

## International Trade Alert

January 19, 2016

### If you read one thing...

- There are far greater opportunities for U.S. companies with respect to Iran, particularly through foreign subsidiaries and in the commercial aviation sector, however, U.S. persons and foreign entities owned or controlled by U.S. persons are still subject to U.S. sanctions with respect to activities involving Iran.
- The remaining legal and practical challenges require a cautious approach for U.S. companies interested in entering the Iranian market through permissible channels. For example, significant risks may still exist in the financial system with respect to transactions involving Iran.



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## What Implementation of the Iran Nuclear Deal Means for U.S. Companies and Their Subsidiaries Abroad

On January 16, 2016, the International Atomic Energy Agency (IAEA) verified, and U.S. Secretary of State 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 UN, U.S. and EU nuclear-related sanctions.

This alert examines the implications of this sanctions relief for U.S. companies and their U.S.-owned or -controlled foreign entities. While the Agreement removes the application of various sanctions to non-U.S. companies, the U.S. sanctions regime largely remains intact in its application to U.S. companies and individuals and, to some extent, continues to expand. Still, the JCPOA sanctions relief provides (i) a general license authorizing certain activities of foreign subsidiaries of U.S. companies, (ii) a favorable licensing policy for the export and re-export to Iran of certain commercial passenger aircraft and related parts and services, and (iii) a general license authorizing the import of Iranian carpets and certain foodstuff (e.g., pistachios and caviar). These restrictions, opportunities and risks that apply to U.S. companies and their subsidiaries abroad are discussed in more detail below.

### Primary U.S. Sanctions Still Apply

U.S. sanctions against Iran are based on a variety of policy considerations beyond nuclear proliferation (e.g., terrorism, human rights, ballistic missiles, etc.). Since the Agreement did not resolve any of these other policy concerns, the Iranian Transactions and Sanctions Regulations (ITSR) (31 C.F.R. Part 560), administered by the Office of Foreign Assets Control (OFAC), continue to restrict U.S. persons broadly

from engaging in transactions involving Iran. OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List") also still identifies various Iranian entities that are subject to blocking orders (i.e., subject to asset freezes) and with whom U.S. persons and foreign entities owned or controlled by them are prohibited from conducting business. These restrictions effectively amount to a continued U.S. embargo against Iran, and still exclude Iran from the U.S. financial system.

Moreover, U.S. sanctions are expanding outside of the Agreement. Notably, on January 17, 2016, one day after Implementation Day, OFAC sanctioned 11 entities for their alleged role in Tehran's ballistic missile program, which include U.A.E.-based Mabrooka Trading Co. LLC, its founder and five Iranian Ministry of Defense for Armed Forces Logistics officials.

### **General License H for Foreign Entities Owned or Controlled by a U.S. Person**

While the ITSR restrictions continue to apply to foreign entities owned or controlled by U.S. persons, OFAC has issued General License H that, effective immediately, authorizes such entities to enter into certain transactions involving Iran. It also authorizes U.S. persons (e.g., U.S. parent companies and employees) to engage in limited activities in support of their foreign subsidiaries.

General License H broadly authorizes U.S.-owned or -controlled foreign entities to enter into Iran-related transactions unless they fall under any of the eight enumerated prohibitions. Specifically, these foreign entities are not permitted to engage in Iran-related transactions that involve:

- I. the direct or indirect export or reexport of goods, technology or services from the United States, including items containing 10 percent or more U.S.-controlled content, without separate authorization from OFAC
- II. any transfer of funds to, from or through the U.S. financial system
- III. any individual or entity on the SDN List or any activity that would be prohibited by non-Iran sanctions administered by OFAC if engaged in by a U.S. person or in the United States
- IV. any individual or entity identified on the Foreign Sanctions Evaders (FSE) List
- V. unless authorized by the U.S. Department of Commerce, activity prohibited by, or requiring a license under, part 744 of the U.S. Export Administration Regulations (EAR) or involving a person whose export privileges have been denied pursuant to part 764 or 766 of the EAR
- VI. any military, paramilitary, intelligence or law enforcement entity of the Government of Iran, or any officials, agents or affiliates thereof
- VII. any activity that is sanctionable under certain executive orders relating to Iran's proliferation of weapons of mass destruction and their means of delivery (including ballistic missiles); international terrorism; Syria; Yemen; or Iran's commission of human rights abuses against its citizens
- VIII. any nuclear activity involving Iran that is subject to the procurement channel established pursuant to UNSCR 2231 and the JCPOA and that has not been approved through the procurement channel process.

In addition, General License H authorizes U.S. persons, including senior management, to be involved in the initial determination as to whether to engage in activities with Iran under the general license. U.S.

persons may also establish, alter and provide training on corporate policies and procedures to allow U.S.-owned or -controlled foreign entities to engage in activities authorized under General License H. Lastly, U.S. persons can make certain “automated” and “globally integrated” business support systems available to U.S.-owned or -controlled foreign entities to support engagement in permissible Iran-related transactions.

However, the general license does not authorize U.S. persons to continue to be involved in the ongoing Iran-related operations or decision making of its U.S.-owned or -controlled foreign entities once the establishment or alteration of corporate policies and procedures is complete. In other words, OFAC’s ITSR restrictions on U.S. persons’ involvement in the Iran-related day-to-day operations of a U.S.-owned or -controlled foreign entity will continue to apply. This includes prohibitions on U.S. persons approving, financing, facilitating or guaranteeing any Iran-related transaction by its U.S.-owned or -controlled foreign entities. For instance, these restrictions would apply to U.S. person employees of U.S.-owned or -controlled foreign entities engaging in authorized activities under General License H.

### **Licensing Policy for the Export or Reexport to Iran of Commercial Passenger Aircraft and Related Parts and Services**

OFAC also issued a statement of licensing policy through which U.S. persons (and non-U.S. persons) may expect favorable treatment of license applications involving Iran-related transactions for the (i) export, reexport, sale, lease or transfer to Iran of commercial passenger aircraft exclusively for civil aviation end use, (ii) export, reexport, sale, lease or transfer to Iran of spare parts and components for commercial passenger aircraft; and (iii) provision of associated services, including warranty, maintenance and repair services and safety-related inspections for all the foregoing, provided that licensed items and services are used exclusively for commercial passenger aviation. The favorable licensing policy covers wide-body, narrow-body, regional and commuter aircraft used for commercial passenger aviation. However, it excludes cargo aircraft, state aircraft, unmanned aerial vehicles, military aircraft and aircraft used for general aviation or aerial work.

OFAC has also stated that licenses approved pursuant to this licensing policy “will include appropriate conditions to ensure that licensed activities do not involve, and no licensed aircraft, goods, or services are re-sold or retransferred to, any person on the SDN list.” Furthermore, any license applications that request authorization to export, reexport or transfer U.S. export-controlled items must be consistent with all U.S. legal requirements, including the EAR and other related Department of Commerce regulations.

### **General License and Regulatory Amendment Authorizing the Imports of Iranian-Origin Carpets and Foodstuffs**

OFAC also issued a general license authorizing the importation into the United States of Iranian-origin carpets, other textile floor and wall coverings, and foodstuffs that are intended for human consumption. OFAC specifically clarified that the definition of foodstuffs includes Iranian-origin pistachios and caviar. Furthermore, U.S. persons are authorized to act as brokers for the purchase or sale of Iranian-origin carpets and foodstuffs that are authorized to be imported into the United States. While restrictions continue to exist with respect to debits and credits to Iranian accounts, payments are authorized for these

imports, such as U.S. depository institutions being authorized to process letters of credit for such payments. Importantly, the ITSR amendment authorizing the importation of Iranian-origin carpets and foodstuffs will only go into effect after its publication in the *Federal Register*.

## **Conclusion**

U.S. persons and foreign entities owned or controlled by U.S. persons are still subject to U.S. sanctions with respect to activities involving Iran. However, as of January 16, 2016, there are far greater opportunities for U.S. companies with respect to Iran, particularly through foreign subsidiaries and in the commercial aviation sector. If U.S. companies are interested in entering the Iranian market through these permissible channels, the remaining legal and practical challenges require a cautious approach. For instance, beyond the regulatory restrictions identified above, significant risks may still exist in the financial system with respect to transactions involving Iran. Consequently, considerable legal and business review and planning is necessary to guard against the continued risk in the Iranian market.

**Contact Information**

If you have any questions regarding this alert, please contact:

**Edward L. Rubinoff**

Partner

[erubinoff@akingump.com](mailto:erubinoff@akingump.com)

+1 202.887.4026

Washington, D.C.

**Tatman R. Savio**

Partner

[tatman.savio@akingump.com](mailto:tatman.savio@akingump.com)

+852 3694.3015

Hong Kong

**Gola Javadi**

Associate

[gjavadi@akingump.com](mailto:gjavadi@akingump.com)

+1 212.872.8077

New York

**Wynn H. Segall**

Partner

[wsegall@akingump.com](mailto:wsegall@akingump.com)

+1 202.887.4573

Washington, D.C.

**Nnedinma C. Ifudu Nweke**

Senior Counsel

[nifudu@akingump.com](mailto:nifudu@akingump.com)

+1 202.887.4013

Washington, D.C.

**Tamer A. Soliman**

Partner

[tsoliman@akingump.com](mailto:tsoliman@akingump.com)

+971 2.406.8531

Abu Dhabi

**Christian C. Davis**

Counsel

[chdavis@akingump.com](mailto:chdavis@akingump.com)

+1 202.887.4529

Washington, D.C.