



Implementation Day Triggers Significant Changes to International Sanctions Against Iran

International sanctions on Iran changed drastically on Saturday, January 16, 2016. After months of anticipation and speculation, the International Atomic Energy Agency (“IAEA”) announced that it has verified that Iran has fulfilled its commitments under the Joint Comprehensive Plan of Action (“JCPOA”). This triggered Implementation Day, the latest and perhaps most significant milestone contemplated by the agreement reached on July 14, 2015, and the day on which the international sanctions relief contemplated by the JCPOA comes into effect. Although Implementation Day has undoubtedly been reached far earlier than originally predicted, United Nations, United States, and European Union authorities have promptly lifted certain international sanctions, as required by the JCPOA, and provided extensive guidance regarding the scope of the newly enacted sanctions relief. This lifting of sanctions significantly widens the scope of activities in which many international companies can engage with Iran, though many restrictions remain in place, particularly for U.S. companies.

The implementation of the JCPOA comes almost six months to the day after the EU, together with the U.S., the UK, Germany, France, Russia, and China (the “P5+1”) reached an agreement with Iran regarding

Iran’s nuclear weapons development efforts. The JCPOA built on an [April 2015 framework](#) developed by the parties. That framework and the JCPOA committed Iran to undertake certain measures to prepare for and implement inspections and other processes to limit its ability to develop nuclear weapons in exchange for specified relief from international nuclear-related sanctions imposed over the past decade.

This *Commentary* provides a brief overview of the sanctions lifted on January 16 and the resulting regulatory changes for U.S., EU, and international companies.

UN SANCTIONS

Pursuant to the terms of UNSCR 2231 (2015) (which endorsed the JCPOA), all prior United Nations Security Council Resolutions mandating sanctions on Iran—namely, UNSCR 1696 (2006), 1737 (2007), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010), and 2224 (2015)—were formally terminated upon receipt of the IAEA’s report verifying that Iran has met its nuclear-related obligations under the JCPOA. All countries that are members of the UN are required to give effect to UN sanctions and will similarly now be able to withdraw these requirements within their

jurisdictions. Through UNSCR 2231, the UN continues, however, to impose certain restrictions on nuclear-, conventional arms-, and ballistic missile-related activities involving Iran, and all UN sanctions remain subject to reimposition in the event of significant nonperformance by Iran of its commitments under the JCPOA.

As a result of Saturday's announcement, UNSCR 2231, in conjunction with the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT"), is now the sole international legal framework addressing Iran's nuclear activities.

U.S. SANCTIONS

Upon confirmation of the IAEA's findings by U.S. Secretary of State John Kerry, the United States, through a combination of waivers, partial or complete revocation of executive orders, commitments to refrain from imposing sanctions measures, and agency findings, took three key steps on January 16 to fulfill its obligations under the JCPOA. First, the United States lifted its nuclear-related secondary, or extraterritorial, sanctions that had been imposed on certain Iranian industries, services, and trade. Second, the United States removed certain individuals and entities identified in the JCPOA from its sanctions-related prohibited parties lists. Finally, the United States implemented a general license to permit certain activities involving entities owned or controlled by U.S. persons, announced that it would be adding a general license for the import of Iranian-origin carpets and certain foodstuffs to the United States, and issued a Statement of Licensing Policy related to the export or re-export to Iran of commercial passenger aircraft and related parts and services.

Notably, with limited exceptions, the sanctions relief implemented on January 16 does not apply to U.S. persons. Indeed, substantial U.S. sanctions impacting U.S. and non-U.S. persons remain in force. In addition, all U.S. sanctions lifted on January 16 may be reimposed in the event of significant nonperformance by Iran of its obligations under the JCPOA. Accordingly, careful review of these changes to U.S. sanctions against Iran and forward-looking protections in the event of the reimposition of sanctions should be considered before proceeding with any course of action.

Lifting of Nuclear-Related Secondary Sanctions

As of January 16, the United States lifted secondary sanctions applicable to non-U.S. persons for the following general categories of activities:

- Certain financial or banking activities, including transactions involving specified designated individuals and entities; transactions involving the Iranian rial; transactions involving the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt, including government bonds; and provision of specialized financial messaging services to designated entities;
- Provision of certain insurance, reinsurance, and underwriting services;
- Certain activities related to Iran's energy sector, such as investment, including participation in joint ventures, provision of goods, services, information, technology, and technical expertise and support; the purchase, acquisition, sale, transport, or marketing of Iranian petroleum, petrochemical products, and natural gas; the exportation, sale, or provision of refined petroleum and petrochemical products to Iran; and transactions involving certain designated entities;
- Certain activities related to Iran's shipping and shipbuilding sectors and port operators;
- Activities related to trade in gold and other precious metals;
- Activities related to trade in graphite, raw or semi-finished metals (such as aluminum and steel), coal, and software for integrating industrial processes; and
- Activities related to the sale, supply, or transfer of goods or services used in connection with Iran's automotive sector.

Accordingly, non-U.S. persons will no longer be subject to U.S. sanctions measures should they engage in these formerly sanctionable activities.

Removal of Certain Designated Persons from U.S. Sanctions Lists

The United States has also removed more than 400 individuals and entities specifically set out in the JCPOA, including the Central Bank of Iran and certain other specified Iranian

financial institutions, from the List of Specially Designated Nationals and Blocked Persons (the “SDN List”), the Foreign Sanctions Evaders List (the “FSE List”), and the Non-SDN Iranian Sanctions List maintained by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). Consequently, as of January 16, non-U.S. persons are no longer subject to the imposition of sanctions for engaging in transactions with any individual or entity removed from these lists, as long as the transactions involve neither individuals nor entities still designated on the SDN List or activities that continue to be subject to certain remaining U.S. sanctions, such as activities related to the proliferation of weapons of mass destruction or support for international terrorism.

Licensing Regimes

The United States has taken steps to license or permit licensing for three categories of activities.

General License Authorizing Activities by Non-U.S. Persons Owned or Controlled by U.S. Persons. OFAC issued a general license, effective on January 16, authorizing, subject to certain restrictions, entities owned or controlled by U.S. persons to engage, directly or indirectly, in transactions involving Iran. As a result, foreign subsidiaries of U.S. persons are now permitted to engage in many transactions involving Iran that were previously prohibited by U.S. sanctions, and will not require a specific license to do so.

Further, this general license authorizes U.S. persons to engage in certain otherwise prohibited activities that may be necessary to facilitate these newly authorized activities. Specifically, U.S. persons are authorized to engage in:

- Activities related to establishing or altering operating policies and procedures to the extent necessary to permit U.S.-owned or -controlled entities to engage in activities covered by the general license; and
- Activities to make available to U.S.-owned or -controlled entities any automated and globally integrated computer, accounting, email, telecommunications, or other business support systems, platforms, databases, applications, or servers necessary to store, collect, transmit, generate, or otherwise process documents or information related to activities covered by the general license.

Pursuant to the general license, U.S. persons are also permitted to be involved in the initial determination to engage in activities in Iran authorized by this general license and provide training and counseling regarding any new or revised policies or procedures, but otherwise remain prohibited from being involved in the day-to-day operations associated with such activities.

In addition to the limitations on the involvement of U.S. persons in the Iran-related activities of their foreign subsidiaries, this general license imposes several other key restrictions. Specifically, the general license does not authorize U.S.-owned or -controlled entities to engage in transactions involving, among others:

- The export, re-export, sale, or supply, directly or indirectly, of any goods, technology, or services from the United States to Iran without authorization;
- Any activity involving any item (including information) subject to the Export Administration Regulations (“EAR”), 15 C.F.R. Parts 730-774, that is prohibited or requires a license under the EAR’s end-user and end-use restrictions;
- Participation in any transaction involving any person whose export privileges have been denied pursuant to Part 764 or 766 of the EAR;
- Any transfer of funds to, from, or through the U.S. financial system;
- Any persons on OFAC’s SDN List, FSE List, or military, paramilitary, intelligence, or law enforcement entity of the Government of Iran or their officials, agents, or affiliates;
- Any activities prohibited by remaining U.S. sanctions on Iran related to proliferation of weapons of mass destruction, support for international terrorism, and human rights abuses, or any other U.S. sanctions programs, including, specifically, U.S. sanctions pertaining to Syria and Yemen; and
- Any nuclear activities involving Iran that are subject to the procurement channel established pursuant to UNSCR 2231 that have not been approved through the required process.

U.S. persons will be held liable and subject to civil penalties if foreign entities they own or control engage in activities outside those authorized under the general license.

General License Authorizing the Import of Iranian-Origin Carpets and Foodstuffs. OFAC has further announced that it will be adding a general license authorizing the importation of Iranian-origin carpets and certain foodstuffs, including pistachios and caviar, into the United States, and certain related services, including processing associated letters of credit and acting as a broker to such transactions. This general license will apply to certain categories of Iranian-origin carpets and foodstuffs, based on Harmonized Tariff Schedule classification. All goods covered by the general license will remain subject to all other applicable laws and regulations, including those administered by the Departments of Agriculture or Commerce, the Food and Drug Administration, and Customs and Border Protection. Significantly, this general license will become effective only upon publication in the Federal Register, and all covered transactions undertaken before that time remain prohibited.

Licensing Policy for Activities Related to the Export or Re-export of Commercial Passenger Aircraft and Related Parts and Services to Iran. Finally, OFAC has issued a Statement of Licensing Policy, effective as of January 16, permitting the issuance of licenses on a case-by-case basis that authorize the export, re-export, sale, lease, or transfer of commercial passenger aircraft and related spare parts and components to Iran for civil aviation use, and the provision of associated services, including warranty, maintenance, and repair services and safety-related inspections. Certain transactions covered by this Statement of Licensing Policy may also require separate authorization from the U.S. Department of Commerce's Bureau of Industry and Security.

Substantial U.S. Sanctions Remain in Place

Notwithstanding the significant sanctions relief provided pursuant to the JCPOA on Implementation Day, substantial U.S. sanctions remain in place that will continue to prohibit or penalize activities by U.S. and non-U.S. persons.

Most significantly, U.S. primary sanctions have not been lifted in connection with Implementation Day and remain in force. Consequently, very little has changed for U.S. persons, including U.S. companies, as a result of Implementation Day. These sanctions not only prohibit U.S. persons from engaging in virtually all transactions or other dealings directly or indirectly involving Iran without authorization, but also, significantly, apply to certain activities by non-U.S. persons, including the re-export of certain U.S.-origin or -controlled goods, technology, and services, and efforts to evade, avoid, or cause a U.S. person to violate U.S. sanctions. In addition, non-U.S. companies (including non-U.S. financial institutions) may not have access to or otherwise use the U.S. financial system in connection with any dealings involving Iran, as U.S. financial institutions remain prohibited, pursuant to U.S. primary sanctions, from engaging in or facilitating any transactions directly or indirectly involving Iran. This prohibition includes so-called "U-turn transactions" in which U.S. financial institutions clear U.S. dollar-denominated transactions related to Iran but originating and ending in third-country financial institutions.

Certain U.S. secondary sanctions also continue to remain in force. Even after Implementation Day, non-U.S. persons remain subject to the imposition of U.S. sanctions if, for example, they engage, directly or indirectly, in significant transactions involving: (i) Iranian persons that are on the SDN List; (ii) Iran's Revolutionary Guard Corps or its officials, agents, or affiliates; and/or (iii) any person designated on the SDN List in connection with Iran's proliferation of weapons of mass destruction or their means of delivery or support for international terrorism. Notably, the United States retains the authority to designate individuals and entities on the SDN List. Indeed, on Sunday, January 17, 2016, only one day after Implementation Day, the United States added eight individuals and three entities to the SDN List in connection with recent Iranian ballistic missile development activities. Further, trade in certain materials that are outside the scope of the JCPOA and related waivers remain subject to U.S. sanctions.

As a result, all companies that intend to engage in business in Iran would be prudent to continue to carefully monitor the remaining and developing scope of U.S. sanctions.

EU SANCTIONS

As of Implementation Day, the bulk of sanctions previously imposed by the European Union on Iran relating to nuclear proliferation have been lifted. Nonetheless, a mixture of EU human rights-related sanctions and some remaining nuclear-related sanctions continue to remain in force.

EU Legal Framework Leading to Implementation Day

The EU sanctions in place with respect to Iran are twofold. First, the European Union has a set of sanctions in place that relate to the human rights situation in Iran, which are implemented through Council Decision 2011/235/CFSP and Council Regulation (EU) No 359/2011. Second, the European Union imposed sanctions with respect to its concerns regarding Iran's nuclear program, which are enacted through Council Decision 2010/413/CFSP and Council Regulation (EU) No 267/2012.

As of October 18, 2015 (Adoption Day), the European Union adopted the legislative instruments—namely, Council Decision (CFSP) 2015/1863, Council Regulation (EU) 2015/1861, and Council Implementing Regulation (EU) 2015/1862—necessary to enact the relevant amendments to lift EU nuclear-related sanctions on Iran pursuant to the JCPOA. Application of this legislation, however, was made contingent on the EU Council's confirmation that the Director General of the IAEA presented a report to the IAEA Board of Governors and to the UN Security Council confirming that Iran took the necessary measures it committed to under the JCPOA. Upon receipt of that confirmation on January 16, the EU Council published Council Decision (CFSP) 2016/37, and as a result, the amendments to the EU nuclear-related sanctions regime enacted on Adoption Day became applicable, and the bulk of EU sanctions were lifted.

Similar to the United States, the European Union has largely implemented the sanctions relief required by the JCPOA by lifting or easing the bulk of its nuclear-related sanctions against Iran and removing certain specified individuals and entities from its sanctions-related prohibited parties lists. The lifting and easing of sanctions by the European Union is without prejudice to a possible reintroduction in the event of significant nonperformance by Iran of its commitments

under the JCPOA. The EU Council, however, anticipates that in such a case, adequate protection for the execution of contracts concluded while sanctions relief was in force will be provided. Nevertheless, in the absence of specific guidance, it may be prudent to provide for adequate contractual protection should a snapback of sanctions occur.

Remaining Sanctions

While the bulk of the nuclear-related sanctions have, as of Implementation Day, been lifted or eased, certain EU sanctions nevertheless remain in force. In particular, Implementation Day has not lifted or eased all EU nuclear-related sanctions and does not have any bearing on EU human rights-related sanctions, which remain entirely unchanged and fully in force. The following provides a general overview of the EU sanctions currently remaining with respect to dealings directly or indirectly involving Iran:

1. Prior authorization is required for transactions concerning items contained in the Nuclear Suppliers Group List, items that could contribute to reprocessing or enrichment-related or heavy-water-related or other activities inconsistent with the JCPOA, Enterprise Resource Planning software designed specifically for use in nuclear and military industries, certain graphite and raw or semi-finished metals, and items that may be used for the monitoring or interception of internet or telephone communications.
2. Prohibitions on transactions concerning items included in the Missile Technology Control Regime list, items included in the Common Military List (arms embargo), and items that can be used for internal repression.
3. The prohibitions/restrictions referred to under (1) and (2) above are accompanied by specific prohibitions on associated services (such as technical assistance, brokering services, financing, and financial assistance) and also include restrictions on EU persons from entering into or being involved in any arrangements that allow Iranian legal persons to participate or increase participations in these sort of activities. In addition, EU persons are also prohibited from providing bunkering, ship supply services, or any other services to vessels as well as from providing engineering and maintenance services to cargo aircraft, where such vessels or aircraft are owned

or controlled by Iranian persons or entities and there are reasonable grounds to determine that they are transporting prohibited goods (subject to limited humanitarian and safety exceptions).

4. Restrictions on admission to the European Union for listed (natural) persons and a prohibition on making funds or economic resources available, directly or indirectly, to or for the benefit of listed persons. Also, the supply of specialized financial messaging services used to exchange financial data to certain listed persons is prohibited. As with the previous Iranian-related sanctions, the risk of liability for EU persons who are indirectly involved in arrangements that breach the remaining Iranian sanctions remains a concern. The number of listed persons is, however, substantially reduced.

Accordingly, even though EU nuclear-related sanctions have been substantially lifted or eased, EU persons must continue to take steps to ensure they remain in compliance with applicable restrictions in any dealings involving Iran.

Lifting or Easing of Nuclear-Related Sanctions

Those who are familiar with the scope of the EU sanctions that were previously in place will notice from the general overview provided above that several key restrictions and prohibitions have been lifted or significantly eased. For instance, the EU sanctions no longer prohibit dealings involving dual-use items with respect to Iran or Iranian entities. Of course, export of dual-use items will remain subject to the general dual-use framework (as laid down in Council Regulation (EC) No 428/2009). Moreover, certain dual-use items are contained

in the Nuclear Suppliers Group List, and for those items, an authorization will still be required pursuant to the remaining EU sanctions on Iran. The EU sanctions also no longer provide for restrictions on transfers of funds or on the export of gold, precious metals, and diamonds. Other examples of important restrictions or prohibitions that have been lifted or eased relate to the oil, gas, petrochemicals, finance, banking, and insurance industries.

Removal of Certain Designated Persons from EU Sanctions Lists

Pursuant to the JCPOA, the European Union has also removed numerous individuals and entities from its sanctions lists. As a result, as of January 16, EU persons are no longer prohibited from engaging in dealings with such persons but must remain vigilant for the numerous individuals and entities that remain designated on applicable lists, including in respect of indirect dealings.

CONCLUSION

Jones Day continues to closely monitor developments associated with the JCPOA and the recently implemented sanctions relief provided on Implementation Day. As can be seen from the above, challenges remain for organizations who intend to explore opportunities and/or do business in Iran while remaining in full compliance with international sanctions regimes. At the same time, the legacy of previous Iranian sanctions regimes (including contractual agreements not to do business in Iran that may now need to be amended) will continue to be a focus of transaction teams, general counsel, and compliance officers for some time to come.

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