

‘Implementation Day’ Marks Rollback of Significant Nuclear-Related Sanctions on Iran

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On Jan. 16, 2016, Secretary of State John Kerry confirmed the International Atomic Energy Agency’s (IAEA) determination that Iran implemented its key nuclear-related measures as described in the Joint Comprehensive Plan of Action

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(JCPOA). Thus, Jan. 16, 2016 was “Implementation Day” under the JCPOA. As a result of Iran verifiably meeting its nuclear commitments, the United States lifted certain sanctions primarily applicable to non-U.S. persons, including foreign entities owned or controlled by U.S. persons, as discussed below. In addition, the United States removed over 400 individuals and entities from the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons List (SDN List), the Foreign Sanctions Evaders List (FSE List) and/or the Non-SDN Iran Sanctions Act List (NS-ISA List).

SECONDARY SANCTIONS IN CERTAIN SECTORS

The U.S. government rolled back certain nuclear-related “secondary

sanctions” on Iran: 1) as applied to non-U.S. persons and entities; and 2) with respect to the eight business categories listed below. These secondary sanctions applied even to non-U.S. entities that were not owned or controlled by a U.S. person and that were outside OFAC’s jurisdiction. Although such entities could not be penalized in an enforcement action, they faced other sanctions such as being denied access to the U.S. financial system. Under the JCPOA, non-U.S. persons, including U.S.-owned or -controlled foreign entities, are now eligible to participate in transactions or activities subject to the sanctions lifting under the JCPOA only to the extent that the transactions or activities are exempt from regulation or authorized by OFAC. Specifically, the United States lifted the following eight categories of

secondary sanctions as related to Iran:

1. Financial and banking-related activities;
2. Underwriting services, insurance or re-insurance;
3. Energy and petrochemicals;
4. Shipping, shipbuilding and port operators;
5. Gold and other precious metals;
6. Graphite, metals and software for integrating industrial processes;
7. Automotive sector; and
8. Sanctions on associated services for each of the categories above.

Accordingly, for example, a Swiss corporation may purchase, sell, transport or market petroleum, petrochemical products and natural gas from Iran, including transactions with the National Iranian Oil Company (NIOC). A Swiss subsidiary of a U.S. company may also engage in transactions with Iran's energy sector, provided the U.S. parent is not involved in the Iran-related operations or decision-making, as explained further below.

The secondary sanctions relief does not apply to transactions in-

volving persons on the SDN List. Transactions involving such persons remain prohibited after Implementation Day.

GENERAL LICENSE H

OFAC's Iran sanctions program originally applied for the most part only to U.S. persons and entities, and not to foreign subsidiaries of U.S. companies. The program was subsequently expanded such that, by 2012, a foreign entity owned or controlled by a U.S. person was prohibited from knowingly engaging in any transaction, directly or indirectly, with the Government of Iran (GOI) or any person subject to the jurisdiction of the GOI to the same extent as a U.S. person. For this purpose, a foreign entity is deemed owned or controlled by a U.S. person if the U.S. person: 1) holds a 50% or greater equity interest by vote or value in the entity; 2) holds a majority of seats on the board of directors of the entity; or 3) otherwise controls the actions, policies or personnel decisions of the entity.

The JCPOA, pursuant to General License H, now authorizes U.S.-owned

or -controlled foreign entities to engage in transactions with Iran, subject to certain limitations. This authorization is not limited to specific economic sectors or industries. The limitations to General License H, however, are substantial. Among other things, General License H does not authorize transactions involving:

1. the director or indirect exportation, reexportation, sale or supply of goods, technology, or services from the United States, unless otherwise licensed by OFAC;
2. any transfer of funds to, from, or through the U.S. financial system;
3. any individuals on the SDN List or the FSE List;
4. any activity prohibited by, or otherwise requiring a license under, the Export Administration Regulations or with a person on the Bureau of Industry and Security's Denied Persons or Entity Lists;
5. any military, paramilitary, intelligence or law enforcement entity of the GOI, or any official, agent, or affiliate, thereof;
6. sanctionable activity, pursu-

ant to Executive Orders, related to Iran's proliferation of weapons of mass destruction, and their delivery means, including ballistic missiles, international terrorism, Syria, Yemen, or Iran's commission of human rights abuses against its citizens; and

7. any nuclear activity involving Iran that is inconsistent with the JCPOA.

OFAC's General License H also authorizes U.S. persons (*e.g.*, senior management) to establish or alter corporate policies to the extent necessary to allow U.S.-owned or -controlled foreign entities to engage in transactions involving Iran that would otherwise be prohibited. U.S. persons, however, may not be involved in the Iran-related day-to-day operations of a U.S.-owned or -controlled foreign entity, including by approving, financing, facilitating or guaranteeing any Iran-related transaction by the foreign entity, regardless of the business sector of the activity. In addition, General License H authorizes U.S. person employees and outside legal counsel and consultants to provide training,

advice and counseling on the new or revised operating policies and procedures, provided these services do not facilitate illegal transactions.

Furthermore, General License H authorizes U.S. persons to make available certain "Authorized Business Support Systems." This includes any automated and globally integrated computer, accounting, email, telecommunications or other business support system, platform, database, application or server broadly available to, and in general use by, the U.S. parent company's global organization. For example, a "sales lead database" on a U.S. server that is broadly available to, and in general use by, the U.S. parent company's non-U.S. entities would be considered "globally integrated" for the purposes of this license.

LICENSED ACTIVITIES FOR U.S. PERSONS

Aircraft Parts

Simultaneous with Implementation Day, OFAC issued a Statement of Licensing Policy (SLP) establishing a favorable licensing policy regime through which U.S. and

non-U.S. persons may apply for a specific license authorizing certain transactions related to the sale of commercial aircraft and related parts and services to Iran, provided those transactions do not involve SDNs. Individuals and entities, on a case-by-case basis, may be issued a license allowing them to: 1) export, re-export, sell, lease or transfer to Iran commercial passenger aircraft for exclusively civil aviation end-use; 2) export, re-export, sell, lease or transfer to Iran spare parts and components for commercial passenger aircraft; and 3) provide associated services, including warranty, maintenance and repair services and safety-related inspections for commercial passenger aviation. Cargo aircraft, state aircraft, unmanned aerial vehicles, military aircraft, and aircraft used for general aviation or aerial work are not eligible for licensing under the SLP.

Imports of Iranian-Origin Carpets and Foodstuffs

In addition, effective Jan. 16, 2016, Iranian-origin carpets and foodstuffs, including pistachios and caviar, may be imported into the United States without prior written authorization. This general license covers: 1) car-

pets and other textile floor coverings and carpets used as wall hangings that are classified under Chapter 57 or Heading 9706.00.0060 of the Harmonized Tariff Schedule of the United States; and 2) foodstuffs intended for human consumption that are classified under Chapters 2-23 of the Harmonized Tariff Schedule of the United States. However, U.S. persons remain prohibited from paying Iranian companies for these imports by crediting or debiting an Iranian account. Therefore, payment mechanisms under this general license typically involve a third-country bank or money service business to finance the purchase from a third country.

CIVIL AND CRIMINAL PENALTIES

OFAC may take a variety of enforcement actions for sanctions violations, including imposing civil monetary penalties and making criminal referrals to appropriate law enforcement agencies for investigation and/or prosecution. The penalties for such violations can be substantial and vary based on the sanctions program and other factors. For violations of many of the Iranian sanctions regulations, the International

Emergency Economic Powers Act (IEEPA) provides for a maximum civil penalty of the greater of \$250,000 or twice the amount of the transaction that is the basis of the violation. Each prohibited transaction is viewed as a separate violation. For criminal violations, which involve a willful violation or willful attempt to violate Iranian sanctions regulations, IEEPA provides for a maximum penalty of \$1 million, imprisonment of 20 years, or both. Proceeds derived from an IEEPA offense are also subject to forfeiture.

SANCTIONS IN PLACE AFTER IMPLEMENTATION DAY

Companies that want to engage in new business involving Iran must continue to exercise caution. Iran remains designated as a state sponsor of terrorism, and the JCPOA does not alter that designation. Indeed, the rollback of sanctions described above can be “snapped back” if Iran fails to comply with the JCPOA going forward. Moreover, the U.S. government continues to enforce sanctions against persons and entities involved in the proliferation of weapons of mass destruction

and their delivery means, including ballistic missiles. On Jan. 17, 2016, the day after Implementation Day, OFAC added 11 entities and individuals to the SDN List for their involvement in procuring goods for Iran’s ballistic missile program. Finally, on Jan. 20, 2016, FinCEN, one of the U.S. Department of the Treasury’s lead agencies in the fight against money laundering, called on U.S. financial institutions to “give special attention to business relationships and transactions with Iran” because of the risk of terrorist financing.



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