

11 Highlights from the Iran Sanctions Implementation Day

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PRACTICES Foreign Corrupt Practices Act FCPA, Export Controls and Trade Compliance, International

As part of the nuclear arrangement reached with Iran, the United States rescinded its nuclear-related sanctions imposed on entities outside the United States on January 16, 2016, which is the so-called “Implementation Day” under the Joint Comprehensive Plan of Action (“**JCPOA**”). At the same time, the United States also lifted 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 that have been imposed in response to Iran’s support for terrorism, its human rights abuses, proliferation of weapons of mass destruction, 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 Joint Comprehensive Plan of Action (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. lifted 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.** Only secondary sanctions were lifted by the United States. 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.
6. **Foreign subsidiaries of U.S. companies can now transact business with Iran.** Under a new OFAC general license, 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, such U.S.-owned or controlled foreign entities may not export or re-export U.S.-origin goods to Iran without separate authorization from OFAC.
7. **U.S. persons can assist 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, namely to set up policies and procedures to comply with the general license described in Point 6 above. 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.
8. **U.S. persons can provide automated computer systems to U.S.-owned foreign companies doing business in Iran.** To support the transactions described in Point 6 above, the U.S. parent company 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.
9. **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.
10. **Transactions with Iran must remain outside the U.S. financial system.** None of the newly permissible transactions, including those conducted by non-U.S. persons, may transit 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. Transactions may be in U.S. dollars, provided that such transactions do not involve the U.S. financial system.
11. **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.

If you have any questions, please contact one of the lawyers listed below.