

“IMPLEMENTATION DAY” MARKS LIFTING OF CERTAIN NUCLEAR-RELATED “SECONDARY” SANCTIONS ON IRAN BY THE UNITED STATES IN ACCORDANCE WITH THE JOINT COMPREHENSIVE PLAN OF ACTION

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By: Jerome J. Zaucha, Daniel Gerkin

On January 16, 2016, the International Atomic Energy Agency ("IAEA") verified that the Islamic Republic of Iran ("Iran") had satisfied its commitments under the Joint Comprehensive Plan of Action ("JCPOA"), which was entered into on July 14, 2015, by the so-called P5+1 (China, France, Germany, the Russian Federation, the United Kingdom, and the United States), the European Union, and Iran.^[1] Accordingly, January 16, 2016, marked "Implementation Day," or the date on which the United States effected the lifting of its nuclear-related "secondary" sanctions and took additional steps consistent with its commitments under the JCPOA.

As discussed below, however, this "secondary" sanctions relief primarily affects the ability of non-U.S. persons to engage in transactions involving Iran occurring entirely outside the jurisdiction of the United States and not involving U.S. persons, but does not materially affect the ability of U.S. persons to engage in such transactions, although it does allow for certain Iran trade to be undertaken by owned or controlled non-U.S. affiliates of U.S. companies. Indeed, the primary Iran-related trade embargo restrictions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"), which are applicable to U.S. persons and to U.S. export-controlled goods, software, and technology, remain in effect.^[2]

The European Union likewise lifted certain Iran-related sanctions. A more detailed discussion of the actions taken by the European Union may be found [here](#).

A brief summary of the actions taken by the United States appears below. More detailed guidance jointly published by the U.S. Department of State and the U.S. Department of the Treasury may be found [here](#) and Frequently Asked Questions published by OFAC may be found [here](#).

LIFTING OF NUCLEAR-RELATED "SECONDARY" SANCTIONS

Effective January 16, 2016, non-U.S. persons generally may engage in the following activities involving Iran, which previously could have resulted in the imposition of sanctions by the United States, without being exposed to U.S. "secondary" sanctions risk:

- Activities, including financial and banking transactions, with the government of Iran, the Central Bank of Iran, and Iranian financial institutions, among others;

- The provision of underwriting services, insurance, and reinsurance;
- Investment in Iran's oil, gas, and petrochemical sectors; the purchase, acquisition, sale, transportation, and marketing of petroleum, petrochemical products, and natural gas from Iran; the export, sale, and provision of refined petroleum products and petrochemical products to Iran; and transactions with Iran's energy sector, including with the National Iranian Oil Company, the Naftiran Intertrade Company, and the National Iranian Tanker Company. In addition, the United States has ceased efforts to reduce Iran's crude oil sales, including by terminating limitations on the quantities of Iranian crude oil sold and the nations permitted to purchase Iranian crude oil without risking sanctions;
- Transactions with Iran's shipping and shipbuilding sectors and port operators;
- Transactions relating to the sale, supply, export, or transfer, directly to or from Iran, of gold and other precious metals;
- Transactions relating to the sale, supply, or transfer, directly or indirectly, of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes to or from Iran; and
- Financial or other transactions relating to the sale, supply, or transfer to Iran of goods and services used in connection with the Iranian automotive sector.

SANCTIONS LIST REMOVALS

In addition to the several categories of activities described above, non-U.S. persons generally no longer will be subject to nuclear-related "secondary" sanctions risk for engaging in transactions with the more than 400 individuals and entities OFAC has removed from its list of Specially Designated Nationals and Blocked Persons ("SDN List"), Foreign Sanctions Evaders List, and Non-SDN Iran Sanctions List. These include certain "government of Iran" and "Iranian financial institution" entities that now appear on a separate "E.O. 13599 list."^[3] Entities appearing on this separate list will continue to have any of their property and interests in property that are in the United States or within the possession or control of a U.S. person blocked, and U.S. persons will continue to be prohibited from engaging in transactions with such entities. However, non-U.S. persons will not be at risk of U.S. sanctions for dealing with such entities.

CONTINUING NUCLEAR-RELATED "SECONDARY" SANCTIONS AND OTHER RISKS

Despite the lifting of nuclear-related "secondary" sanctions and the sanctions list removals described above, non-U.S. persons still must be mindful of the following risks, none of which are impacted by the developments triggered by Implementation Day:

- The primary U.S. trade embargo restrictions, as well as U.S. export controls relating to Iran, remain in full force and may impact transactions outside the United States involving U.S. persons, U.S.-origin items, and items manufactured outside the United States that incorporate U.S.-origin content;
- Transactions by non-U.S. persons may not involve U.S. financial institutions;

- The assets of non-U.S. persons may still be blocked though the addition of such persons to the SDN List for activities involving Iran (or any other country) that are deemed to support: (i) international terrorism; (ii) the proliferation of weapons of mass destruction and their means of delivery, including ballistic missiles;^[4] (iii) Iran's human rights abuses; (iv) human rights abuses in Syria; and (v) destabilization in Yemen;
- Activities by non-U.S. persons remain sanctionable if they involve persons remaining on the SDN List, including, in particular, the Islamic Revolutionary Guard Corps and any of its designated officials, agents, or affiliates, and individuals and entities designated in connection with Iran's proliferation of weapons of mass destruction and support for international terrorism; and
- Iran remains designated as a state sponsor of terrorism and the restrictions attendant to such a designation remain in effect.

PRIMARY U.S. TRADE EMBARGO RESTRICTIONS REMAIN IN EFFECT

The OFAC-administered Iranian Transactions and Sanctions Regulations, which bar U.S. persons from engaging in virtually any transaction involving Iran, remain in effect. However, Implementation Day ushered in the following changes potentially opening certain trade with Iran:

- Pursuant to General License H, which may be found at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glh.pdf, entities owned or controlled by a U.S. person that are established and maintained outside the United States again may engage in transactions, subject to certain conditions, directly or indirectly with the government of Iran or persons subject to the jurisdiction of the government of Iran (including persons in Iran). In addition, the General License authorizes U.S. persons, such as U.S. parent companies, to establish or alter existing policies or procedures to allow these transactions and authorizes U.S. persons to make available to owned or controlled non-U.S. affiliates any automated and globally integrated business support systems, platforms, databases, applications, or servers. Otherwise, however, U.S. persons cannot be involved in any day-to-day activity pertaining to their owned or controlled affiliates' trade with Iran;
- OFAC also issued a Statement of Licensing Policy for Activities Related to the Export or Reexport to Iran of Commercial Passenger Aircraft and Related Parts and Services, which may be found at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/lic_pol_statement_aircraft_jcpoa.pdf, which authorizes the issuance of licenses to U.S. persons and, as necessary, non-U.S. persons to engage in trade with Iran involving commercial passenger aircraft for civilian use and associated parts, components, and services; and
- On January 21, 2016, OFAC published in the Federal Register a general license, which may be found at <https://www.gpo.gov/fdsys/pkg/FR-2016-01-21/pdf/2016-01227.pdf>, authorizing U.S. persons to import, and to engage in other transactions relating to, Iranian-origin foodstuffs, such as caviar and pistachios, carpets and other textile floor coverings, and carpets used as wall hangings.

JCPOA "SNAP-BACK" PROVISIONS

Please note that Iran will continue to be subject to stringent IAEA monitoring and that sanctions may, pursuant to the JCPOA, "snap back" into place in the event of Iran's material noncompliance with commitments it made under the agreement. The U.S. government has committed not to retroactively impose sanctions for legitimate activity undertaken after Implementation Day. However, although there may be a "wind down" period, there will be no "grandfathering" of contracts entered into after Implementation Day, but before the date on which sanctions are re-imposed, which suggests the need for contractual protections in the event of a "snap back."

CONCLUSION

While Implementation Day likely will be beneficial for non-U.S. entities eager to reengage with Iran, U.S. entities largely still will be left standing on the sidelines. Nevertheless, significant risks remain even for non-U.S. persons under the U.S. embargo and sanctions regimes, including, in particular: (i) risks relating to any involvement of U.S. persons or U.S.-origin items in Iran transactions, as well as risks associated with U.S. dollar-denominated transactions or non-U.S. currency transactions that may transit the U.S. financial system, which still are prohibited; (ii) risks relating to the identity of the counterparties in any Iran transactions, which should be vetted against the various U.S. restricted party lists, which still could result in sanctions exposure for non-U.S. persons; and (iii) commercial risks, including potential noncompliance with sanctions-related provisions in credit, financing, underwriting, and other forms of agreement.

Notes:

[1] The JCPOA and the timetable for its implementation was the subject of a July 2015 alert, which may be accessed [here](#).

[2] Please note that the term "U.S. person" means: (i) any U.S. citizen or permanent resident alien, wherever located and by whomever employed; (ii) any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches); and (iii) any person physically present in the United States.

[3] Please note that most Iranian financial institutions now appear on this separate E.O. 13599 list, but the following financial institutions remain on the SDN List and, therefore, as discussed below, non-U.S. entities, to avoid U.S. recriminations, must exercise caution in connection with transactions involving these entities: (i) Ansar Bank; (ii) Bank Saderat; (iii) Bank Saderat PLC; and (iv) Mehr Bank.

[4] On January 17, 2016, OFAC added a number of individuals and entities to the SDN List in connection with Iran's recent ballistic missile testing.

KEY CONTACTS



JEROME J. ZAUCHA
SENIOR OF COUNSEL

WASHINGTON DC
+1.202.778.9013
JEROME.ZAUCHA@KLGATES.COM

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