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Implementation Day Arrives: The Promises and Perils of Iran Sanctions Relief

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) to restrict and ensure the exclusively peaceful development of Iran's nuclear program. As part of the JCPOA, the United States committed to a program of phased sanctions relief dependent on Iran's adherence to certain nuclear commitments.

On January 16, 2016 ("Implementation Day"), the International Atomic Energy Agency (IAEA) verified that Iran has successfully implemented its nuclear-related obligations under the JCPOA. In keeping with its commitments under the JCPOA, the United States simultaneously lifted nuclear-related sanctions on Iran.

The U.S. sanctions relief granted to Iran on Implementation Day is generally limited to secondary nuclear sanctions targeted at the actions of foreign persons engaged in certain Iranian business activities. The majority of U.S. primary sanctions against Iran continue to apply to U.S. persons, and certain secondary sanctions applicable to foreign persons also remain intact. However, several relief measures now implemented by the United States extend to U.S. persons and their majority-owned or controlled foreign subsidiaries, as well as specified products or industries. In the immediate aftermath of Implementation Day, U.S. companies and companies with U.S. ties should diligently work to address possible confusion in the market about the scope of sanctions relief and to reaffirm existing corporate compliance policies and procedures governing international business. At the same time, many companies should evaluate the potential opportunities presented by sanctions relief and develop internal compliance processes and structures to act effectively on opportunities identified.

Nuclear-Related Secondary Sanctions Removed

The United States has lifted nuclear-related secondary sanctions on the following industries, sectors and activities engaged by foreign persons in or with Iran:¹

- Financial and banking sectors.
- Energy and petrochemical industries.

¹ The United States continues to maintain other secondary sanctions regimes applicable to foreign persons. For example, a number of Iranian entities, such as the Iran Revolutionary Guard Corps (IRGC), remain on the SDN List, and the provision of material assistance, sponsorship, financial, material or technological support, or goods and services to them remain prohibited. Accordingly, the U.S. sanctions must still be considered prior to transacting business with Iran.

- Shipping and shipbuilding sectors, as well as dealings with Iranian port operators.
- Automotive sector.
- The provision of insurance, re-insurance and underwriting services in connection with activities authorized under the JCPOA.
- Iran's trade in gold and other precious metals, as well as trade with Iran in graphite, raw or semifinished metals such as aluminum and steel, coal and certain software that is consistent with JCPOA-approved activities.
- The provision of associated services related to these activities.

With the lifting of these secondary measures, non-U.S. companies can now, for the most part, engage in these Iranian industries, sectors and activities without facing the risk of becoming the target of restrictive measures imposed by the United States government.

In addition to the easing of secondary sanctions, the United States also removed several individuals and entities from the Office of Foreign Assets Control's (OFAC) Specially Designated Nationals and Blocked Persons List ("SDN List"), the Foreign Sanctions Evader List ("FSE List") and the Non-SDN Iranian Sanctions Act List ("NS-ISA List"). These removals expand the scope of the individuals and entities with whom foreign persons may conduct business without subjecting themselves to U.S. secondary sanctions. However, U.S. persons continue to be broadly prohibited from engaging in transactions with these individuals and entities, which are now on the new list created pursuant to Executive Order 13599 (the "13599 List"). These prohibitions also extend to any subsidiary that is owned 50 percent or more by an SDN or, at least implicitly, by a 13599 List designee, although OFAC has not yet provided any specific guidance on the latter.

Limited Relief Applicable to U.S. Persons

Under the JCPOA, the United States also committed to license three categories of activities that would otherwise be prohibited under the Iranian Transactions and Sanctions Regulations (ITSR): (1) the export, reexport, sale, lease or transfer of commercial passenger aircraft and related parts and services to Iran for exclusively civil, commercial passenger aviation end-use; (2) licensing of the importation into the United States of Iranian-origin carpets and foodstuffs; and (3) licensing of non-U.S. entities that are owned or controlled by a U.S. person to engage in activities that are consistent with the JCPOA and applicable U.S. laws and regulations.

Commercial passenger aircraft and related parts and services

OFAC's Statement of Licensing Policy for Activities Related to the Export or Re-Export to Iran of Commercial Passenger Aircraft and Related Parts and Services (SLP) announces a favorable OFAC licensing policy for transactions involving the export, re-export, sale, lease or transfer to Iran of commercial passenger aircraft and related parts and services to Iran. While previous statements issued by OFAC related solely to transactions intended to promote civil aviation safety in Iran, the new SLP applies broadly to commercial passenger aviation. It should be noted that the SLP is a *licensing policy*. Accordingly, U.S. persons must submit license applications to and receive approval from OFAC prior to engaging in transactions contemplated by the SLP. Specific licenses granted under the SLP will be subject to prohibitions regarding transactions involving SDNs and other parties subject to U.S. export restrictions, as well as the processing of related payments through certain Iranian financial institutions.

Certain foodstuffs and carpets

In conjunction with Implementation Day, OFAC added a general license to the ITSR permitting the importation into the United States from Iran or a third country of certain Iranian-origin goods, including textile floor coverings and carpets and foodstuffs intended for human consumption. A related general license was also issued by OFAC to permit U.S. depository institutions to issue letters of credit in favor of Iranian sellers to pay for purchases of the categories of Iranian goods described in the new general license. Neither of these general licenses will have legal effect until they are published in the *Federal Register*, which should be this week.

Foreign entities majority-owned or controlled by a United States person

While the Iranian sanctions relief related to civil aviation sales and foodstuff/carpet imports are limited in scope to specified industries, foreign entities majority-owned or controlled by U.S. persons are again permitted to engage in certain Iranian business pursuant to General License H: Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person (GL-H). GL-H provides that, with certain enumerated exceptions, “an entity owned or controlled by a United States person and established or maintained outside the United States ... 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 by 31 C.F.R. § 560.215,” which broadly prohibits all transactions that would be prohibited if undertaken by a U.S. person.

Importantly, GL-H also permits U.S. persons to engage in activities related to the establishment or alteration of operating policies and procedures of a U.S. entity or a U.S.-owned or controlled foreign entity to the extent necessary to allow the foreign entity to engage in authorized transactions with Iran. Thus, U.S. person board members, senior management and employees may amend or create operating policies and procedures allowing the conduct of Iranian business, and U.S. counsel and advisors may be hired to draft, alter or consult on such operating policies and procedures. However, GL-H does not authorize U.S. persons to engage in Iran-related day-to-day operations or transactions of a U.S.-majority-owned or controlled foreign entity, including by approving, financing, facilitating or guaranteeing any Iran-related transaction by the foreign entity.

U.S. parents are also authorized under GL-H to make automated and globally integrated business support systems available to their foreign-owned or controlled entities that engage in authorized business with Iran. Such automated and globally integrated business support systems include integrated computer, accounting, email, telecommunications or other business support systems, platforms, databases, applications or servers necessary to store, collect, transmit, generate or otherwise process documents or information related to transactions authorized by GL-H. These systems must operate without U.S.-human intervention (e.g., an automated enterprise resource system that utilizes a U.S.-based server) and must be globally integrated (e.g., a sales lead database maintained on a U.S. server that is broadly available to, and in general used by, foreign subsidiaries). However, U.S. person employees are permitted to establish and maintain these systems.

Finally, GL-H lists several transactions that *are not authorized* under the GL-H provisions. These restrictions generally also apply to all foreign persons:

- The exportation, reexportation, sale or supply, directly or indirectly, from the United States of any goods, technology or services to Iran without separate authorization from OFAC.
- The reexportation to Iran from a third country any goods, technology or services prohibited by 31 C.F.R. § 560.205.
- The transfer of funds to, from or through a U.S. depository institution related to transactions with Iran.

- Transactions involving SDNs, Blocked Persons or FSE listed entities.²
- Activities involving any item (including information) subject to the Export Administration Regulations (EAR) that is prohibited by, or otherwise requires a license under, Part 744 of the EAR (i.e., nuclear and other end-use controls or sales to companies on the Bureau of Industry and Security's Entity List).
- Dealings with any military, paramilitary, intelligence or law enforcement entity of the government of Iran, or any of its officials, agents or affiliates.
- Any activity sanctionable under Executive Order 12938 or 13382 (relating to Iran's proliferation of weapons of mass destruction and their means of delivery, including ballistic missiles), Executive Order 13224 (international terrorism), Executive Order 13572 or 13582 (Syria), Executive Order 13611 (Yemen), or Executive Order 13553 or 13606, or Section 2 or 3 of Executive Order 13628 (Iran's commission of human rights abuses against its citizens).
- Any nuclear activity involving Iran that is subject to the JCPOA-approved procurement channel requirement and has not been approved through the procurement channel process (See Section 6 of Annex IV to the JCPOA).

Conclusion

Amidst press reports, rumors and the general perception that all Iran sanctions have been lifted, the reality is that many U.S. sanctions remain. U.S. sanctions against Iran relating to actions by U.S. persons continue to be comprehensive and robust, except for a few notable changes. On the other hand, the lifting of secondary sanctions has provided avenues for engagement with Iran by foreign persons, including foreign subsidiaries of U.S. companies.

Implementation Day presents business opportunities as well as compliance risks for companies. Corporate, legal and compliance personnel should engage in active education and training to prevent unauthorized activities. U.S. companies considering taking advantage of these opportunities should review and update their policies and procedures prior to engaging in Iranian business to ensure that they do not overstep the bounds of the authorizations. Careful and coordinated evaluation and planning will be the key to compliance with the remaining U.S. sanctions.

² We note that the IRGC and other SDNs maintain extensive economic and commercial holdings throughout the Iranian economy. OFAC recommends that a person considering business in Iran conduct due diligence sufficient to ensure that it is not knowingly engaging in transactions with the IRGC or other persons on the SDN List.

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