

## The Partial Lifting of Iranian Sanctions – Not Quite Business As Usual

January 20, 2016

Implementation Day under the Joint Comprehensive Plan of Action signed by the P5+1 (United States, United Kingdom, France, Russia, China and Germany), the European Union, and Iran (“JCPOA”) came on January 16, 2016 and certain nuclear-related secondary sanctions on Iran have now been lifted. With three notable exceptions, the partial lifting of sanctions do not apply to US persons and US companies, who continue to be broadly prohibited from engaging in transactions or dealings with Iran and the Government of Iran unless such activities are exempt from regulation or authorized by the Office of Foreign Assets Control (“OFAC”). However, the US has now removed restrictions on formerly prohibited activities of non-US entities owned or controlled by U.S. persons, which represents a significant development.

Far from marking the return to business as usual between the United States and Iran, Implementation Day inaugurates a no less challenging phase in the complex US relationship with Iran. As if to underscore this fact, only one day after partial lifting of nuclear-related sanctions on Iran, OFAC imposed new sanctions on specific individuals involved in Iran’s ballistic missile development program.

### *How did we Arrive at Implementation Day?*

US economic sanctions on Iran began in 1979 in retaliation for the Tehran hostage crisis. Over the succeeding years, additional sanctions have been imposed to punish Iran for supporting international terrorism, its human rights violations, and its refusal to cooperate with the International Atomic Energy Agency (“IAEA”). In October 1987, President Reagan by executive order imposed import restrictions on Iranian goods and services.<sup>i</sup> President Clinton followed in March<sup>ii</sup> and May<sup>iii</sup> of 1995 with his own executive orders prohibiting, inter alia, all US involvement with Iran’s petroleum development industry. President Clinton also signed the Iran and Libya Sanctions Act of 1996, later renamed the Iran Sanctions Act (“ISA”), which sanctioned individuals who materially contributed to and supported Iran’s ability to develop its petroleum resources and gave rise to what is known as the “Specially Designated Nationals List” (“SDN List”). In August of 1997, President Clinton acted again by executive order to prohibit almost all trade and investment activities with Iran by US persons wherever located.<sup>iv</sup> Other rounds of sanctions followed,<sup>v</sup> including President Obama’s 2012 executive order barring non-US entities owned or controlled by a US parent from doing business with Iran.<sup>vi</sup>



These sanctions, as well as numerous United Nations (“UN”), European Union (“EU”) and individual country sanctions enacted against Iran, served as the springboard for talks leading to the November 2013 Joint Plan of Action (“JPOA,” to be distinguished from JCPOA). The JPOA halted progress on, and rolled back, key elements of Iran’s nuclear program in exchange for limited and reversible sanctions relief for a period of 6 months while the parties negotiated a comprehensive final agreement. The sanctions relief applied only to Iran’s petrochemical exports, automotive industry, gold and precious metals industry, the supply and installation in Iran of spare parts for safety of flight for Iranian civil aviation, Iran’s export of crude oil, and associated services relating to the foregoing.

After continued negotiations, on July 14, 2015 the parties agreed to the JCPOA, which became effective on October 18, 2015 (“Adoption Day”). The JCPOA provided that whenever the International Atomic Energy Agency (“IAEA”) verified Iranian implementation of specified nuclear measures, relief from multilateral and national nuclear-related sanctions would be implemented (“Implementation Day”). The agreed-to sanctions relief included:

- Termination by the UN of Security Council resolutions relating to Iran, except those related to the sale of arms to or from Iran and Iran’s ballistic missile technology development program, which will be kept in place for 5 years and 8 years respectively.
- Suspension of all US nuclear-related sanctions, but not sanctions related to Iran’s support for terrorism, its human rights abuses, missile activities, and the general trade ban.
- Termination by the European Union of all nuclear-related sanctions including banking, energy, and trade sanctions.

On January 16, 2016, upon receipt of the required verification, sanctions relief was implemented.

### *What Does Implementation Day Mean for US Business?*

On Implementation Day, the US lifted the following nuclear-related “secondary sanctions” that had been directed largely toward *non-U.S. persons* for specified conduct involving Iran that occurs entirely outside of U.S. jurisdiction. The secondary sanctions lifted are on:

- Iran’s financial/banking, energy/petrochemical, shipping/shipbuilding, and automotive sectors
- Iran’s port operators
- The provision of insurance, re-insurance and underwriting services in connection with now-permitted activities
- Iran’s trade in gold and other precious metals



- Trade with Iran in graphite, raw or semi-finished metals such as aluminum and steel, coal, and certain software in connection with now-permitted activities
- The provision of associated services for each of the above categories

The US also removed over 400 individuals and entities from OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List"), the Foreign Sanctions Evaders List ("FSE List"), and/or the Non-SDN Iran Sanctions Act List ("NS-ISA List"). **Non-US persons** will no longer be subject to sanctions for conducting transactions with any of these individuals and entities. Secondary sanctions, however, continue to apply to non-US persons for conducting transactions with any of the more than 200 Iranian or Iran-related individuals and entities who remain or are placed on the SDN List.

***None of the activities described above apply to US persons, including US companies, who continue to be broadly prohibited from engaging in transactions or dealings with Iran and the Government of Iran unless such activities are exempt from regulation or authorized by OFAC.***

In addition, the US took the following steps to authorize three categories of activities that would otherwise be prohibited by US persons, provided that the transactions do not involve individuals and entities on the SDN List and are otherwise consistent with applicable US law:

- A Statement of Licensing Policy allowing case-by-case licensing of individuals and entities seeking to export, re-export, sell, lease, or transfer to Iran commercial passenger aircraft, and related parts and services, for exclusively commercial passenger aviation
- A general license authorizing non-US entities owned or controlled by a US person to engage in certain activities involving Iran (*see below*)
- A general license authorizing the importation into the US of Iranian-origin carpets and foodstuffs, including pistachios and caviar

The lifting of these sanctions do not apply to transactions or activities involving individuals and entities who remain or are placed on OFAC's SDN List after Implementation Day or that are subject to any other US sanctions that may apply.

### ***What Activities by Non-US Entities Owned or Controlled by US Persons are Now Authorized?***

Under a new general license issued by OFAC on Implementation Day, a non-US entity owned or controlled by a US person (a "US-Owned or -Controlled Foreign Entity") is authorized to engage in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would otherwise be prohibited if done by a US person. This general license does not authorize the re-exportation from a third country of any goods, technology, or services originally exported from the US.



This general license also authorizes a US person to engage in the following activities on behalf of a US-Owned or -Controlled Foreign Entity, except with respect to the exportation or re-exportation of goods or services directly or indirectly from the US or by a US person wherever located:

- activities related to the establishment or alteration of operating policies and procedures of a US entity or a US-Owned or -Controlled Foreign Entity, to the extent necessary to allow a US-Owned or -Controlled Foreign Entity to engage in transactions now authorized under the general license, and
- activities to make available to a US-Owned or -Controlled Foreign Entity 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 such transactions.

This general license does not authorize transactions involving:

- The exportation, re-exportation, sale, or supply, directly or indirectly, from the US of any goods, technology, or services or by a US person without separate OFAC authorization
- Any transfer of funds to, from, or through a US depository institution or a US-registered broker or dealer in securities
- Any person on OFAC's SDN List, or any activity engaged in by a US person or in the US
- Any person identified on the FSE List
- Any activity prohibited or requiring a license under the end-use/end-user prohibitions of the Export Administration Regulations ("EAR")
- Any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate thereof
- Any activity relating to Iran's proliferation of weapons of mass destruction and their means of delivery, international terrorism, involvement in Syria or Yemen, commission of human rights abuses against its citizens, or unapproved nuclear activity involving Iran
- Any transaction by a US person prohibited by any other sanctions program not subject to the JCPOA



## *What to Expect Post Implementation Day?*

Notwithstanding the lifting of nuclear-related secondary sanctions, and the other limited sanctions relief that became effective on Implementation Day, a number of US sanctions with respect to Iran remain in place and will continue, including the following:

- Primary US Sanctions, such as the general domestic trade embargo on Iran, remain in place with limited exceptions. US persons including US companies continue to be broadly prohibited from engaging in transactions or dealings with Iran or its government. In addition, the Government of Iran and Iranian financial institutions remain persons whose property and interests in property are blocked, and US persons continue to be broadly prohibited from engaging in transactions or dealings with the Government of Iran and Iranian financial institutions. In addition, non-US persons continue to be prohibited from knowingly engaging in conduct that seeks to evade US restrictions on transactions or dealings with Iran or that causes the export of goods or services from the US to Iran.
- The US retains a number of authorities to counter Iran's support for terrorism, human rights abuses, proliferation of weapons of mass destruction and their means of delivery, including ballistic missiles, support for persons involved with human rights abuses in Syria or for the Government of Syria, support for persons threatening the peace, security, or stability of Yemen.
- Sanctions remain in place targeting dealings by non-US persons with Iran-related persons remaining on the SDN List or involving trade in certain materials involving Iran.

The next major milestone under the JCPOA is Transition Day, which will occur 8 years from Adoption Day or upon a report from the IAEA to the UN Security Council stating that all nuclear material in Iran remains in peaceful activities, whichever is earlier. On Transition Day, the US Government has committed that it will seek to terminate, or modify to effectuate the termination of, relevant statutory provisions giving rise to remaining sanctions, and remove remaining individuals and entities from the SDN List and/or FSE List.

The outcome of the JCPOA is far from certain, with US relations with Iran remaining complex and US domestic politics unpredictable. More certain for US business for the foreseeable future is the continuing challenge of complying with remaining sanctions on Iran.

## **Contact Information**

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# Client ALERT

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<sup>i</sup> Executive Order 12613

<sup>ii</sup> Executive Order 12957

<sup>iii</sup> Executive Order 12959

<sup>iv</sup> Executive Order 13059

<sup>v</sup> In November 2008, authorization for “U-turn” transfers involving Iran was revoked, barring US banks from processing any transfers involving Iran that originated and ended with non-Iranian foreign banks. In September 2010, the US Congress enacted the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”) thereby revoking authorization to import into the United States certain foodstuffs and carpets of Iranian origin. In August 2012, President Obama signed the Iran Threat Reduction and Syria Human Rights Act (“ITRA”) which, in combination with the Iran Sanctions Act of 1996 and CISADA, tightened sanctions on Iran even further.

<sup>vi</sup> Executive Order 13628

