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U.S. Eases Sanctions on Iran on “Implementation Day” Summary of 10 Key Changes

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As part of the nuclear arrangement reached with Iran, the United States ceased application of its nuclear-related sanctions imposed on entities outside the United States on January 16, 2016, the so-called “Implementation Day” under the Joint Comprehensive Plan of Action (“**JCPOA**”). At the same time, the United States also eased sanctions on foreign subsidiaries of U.S. companies. Apart from a few specific exceptions, however, including new exceptions for U.S. exports of civilian aircraft to Iran and imports of carpets and foodstuffs from Iran, U.S. persons (*i.e.*, U.S. individuals and companies and foreign persons physically in the United States) are still prohibited from transacting any business with Iran or the Government of Iran. The changes to the U.S. sanctions regime against Iran only affect nuclear-related sanctions. The United States will continue to maintain its other sanctions on both U.S. and non-U.S. persons relating to Iran’s support for terrorism, its human rights abuses, proliferation of weapons of mass destruction, missile activities and support for persons threatening regional stability.

On July 14, 2015, the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States), the European Union (“**EU**”), and Iran reached a JCPOA. The agreement came into effect on October 18, 2015. Implementation Day is the day on which the International Atomic Energy Agency (“**IAEA**”) verified that Iran had implemented its nuclear-related commitments under the JCPOA. Below is a summary of the key changes to the U.S. sanctions regime against Iran as of Implementation Day and how these changes affect U.S. businesses:

1. Non-U.S. entities can conduct business with Iran. The U.S. ceased application of its nuclear-related “secondary sanctions,” that is, the sanctions imposed on non-U.S. persons. Foreign companies can therefore now engage in activities that previously had been prohibited. These include activities related to banking and financial transactions involving Iran; financial messaging services; insurance and re-insurance; investment in the oil, gas and petrochemical sectors; the purchase and sale of petroleum and refined petroleum products; shipping, shipbuilding, and ports; the trade in gold and precious metals; the trade in raw and semi-finished metals and software related thereto; and the automotive industry.
2. U.S. persons remain largely prohibited from conducting any transactions related to Iran. The United States only eased its nuclear-related secondary sanctions. Its primary sanctions, meaning those that affect U.S. persons, remain. Therefore, U.S. persons are still barred from doing business with Iran or the Government of Iran, except for transactions that have been specifically authorized or licensed by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”).
3. Existing exceptions to U.S. primary sanctions continue. There is no change to the current limited exceptions to U.S. primary sanctions. Under previous authorization, U.S. companies are allowed to export to Iran agricultural products and food, medicine, medical supplies, and hardware, software and services incident to personal communications (*e.g.*, smartphones, laptops, tablets, operating systems, social networking software and apps).

4. New exception for civilian aircraft. On a case-by-case basis, U.S. persons may now obtain a license for the export, re-export, sale, lease or transfer to Iran of commercial passenger aircraft, spare parts, and services related thereto (warranty, maintenance, repair services and safety-related inspections) exclusively for the civil aviation sector. U.S. airlines remain prohibited from operating flights to or from Iran, however.
5. Imports of carpets and foodstuffs from Iran now allowed. Under a new OFAC general license, Iranian-origin carpets and foodstuffs, such as pistachios and caviar, can be imported into the United States. Such products remain subject to all other laws and regulations related to imports administered by the Departments of Agriculture, Commerce and Homeland Security and by the Food and Drug Administration. U.S. banks are authorized to process transfers of funds to or from Iran to pay for these imports provided that doing so does not involve crediting or debiting an Iranian account. A U.S. bank may issue and process letters of credit for payments for Iranian-origin carpets and foodstuffs provided that only third country banks and no Iranian financial institution or the Government of Iran is involved with such letters of credit.
6. Foreign subsidiaries of U.S. companies can now transact business with Iran with restrictions. Under new OFAC General License H, foreign entities owned or controlled by a U.S. person (50 percent or more ownership or control) can transact business with Iran or the Government of Iran in the fields listed in Point 1 above, however, certain restrictions apply. For example, U.S.-owned or controlled foreign entities may not export or re-export to Iran U.S.-origin goods requiring an export license for Iran or re-export from any third countries any non-U.S. goods that incorporate 10 percent or more U.S.-controlled content. In general, a non-U.S. subsidiary seeking to conduct Iran-related business must be able to operate independently of its U.S. parent, with no involvement from any U.S. person employees or U.S. banks.
7. U.S. persons can provide limited assistance to foreign subsidiaries of U.S. companies doing business in Iran. Although U.S. persons are generally prohibited from engaging in transactions involving Iran, U.S. persons can assist foreign entities owned or controlled by a U.S. person in certain limited ways. First, U.S. persons are able to set up policies and procedures to comply with General License H. This includes U.S.-based law firms and consultants. It also includes U.S. citizens who are in senior management of the U.S. parent involved in the initial decision-making and other employees who provide training on the new policies and procedures. It is important to note, however, that a U.S. person cannot be involved in the day-to-day transactions conducted with Iran by the U.S.-owned subsidiary. Second, the U.S. parent of a foreign entity doing business in Iran can provide any automated and globally integrated computer, accounting, email, telecommunications or other business support system, database, application or server necessary to collect, transmit, generate or otherwise process documents or information. These systems must operate passively without any human intervention in the United States. U.S. person third-party service providers can provide such systems to the U.S. parent company on a contract basis.
8. Transactions with Iranian-related persons remaining on the SDN List are prohibited. The United States removed in excess of 400 individuals and entities from the OFAC Specially Designated Nationals and

Blocked Persons List (“**SDN List**”), including the Central Bank of Iran. However, more than 200 names remain on the SDN List. While foreign entities can now engage in transactions with those persons removed from the SDN List without the risk of being sanctioned, U.S. persons remain prohibited from such dealings under the continued primary sanctions regime. In addition, any transactions with those Iranians remaining on the SDN List, whether by foreign entities or U.S. persons, remain subject to sanctions.

9. Transactions with Iran must remain outside the U.S. financial system. With the easing of secondary sanctions, non-U.S. banks may now transact business with Iranian financial institutions and the Government of Iran, but not with any individuals or entities on the SDN List. Neither any of these transactions nor any transactions by foreign subsidiaries of a U.S. person permitted by General License H may travel through the U.S. financial system (except those specifically permitted by an OFAC license). There can be no clearing of U.S. dollar or other currency transactions through the U.S. financial system or involving a U.S. person. Moreover, U.S. dollar “U-turn” transactions related to Iran remain prohibited. These are transactions where two non-U.S. parties acting outside the United States transact in U.S. dollars.
10. Contracts will not be grandfathered in case of a sanctions snapback. The JCPOA provides for an automatic “snapback” mechanism for UN sanctions should Iran be determined to have violated the terms of the agreement, and U.S. sanctions may be reimposed in such an event. Although the U.S. cannot retroactively impose sanctions on activity that was approved as of Implementation Day, contracts with Iranian entities will not be grandfathered. In the event of a sanctions snapback, the U.S. government will work to minimize the impact of sanctions on the legitimate activities of the contracting parties.

Now, several months into the implementation of these changes, it will be interesting to see the direct effect they will have on international commerce and international political relations between the two countries. The Iran deal has already been a highlighted issue in the 2016 U.S. Presidential campaign and likely will continue to be into the summer and fall.