

ALERTS

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

January 20, 2016

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 (“JCPOA”). Thus, Jan. 16, 2016 is “Implementation Day” under the JCPOA. As a result of Iran verifiably meeting its nuclear commitments, the United States and European Union lifted certain nuclear-related “secondary sanctions” on Iran, as discussed below. In addition to sanctions relief, 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

The U.S. government rolled back sanctions, with certain limited exceptions, (1) as applied to “non-U.S. persons” and entities and (2) with respect to the eight business categories listed below.

For these purposes, the term “non-U.S. person” includes foreign entities owned or controlled by U.S. persons. A foreign entity is owned or controlled by a U.S. person if the U.S. person: (1) holds a 50-percent 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.

U.S.-owned or -controlled foreign entities are 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 only the following eight categories of secondary sanctions against 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.

U.S.-owned or -controlled foreign entities continue to be subject to remaining U.S. secondary sanctions, as are all other non-U.S. persons.

Accordingly, for example, a Swiss corporation that is majority-owned by U.S. persons 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.

The secondary sanctions relief, however, does not apply to transactions involving persons on the SDN List. Transactions involving such persons remain prohibited after Implementation Day.

Licensed Activities for U.S. Persons

While the general prohibitions against engaging in transactions with Iran by U.S. persons remain in place, the United States has committed to license the following three categories of activity by U.S. persons, provided that the transactions do not involve persons on the SDN List.

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.

General License H

OFAC’s General License H 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. However, U.S. persons *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. 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.

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) carpets 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.

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.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the following attorneys: *Betty Santangelo, Gary Stein, Peter H. White, Seetha Ramachandran, Michael P. Court or Matthew J. Moses.*

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