controlled by U.S. persons.

The Guidance also makes clear that non-U.S. financial institutions can still be subject to correspondent or payable-through account sanctions for knowingly facilitating a significant financial transaction that involves the following:

- Designated Iranian financial institutions or any Iranian persons that remain or are placed on the SDN List.
- Other persons listed on the SDN List due to (1) their affiliation with the IRGC and any of its designated officials, agents, or affiliates; (2) their connection with Iran’s proliferation of weapons of mass destruction or their means of delivery; or (3) their connection with Iran’s support for international terrorism.
- The sale, supply, or transfer to or from Iran of significant goods and services used in connection with the energy, shipping, or shipbuilding sectors of Iran if the transactions involve persons who remain or are placed on the SDN List.
- 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 processes if the transactions involve (1) persons on the SDN List; (2) sales that have not been approved by the procurement channel established pursuant to the JCPOA, if the procurement channel applies; or (3) material sold, supplied, or otherwise transferred for use in connection with the military or ballistic missile program of Iran.

Secondary sanctions will still apply to non-U.S. persons who engage in the following activities:

- Materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services in support of the IRGC or any of its officials, agents, or affiliates.

- Engaging in significant transactions with (1) the IRGC or any of its officials, agents, or affiliates and/or (2) persons subject to financial sanctions pursuant to UN Security Council Resolutions with respect to Iran.
- Selling, supplying, or transferring to or from Iran significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran, including the NIOC, the NITC, and the IRISL, if the transactions involve persons on the SDN List.
- Knowingly providing underwriting services or insurance or reinsurance for certain sanctioned activities, if the transactions involve persons on the SDN List.
- Selling, supplying, or transferring directly or indirectly to or from Iran graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes that have been determined to be (1) used as a medium for barter, swap, or any other exchange or transaction; (2) controlled directly by the IRGC; or (3) used in connection with the nuclear, military, or ballistic missile programs of Iran.

General License for Non-U.S. Entities Owned or Controlled by a U.S. Person

OFAC issued **General License H, effective immediately**, which authorizes certain transactions by non-U.S. entities owned or controlled by a U.S. person. Generally speaking, General License H allows these entities to engage in transactions with the Government of Iran or persons subject to the jurisdiction of the Government of Iran, directly or indirectly, that otherwise would be prohibited by Section 560.215 of the Iranian Transactions and Sanctions Regulations (“ITSR”). An entity established or maintained outside the United States is “owned or controlled” by a U.S. person if the U.S. person: (1) holds a 50 percent or greater equity interest by vote or value in the entity; (2) holds a majority of seats on the board of directors of the entity; or (3) otherwise controls the actions, policies, or personnel decisions of the entity.

General License H also allows U.S. persons to establish or alter operating policies and procedures of a U.S. entity or of a U.S.-owned or –controlled non-U.S. entity to the extent necessary to allow a U.S.-owned or –controlled non-U.S. entity to engage in authorized transactions. U.S. persons may provide training, advice, and counseling on any new or revised operating policies and procedures, provided that they are not provided to facilitate transactions in violation of U.S. law.

U.S. persons also may make any automated and globally integrated computer, accounting, email, telecommunications, or other business support systems, platforms, databases, applications or servers available to non-U.S. entities they own or control for the purposes of storing, collecting, transmitting, generating, or otherwise processing documents or information related to permitted transactions. The term “globally integrated” means a system that is available to, and in general use by, the U.S. person’s global organization.

General License H *does not* authorize any of the following:

- Exportation, reexportation, sale, or supply, directly or indirectly, from the United States of any goods, technology or services prohibited by the ITSR without separate authorization from OFAC;
- Reexportation from a third country of any goods, technology, or services prohibited by the ITSR;
- Transfers of funds to, from, or through a U.S. depository institution or a U.S.-registered broker or dealer in securities;
- Use of any automated computer, accounting, email, telecommunications, or other business support system, platform, database, application or server in connection with transfers of funds to, from, or through a U.S. depository institution or a U.S.-registered broker or dealer of securities;

- Facilitation by U.S. persons of transactions with Iran, other than the activities specifically described in General License H;
- Transactions with any person on OFAC's SDN List or the List of Foreign Sanctions Evaders;
- Transactions that would be prohibited under Treasury regulations other than the ITSR (*i.e.*, the Iranian Assets Control Regulations, the Iranian Financial Sanctions Regulations, and the Iranian Human Rights Abuses Sanctions Regulations);
- Activities involving any item subject to the Export Administration Regulations ("EAR") that would require a license or otherwise be prohibited under part 744 of the EAR related to items used in certain nuclear, biological weapon, or chemical weapon related activities, including missile systems designed to carry such weapons;
- Transactions involving persons whose export privileges have been denied, unless authorization is obtained from the Department of Commerce;
- Transactions involving any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate thereof;
- Activities that would be sanctionable under existing Executive Orders relating to Iran's proliferation of weapons of mass destruction (including ballistic missiles), international terrorism, Syria, Yemen, or Iran's commission of human rights abuses against its citizens; and
- Nuclear activity that is subject to the procurement channel established under the JCPOA that has not been approved through the procurement channel process.

The U.S. person who owns or controls the non-U.S. entity will continue to be held liable for transactions conducted by a non-U.S. entity that are outside the scope of General License H.

Statement of Licensing Policy for Activities Related to Commercial Passenger Aircraft

OFAC published a **Statement of Licensing Policy**, effective immediately, which contains criteria for OFAC to issue specific licenses for activities related to the export or re-export to Iran of commercial passenger aircraft and related parts and services. OFAC will issue specific licenses on a case-by-case basis to authorize the export, re-export, sale, lease, or transfer to Iran of commercial passenger aircraft exclusively for civil aviation end-use, as well as spare parts and components of such aircraft. OFAC also will issue specific licenses on a case-by-case basis for associated services, including warranty, maintenance, and repair services and safety-related inspections if the items and services are used exclusively for commercial passenger aviation. The licenses will be issued to U.S. persons and to non-U.S. persons provided there is a nexus to U.S. jurisdiction. Applications will be evaluated by OFAC for compliance with the Iran-Iraq Arms Nonproliferation Act and other relevant statutes. Licenses issued pursuant to this Statement of Licensing Policy will include conditions to ensure that no persons on the SDN List are involved in the transaction or will receive aircraft, goods, or services through a resale or retransfer of the licensed items.

Certain types of transactions related to commercial passenger aircraft will require separate authorization from the Department of Commerce. For example, if the export or reexport will be to an individual or entity listed on the Department of Commerce's Denied Persons List or on the Entity List, a license from both OFAC and the Department of Commerce will be required. In this case, the applicant is required to inform OFAC of any individuals or entities that give rise to the requirement for a separate authorization from the Department of Commerce.

License applications may be submitted online or via mail and, if sent by mail, should be sent to the attention of "Iran Commercial Passenger Aviation." Applicants must include the Export Control Classification Numbers ("ECCNs") for all goods and technology subject to the EAR as part of the application.

Importation of Iranian-origin Carpets and Foodstuffs

OFAC submitted a **second general license** to the Federal Register for publication. *This general license will not come into effect until the Federal Register notice is published.* The Federal Register notice amends the ITSR to add Section 560.534, which will authorize the importation into the United States, from Iran or a third country, of certain Iranian-origin goods. Permitted goods include foodstuffs intended for human consumption classified under chapters 2-23 of the Harmonized Tariff Schedule of the United States (“HTSUS”), as well as carpets and other textile floor coverings and carpets used as wall hangings that are classified under chapter 57 or subheading 9706.00.0060 of the HTSUS. U.S. persons may engage in transactions relating to these Iranian-origin goods only if the transaction does not involve goods, technology, or services for exportation, reexportation, sale, or supply to Iran, the Government of Iran, an Iranian financial institution, or other blocked persons. U.S. persons, however, may engage in such transactions if they are ordinarily incident to the licensed transaction, or if they fit within the general license for the transfer of funds involving Iran under Section 560.516 of the ITSR. The general license does not authorize debits or credits to Iranian accounts.

Any goods under seizure or detention by the Department of Homeland Security as of the publication date of the Federal Register notice are not authorized under the general license until all applicable penalties, charges, duties, or other conditions are satisfied. If forfeiture proceedings have commenced for the goods, or if the goods have already been forfeited to the U.S. government, the general license would not authorize the importation of the goods into the United States other than through disposition by U.S. Customs and Border Protection.

The Federal Register notice also will add Section 560.535 to the ITSR, covering letters of credit and brokering services relating to Iranian-origin foodstuffs and carpets. U.S. depository institutions will be able to issue letters of credit in favor of a beneficiary in Iran, the Government of Iran, an Iranian financial institution, or other blocked persons to pay for purchases from Iran or the Government of Iran of the Iranian-origin carpets and foodstuffs, or for purchases of such Iranian-origin goods located in a third country. Letters of credit *may not* be advised, negotiated, paid, or confirmed by any of the Iranian parties. Finally, U.S. persons may act as brokers for the purchase or sale of Iranian-origin carpets and foodstuffs, provided that the goods are not intended for exportation or sale to Iran, the Government of Iran, an Iranian financial institution, or any other blocked party.

Expiration of Licenses Issued Under the Joint Plan of Action

Any specific license issued pursuant to the Joint Plan of Action—the interim deal reached between Iran, the EU, and the P5+1 countries in November 2013—with an expiration date on or before July 14, 2015 will remain in effect until May 31, 2016.

The Effect of Implementation Day on the EU

The EU has withdrawn many of the nuclear related sanctions it had in place in response to Iran’s halt of its nuclear program pursuant to Iran’s commitments under the JCPOA. Decision (CFSP) 2016/37 of 16 January 2016 applies the provisions on removal of sanctions set out earlier in Decision (CFSP) 2015/1863 of 18 October 2015.

The result of this change is that prohibitions on trading in oil and gas products and provision of related services, provision of engineering and maintenance services to cargo aircraft, bunkering and supply services to Iranian vessels and supply of certain software will be removed unless they are related to supply of items on the EU Common Military List. Other prohibitions from the nuclear sanctions regime, including dealing with Iran with respect to dual-use items, certain metals, diamonds and graphite will be removed subject to a license requirement. For example, graphite, aluminum and steel supplies and technical assistance will be subject to the license requirement.

Licenses will not be available where the supply is related to nuclear related activities inconsistent with the JCPOA. Licenses also will not be available where the supply is a contribution to Iran’s military or ballistic missile program or

for the benefit of the IRGC. These licensing requirements will apply only to a minority of transactions but will require screening of parties involved and application of end-use controls.

Many of the persons and entities subject to asset freezes under the sanctions have been removed, but some remain in place. Furthermore, existing sanctions related to anti-terrorism and human rights violations remain in force. It will still be important, therefore, to screen any Iran transactions against the remaining persons and entities on the asset freeze lists.

Significant controls remain in place in relation to material and technical assistance in the nuclear and missile technology industries.

The EU will remove all remaining nuclear related sanctions on Transition Day, the third stage of the JCPOA, which is set for the earlier of 8 years from July 2015, or when the IAEA declares that all nuclear material in Iran is solely for peaceful purposes.

EU Member States will apply the changes in the EU sanctions regime while adopting their own licensing and other regimes in respect of Iran. For example, it is likely that the UK will review its dual-use provisions in respect of trade in civil aircraft. The UK also has announced that it is reintroducing export finance cover through the UK export credit agency, UK Export Finance. The UK is providing export finance cover on a “case-by-case” basis and has established a £50 million facility guaranteeing payments to UK professional advisory service providers advising the Government of Iran in areas including accounting, capital market development, regulatory compliance, accessing and reducing the cost of finance and facilitating trade.

More explanation of the impact of Implementation Day on the EU sanctions regime in respect of Iran will emerge in the coming days.

King & Spalding will continue to monitor the progress of the JCPOA and its impact on U.S. and EU sanctions programs. Please contact us if you have any questions or would like additional information.

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.”