

## International Trade Alert

January 21, 2016

### If you read one thing...

- While many of the U.S. and EU sanctions against Iran have been lifted, the U.S. and EU sanctions regimes have not been terminated, and substantial and significant sanctions restrictions that apply to non-U.S. persons remain in effect.
- U.S. sanctions prohibit U.S. financial institutions, and foreign financial institutions engaging in activities within the United States, from entering into most kinds of transactions involving Iran, including those that clear U.S. dollar-denominated transactions that occur abroad.
- The EU also continues to maintain sanctions against Iran that prohibit EU persons from engaging in activities that intersect with EU antiterrorism, human rights and nonproliferation policy concerns associated with Iran.
- Non-U.S. companies should be mindful of related sanctions risks, conduct due diligence, ensure incorporation of appropriate contractual provisions and continue to use caution in considering related legal compliance and business risks that may be associated with market entry opportunities involving Iran and specific Iran-related transactions.



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## What Implementation of the Iran Nuclear Deal Means for Non-U.S. Companies

On January 16, 2016, the International Atomic Energy Agency (IAEA) verified, and U.S. Secretary of State John Kerry confirmed, that Iran had implemented its key nuclear-related measures described in the Joint Comprehensive Plan of Action (JCPOA or the “Agreement”). This event triggered “Implementation Day” under the Agreement, which commences the suspension and/or easing of U.N., U.S. and EU nuclear-related sanctions, and marks a historic milestone in the long-standing international sanctions against Iran. Still, a day after Implementation Day, the United States imposed additional sanctions on Iran over its ballistic missile program, which emphasizes the importance of navigating the remaining restrictions in connection with any contemplated Iran-related activities.

While the Agreement removes some of the most significant EU sanctions and U.S. secondary sanctions that apply to non-U.S. persons, a number of extraterritorial measures remain, which are summarized as follows:

- **Export Controls** – Both the United States and European Union continue to enforce controls on the export of dual-use and military items to Iran. In addition, the United States continues to generally prohibit the export of U.S.-origin goods, or goods with more than 10 percent U.S. content, to Iran.
- **U.S. Person Involvement** – With very limited exceptions, U.S. persons continue to be precluded from participating in Iran-related transactions. This includes U.S. citizens and lawful permanent residents (green card holders), even when employed by a non-U.S. company and when holding more than one nationality.
- **U.S. Dollar Transactions** – Nearly all U.S. dollar transactions clear the U.S. financial system (e.g., through u-turn transactions with U.S. correspondent banks), and, as such, dollarized transactions continue to be prohibited, even where there is no other nexus with the United States.
- **Terrorism-, Military- and Human Rights-Related Sanctions** – Primary and secondary U.S. and EU sanctions remain in force that limit dealings involving certain restricted activities (e.g., proliferation and missile activities), or involving certain restricted parties (e.g., Iranian Revolutionary Guard Corps) or parties owned or, in some cases, controlled by such parties.

In addition to the above, it is important to note that the easing of sanctions on Iran is subject to “snap-back” if Iran fails to continue to adhere to its obligations under the Agreement. Below is a more detailed discussion of implications of sanctions relief implemented under the JCPOA for **non-U.S. companies** under U.S. and EU law, and the associated remaining restrictions, risks and opportunities. Please see [here](#) for a discussion of the JCPOA's impact on U.S. companies.

## **U.S. and EU Laws Suspended or Lifted**

Effective Implementation Day, the U.S. government lifted nuclear-related secondary sanctions on non-U.S. persons who engage in transactions involving certain sectors of the Iranian economy. Consequently, subject to the restrictions discussed below, the U.S. government has eased restrictions on non-U.S. companies that enter into Iran-related transactions involving the following sectors:

- Iran's financial, banking, energy, petrochemical, shipping, shipbuilding and automotive sectors (the financial and banking measures are discussed in more detail below)
- Iran's port operators
- the provision of insurance, re-insurance and underwriting services in connection with activities that are consistent with the JCPOA
- 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 activities that are consistent with the JCPOA

- the provision of associated services to transactions in the categories above; in this context, “associated services” means “any service – including technical assistance, insurance, re-insurance, brokering, transportation, or financial service – necessary and ordinarily incident to the underlying activity.”

The EU also lifted the economic and financial sanctions that it had previously imposed in response to Iran's nuclear program, which prohibited EU persons from engaging in transactions in sectors of the Iranian economy that are generally consistent with those identified above.

In addition to the easing of these secondary sanctions on non-U.S. persons, the United States removed more than 400 individuals and entities that had previously been designated for their involvement with Iran's nuclear program from the U.S. Department of the Treasury's Office of Foreign Assets Control's (OFAC) List of Specially Designated Nationals and Blocked Persons (“SDN List”), the Foreign Sanctions Evaders (FSE) List and/or the Non-SDN Iran Sanctions Act List (NS-ISA) List. Consequently, non-U.S. persons will no longer be subject to sanctions for conducting transactions with any of the delisted entities and individuals that were removed from these lists.

The EU also removed over 400 individuals and entities that had previously been listed for their involvement with Iran's nuclear program from the EU's consolidated list of individuals, groups and entities subject to EU financial sanctions. Those delisted persons are no longer subject to asset freezes and travel bans, and EU persons are no longer prohibited from entering into transactions with those Iranian persons.

## **Key U.S. Laws Still in Force**

**Primary U.S. Sanctions Applicable to U.S. Persons** – Primary U.S. sanctions targeting Iran, pursuant to the Iran Transaction and Sanctions Regulations administered by OFAC, remain in full force despite implementation of U.S. sanctions relief suspending secondary extraterritorial sanctions affecting non-U.S. companies following Implementation Day. The OFAC sanctions continue to restrict U.S. persons, including U.S. persons employed by non-U.S. companies, from engaging in most transactions involving Iran, with only limited licensing exceptions. As discussed [here](#), the primary U.S. sanctions targeting Iran also continue to apply to non-U.S. entities owned and controlled by U.S. persons, though a new general license authorizes these entities to engage in activities with Iran subject to certain restrictions. U.S. sanctions also continue to prohibit non-U.S. persons from knowingly engaging in conduct seeking to evade U.S. restrictions on transactions or dealings with Iran. These restrictions are particularly relevant in the context of financial transactions, as discussed below.

**U.S. Export Controls** – U.S. export controls on goods, technology and services that also restrict trade with Iran also remain intact. Consequently, non-U.S. persons continue to be prohibited from re-exporting, directly or indirectly, any U.S.-origin goods, technology or services, or other items from a third country that have been exported from the United States if (i) the items are controlled for export from the United States to Iran and (ii) the non-U.S. person knows or has reason to know that the re-export is intended specifically for Iran or the Government of Iran. The same restriction also applies to non-U.S.-manufactured items

containing 10 percent or more U.S.-controlled content, as well as items produced outside the United States based on certain sensitive U.S. technology.

**Certain U.S. Secondary Sanctions** – Lastly, U.S. secondary sanctions continue to prohibit non-U.S. persons from engaging in transactions with more than 200 Iranian and Iran-related sanctioned individuals and entities included on the OFAC SDN List. Specifically, with the exception of certain activities that are exempt from regulation or authorized by OFAC, U.S. secondary sanctions will continue to apply to, among other activities, “significant” transactions involving (i) Iranian individuals and entities that remain, or are placed on, the SDN List; (ii) the Iranian Revolutionary Guard Corps and its designated agents or affiliates; (iii) any other person on the SDN List that has been designated in connection with (a) Iran’s proliferation of weapons of mass destruction or their means of delivery, or Iran’s support for international terrorism, (b) Iran’s human rights abuses in Iran and Syria, and (c) Iran’s threat to the security of Yemen; and (iv) trade with Iran in graphite, raw or semi-finished metals (such as aluminum and steel), coal and certain software, in connection with activities that are not consistent with the JCPOA. OFAC has discretion in determining which transactions qualify as significant, based on a totality of facts and circumstances in light of the factors described in the Iran Financial Sanctions Regulations (e.g., size, number, nature and frequency of the transactions).

### **Key EU Laws Still in Force**

**EU Prohibitions** – Since the JCPOA relates to only the EU’s nuclear proliferation sanctions on Iran, EU antiterrorism, human rights and other non-nuclear, proliferation-related sanctions remain in force. Certain persons and entities continue to be subject to EU restrictive measures, including asset freezes, visa bans and prohibitions on the provision of specialized financial messaging services. In addition, EU persons continue to be prohibited from engaging in activities in Iran or with Iranian persons involving (i) trade in arms and related goods and technology, including weapons, military vehicles and equipment, spare parts for such equipment and associated services and (ii) trade in missile technology (e.g., items on the Missile Technology Control Regime Lists).

**Activities Requiring Prior Authorization** – In addition, certain activities that were prohibited prior to Implementation Day are now permissible only with prior authorization. Authorization must be sought from the relevant authority in the relevant EU member state for trade, transfers and activities related to (i) nuclear goods and technology, (ii) dual-use goods and technology that could contribute to activities inconsistent with the JCPOA and (iii) metals and software designed specifically for use in nuclear and military industries and associated services.

### **Implications of U.S. and EU Legal and Policy Changes for Non-U.S. (Foreign) Financial Institutions**

As noted above, the U.S. action has eased secondary sanctions on non-U.S. persons, including non-U.S. financial institutions, engaged in the following transactions (including associated services):

- financial and banking transactions with individuals and entities removed from the SDN List, FSE List and/or NS-ISA List on Implementation Day (e.g., the Central Bank of Iran and most other Iranian financial institutions)
- transactions and other activities related to the Iranian rial
- provision of U.S. bank notes to the Government of Iran
- the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt, including governmental bonds
- the provision of specialized financial messaging services (e.g., SWIFT) to the Central Bank of Iran and Iranian financial institutions.

Consequently, non-U.S. financial institutions will generally no longer be subject to U.S. sanctions for engaging in transactions involving the Iranian financial sector, unless they engage in financial transactions involving (i) an Iranian or Iran-related individual or entity designated on the SDN List or (ii) activities related to Iranian proliferation of weapons of mass destruction, Iran's military or ballistic missile program, conduct of international terrorism, money laundering or nuclear-related activities outside the U.N./JCPOA-established procurement channels. However, it should be noted that the full scope of activities that remain subject to continuing U.S. sanctions restrictions of this kind is still unclear at this time, based on current agency guidance. Further guidance and clarification will be needed to identify the full scope of such activities that the United States will treat as restricted by sanctions.

Meanwhile, since the EU has lifted all economic and financial sanctions made in connection with the Iranian nuclear program on Implementation Day, the prohibition against financial transfers between EU and Iranian persons, including EU and Iranian financial credit institutions, has been lifted. EU law no longer requires notification and/or prior authorization of any transfers of funds. All banking activities with nonlisted Iranian persons are now permitted, including the establishment of branches of Iranian financial institutions in EU member states and the provision of financial support, such as guarantees and insurance. Financial messaging services, such as SWIFT, are also now permitted for nonlisted Iranian persons.

Despite these considerations, it is very important for EU persons and other non-U.S. parties to be aware that, U.S. sanctions continue to prohibit U.S. persons from broadly engaging in Iran-related transactions, with only limited exceptions. Thus, U.S. sanctions also continue to prohibit U.S. financial institutions—and non-U.S. financial institutions engaging in activities with or transiting U.S. branches, correspondent banks or other touch points with U.S. jurisdiction—from engaging in transactions involving Iran in that context. Consequently, U.S. dollar-denominated transactions involving Iran cannot be cleared through the U.S. financial system (e.g., “u-turn transactions” remain prohibited), including foreign branches of U.S. financial institutions. Moreover, companies doing business involving Iran can continue to expect significant resistance from financial institutions in processing even non-dollarized transactions involving Iran, and they can also expect bank derisking practices to continue with respect to entities doing business in, or involving, Iran.

## **U.S. Visa Waiver Program Immigration Restrictions**

While the JCPOA presents significant opportunity for non-U.S. companies to do business in Iran, individuals seeking to do so must be mindful not only of the remaining sanctions-related restrictions described above, but also of the U.S. immigration consequences of travel to Iran. Specifically, on December 18, 2015, the United States enacted the Visa Waiver Program Improvement and Terrorist Travel Prevention Act, which bars citizens of the 38 participating countries<sup>1</sup> who generally do not require a visa to enter the United States from entering the United States without a visa if they are dual-nationals of Iraq, Iran, Sudan or Syria, or if they have visited any of these countries within the past five years. Individuals meeting this criteria must now apply for, and receive, a U.S. visa from a U.S. embassy or consulate prior to travel to the United States.

These new restrictions are likely to have a significant adverse impact on nationals of visa waiver participating countries who will travel to both Iran and the United States, whether for business or leisure.

## **Conclusion**

While many of the U.S. and EU sanctions that applied to non-U.S. persons have been lifted with the implementation of the JCPOA, the U.S. and EU sanctions regimes have not been terminated, and substantial and significant sanctions restrictions remain in effect. U.S. secondary sanctions continue to apply to transactions involving designated individuals, entities and activities and could result in non-U.S. persons being subject to sanctions. Furthermore, the OFAC sanctions prohibit U.S. financial institutions, and foreign financial institutions engaging in activities within the United States, from entering into most kinds of transactions involving Iran, including those that clear U.S. dollar-denominated transactions that occur abroad. Although most Iran-related EU sanctions have been lifted, the EU also continues to maintain sanctions against Iran that prohibit EU persons from engaging in activities that intersect EU anti-terrorism, human rights and nonproliferation policy concerns associated with Iran. In addition, this sanctions relief is subject to potential snap-back to the extent that Iran is determined to be in violation of its commitments under the JCPOA. In light of these restrictions, non-U.S. companies should be mindful of related sanctions risks, conduct due diligence, ensure incorporation of appropriate contractual provisions and continue to use caution in considering related legal compliance and business risks that may be associated with market entry opportunities involving Iran and specific Iran-related transactions.

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<sup>1</sup> Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan and the United Kingdom.

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