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BRIEFING

DOING BUSINESS IN IRAN –
THE LIFTING OF INTERNATIONAL SANCTIONS
AND THE CHALLENGES AHEAD

JANUARY 2016

- U.S. SANCTIONS RELIEF LARGELY CONFINED TO "SECONDARY SANCTIONS".
- ON-GOING CONSIDERATIONS FOR NON-U.S. PERSONS INCLUDING SDN LIST, CLEARING OF U.S. DOLLARS TRANSACTIONS AND RE-EXPORTS OF U.S. ORIGIN GOODS.
- NUCLEAR-RELATED EU SANCTIONS LARGELY LIFTED.



On January 16, 2016, "Implementation Day," sweeping changes to the international sanctions regime targeting Iran came into force. The implementation comes six months after the historic signing of the Joint Comprehensive Plan of Action (JCPOA) between the E3/EU+3 (Germany, France, the United Kingdom, the European Union, China, Russia and the United States) and Iran. The JCPOA mandated sanctions relief once the International Atomic Energy Agency (IAEA) verified that Iran had implemented key nuclear-related measures. On January 16, the IAEA confirmed that Iran had satisfied its obligations.

This briefing summarizes the changes in U.S. and EU sanctions law and suggests that businesses should assiduously check their sanctions positions as they develop new business in and with Iran.

U.S. SANCTIONS

U.S. sanctions relief largely confined to "secondary sanctions"

The U.S. sanctions that were lifted on Implementation Day were, with a few small exceptions, entirely limited to "secondary sanctions" that apply to non-U.S. persons. A non-U.S. person that violated secondary sanctions could be subject to multiple adverse consequences, such as prohibitions on accessing the U.S. financial system, and being placed on the list of Specially Designated Nationals and Blocked Persons (SDN List) published by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC). The vast majority of "primary sanctions" applicable to U.S. persons remain in effect and unchanged. Therefore, U.S. persons generally will continue to be prohibited from doing business with Iran for the foreseeable future.

“SIGNIFICANT LIFT OF SECONDARY SANCTIONS APPLICABLE TO NON-U.S. PERSONS.”

Most of the secondary sanctions targeting non-U.S. persons have now been lifted. More than 400 names were removed from the SDN List, which means that non-U.S. persons generally may now do business with such removed individuals and entities. Furthermore, several secondary sanctions targeting specific sectors of the Iranian economy have been lifted.

Financial and banking

Sanctions previously applied to (non-U.S.) foreign financial institutions that engaged in significant financial transactions relating to sectors including the Iranian energy, natural resource, shipping and shipbuilding sectors by, among other things, preventing such financial institutions from opening correspondent or payable through accounts in the United States, and threatening blocking sanctions against such financial institutions. These sanctions placed strict limits on the ability of foreign financial institutions to deal in Iranian petroleum and petroleum products, natural gas and precious metals. They also targeted financial transactions with Iran, including the purchase of U.S. bank notes, and transactions in Iranian Rials and Rial-related derivatives, Iranian sovereign debt and financial messaging services. These sanctions have now been waived or revoked. Most Iranian financial institutions were removed from the SDN List, including the Central Bank of Iran.

Insurance

Sanctions on the provision by non-U.S. insurers of underwriting services, insurance and reinsurance in connection with the export from Iran of petroleum, petrochemicals and precious metals, and in relation to the automotive, aviation, shipping and shipbuilding sectors, have been lifted. Payments on an insurance claim that relates to an incident that occurred prior to Implementation Day may still be paid.

Energy and petrochemical

Sanctions on the investment by non-U.S. persons in Iran’s oil, gas and petrochemical sectors and transactions in Iranian petroleum, petrochemical products and natural gas have been lifted, along with related sanctions on associated financial transactions. Limitations on the quantity of Iranian crude oil sold and the countries to which it may be exported have also been lifted. Entities removed from the SDN List include the National Iranian Oil Company, Naftiran Intertrade Company and the National Iranian Tanker Company (NITC).

Shipping, shipbuilding and port operators

Sanctions targeting Iran’s shipping, shipbuilding and port operator sectors have mostly been lifted. In particular, transactions by non-U.S. persons with Islamic Republic of Iran Shipping Lines, NITC, South Shipping Line and the current port operator of the Iranian port of Bandar Abbas are now generally permitted. However, Tidewater Middle East Co. (the former port operator of Bandar Abbas) remains on the SDN List (because it is allegedly owned by the Islamic Revolutionary Guard Corps (IRGC)), so non-U.S. persons may be prohibited or limited in dealing with Tidewater.

Other sectors

Sanctions targeting other sectors have been lifted, including gold, precious metals, certain natural resources, and automobiles.

“U.S. PERSONS ARE PROHIBITED FROM FACILITATING IRANIAN TRANSACTIONS BY NON-U.S. PERSONS.”

On-going considerations for non-U.S. persons

While most of the secondary sanctions applicable to non-U.S. persons have been lifted, non-U.S. persons should continue to proceed with caution in their dealings with Iran, as there remain several potential pitfalls:

SDN List

The secondary sanctions have not been completely eliminated, and may still apply to transactions with persons on the SDN List. While more than 400 names were removed from the SDN List, several names remain, mostly related to the IRGC, and those implicated in proliferation of weapons of mass destruction and terrorism. Non-U.S. persons that transact, directly or indirectly, with persons on the SDN List (or entities owned 50% or more by such persons) may be subject to secondary sanctions. Any persons doing business with an Iranian entity or individual should conduct careful diligence to confirm whether their counterparty is, or is acting for or owned or controlled by, a person on the SDN List.

U.S. dollar transactions

Global transactions in U.S. dollars are cleared through the United States. Because U.S. financial institutions generally are prohibited from clearing transactions with Iran, U.S. dollar transactions with Iran will usually be blocked. Therefore, payments on transactions with Iran effectively cannot be made using U.S. dollars.

U.S. persons and facilitation

U.S. persons are prohibited from facilitating Iranian transactions by non-U.S. persons. Furthermore, OFAC has in the past interpreted “facilitation” very broadly to apply to non-U.S. persons that involve U.S. persons in prohibited transactions. A non-U.S. entity with U.S. personnel (including individuals with dual U.S. and other citizenship) engaging in business with Iran should monitor the activities of its personnel to ensure that they do not engage in prohibited facilitation.

Re-exports of U.S.-origin goods

Non-U.S. persons are generally prohibited from knowingly re-exporting U.S.-origin goods from a third country to Iran. U.S.-origin goods generally include items that contain 10 percent or more U.S.-controlled content.

Money laundering

The Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) has designated Iran as a jurisdiction of primary money laundering concern. Parties doing business with Iran should ensure that they comply with applicable anti-money laundering laws.

General license applicable to U.S.-owned or -controlled foreign entities

As part of sanctions relief, OFAC issued a general license permitting an entity organized outside the United States that is owned or controlled by a U.S. person to engage in certain transactions with Iran that would be prohibited to its U.S. owner. As described above, a U.S. person generally cannot facilitate or otherwise engage in transactions with Iran. Applied strictly, this rule would make it almost impossible for a non-U.S. subsidiary to conduct business with Iran, since it will likely need basic organization and administrative functions to be performed by U.S. persons.

Therefore, pursuant to the general license, U.S. persons are authorized to engage in activities that would otherwise be prohibited related to the establishment or alteration

“VAST MAJORITY OF
PRIMARY SANCTIONS
REMAIN IN PLACE.”

of necessary operating policies and procedures, and setting up automated globally integrated computing systems, of such a non-U.S. subsidiary. The license does not extend to the on-going monitoring and maintenance of the non-U.S. subsidiary's operations and activities, and of course does not cover transactions that are prohibited to the non-U.S. subsidiary. In other words, a U.S. company and its employees are permitted to take the necessary corporate and technological steps to organize its non-U.S. subsidiary, but may not have an on-going role in its dealings with Iran.

Limited changes to primary sanctions

The vast majority of the primary sanctions that prohibit U.S. persons from dealing with Iran remain unchanged and fully in place. With few exceptions, the primary sanctions prohibit U.S. persons from importing or exporting goods or services from or to Iran, as well as facilitating such transactions by a non-U.S. person. A “U.S. person” for these purposes is a U.S. citizen, permanent resident alien (green card holder) entity organized under the law of the United States or any jurisdiction therein or any person in the United States. A U.S. person includes a foreign branch of a U.S. entity, but does not generally include a non-U.S. subsidiary of a U.S. person.

One limited change to the primary sanctions is that the sale to Iran of passenger aircraft exclusively for civil aviation use, spare parts for such commercial aircraft and associated services will be permitted upon the issuance of a specific license, which will generally be granted. Such sales remain prohibited in the absence of a specific license. Furthermore, OFAC has issued a general license authorizing the importation into the United States of certain Iranian-origin carpets, and certain foodstuffs including pistachios and caviar, without the need for a specific license.

EU SANCTIONS

By contrast with the U.S., the changes in EU sanctions law relating to Iran are more dramatic.

EU Sanctions which have been lifted

In short, the EU has lifted its economic and financial sanctions imposed in relation to the Iran nuclear program (subject to the sanctions and restrictions remaining in place and set out below). This has opened up a range of opportunities for business in financial, banking and insurance; oil, gas and petrochemicals; shipping, shipbuilding and transport; gold, precious metals, banknotes and coinage; metals; and software. The following activities may now (in principle) go ahead:

Financial services

- The transfer of funds between EU persons, entities or bodies (including EU financial and credit institutions) and non-listed Iranian persons, entities or bodies (including Iranian financial and credit institutions). The old authorization/notification regimes relating to funds transfers no longer apply.
- Establishing new correspondent banking relationships; opening branches, subsidiaries or representative offices of non-listed Iranian banks.
- The acquisition – by non-listed Iranian financial and credit institutions – of ownership interests in EU financial and credit institutions.

“AUTHORIZATION/
NOTIFICATION
REQUIREMENTS FOR
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“SWIFT IS NOW
PERMITTED FOR
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PERSONS AND ENTITIES.”

- EU financial and credit institutions may open representative offices, branches or subsidiaries in Iran; establish joint ventures and open bank accounts with Iranian financial or credit institutions.
- SWIFT is now permitted for (non-listed) Iranian natural or legal persons, entities or bodies.
- Export credit, guarantees or insurance/reinsurance; grants, financial assistance or concessional loans to support trade with Iran.

Petrochemicals

- The import, purchase, swap and transport of crude oil, petroleum products, gas and petrochemicals.
- The export – by EU persons – of equipment or technology in support of these sectors, to include exploration, production and refining of oil and natural gas, including liquefaction of natural gas.
- Investments in the Iranian oil, gas and petrochemical sectors by financial loan or credit to, or acquisition/extension of participation in or joint venture with any Iranian person in these sectors.

Shipping, shipbuilding and transport

- The sale, supply, transfer and export of naval equipment and technology for ship building, maintenance or refit, to Iran or any Iranian persons engaged in the sector.
- The design, construction or participation in the design or construction of cargo vessels and oil tankers for Iran or for Iranian persons.
- Providing vessels designed or used for the transport or storage of oil and petrochemical products to Iranian persons, entities or bodies.
- Providing flagging and classification services including those relating to technical specification, registration and identification numbers of any kind to Iranian oil tankers and cargo vessels.
- Iranian cargo carriers may operate to EU airports.
- The inspection, seizure and disposal by EU Member States of cargoes to/from Iran no longer apply to items which are no longer prohibited.
- Bunkering and ship supply services to Iranian-owned or Iranian-contracted vessels provided that they are not carrying prohibited items.
- Providing fuel, engineering and maintenance services to Iranian cargo aircraft not carrying prohibited items.

Gold, precious metals, banknotes and coinage

- The sale, supply, purchase, export, transfer or transport of gold and precious metals and diamonds.
- Providing brokering, financing and security services to, from or for the Government of Iran, its public bodies, corporations and agencies, or the Central Bank of Iran.
- Delivery of newly printed or minted banknotes and coinage for the Central Bank of Iran.

Metals

- The sale, supply, transfer or export of certain graphite and raw or semi-finished metals to any Iranian person, entity or body or for use in Iran is no longer prohibited, but is now subject to an authorization regime.

Software

- The sale, supply, transfer or export of Enterprise Resource Planning software, including updates, to any Iranian person, entity or body, or for use in Iran, connected to activities consistent with the JCPOA, subject to an authorization regime if designed specifically for use in nuclear and military industries.

De-listing of persons, entities and bodies

- The changes have the effect of de-listing certain persons, entities and bodies from sanctions including the asset freeze, the prohibition on making available funds and the visa ban.

EU Sanctions and restrictions which remain in place

There are proliferation-related sanctions which remain in place after Implementation Day. They include the EU arms embargo and the Missiles Technology sanctions prohibiting to sell, supply, transfer, export or procure, directly or indirectly, the arms and goods listed in the EU common military list and the Missile Technology Control Regime list. Moreover, there remain individuals and entities on the EU listings, such as Bank Saderat Plc, which are subject to an asset freeze, visa ban and prohibition on the provision of SWIFT.

“PRIOR AUTHORIZATION REQUIREMENTS FOR DUAL-USE GOODS AND TECHNOLOGY ARE IN PLACE.”

Moreover, there are different groups of goods and technology of which the sale, supply, transfer and export are subject to prior authorization of the competent authorities of the EU member state. These are mainly (i) proliferation-sensitive goods and technology; (ii) dual-use goods and technology that could contribute to reprocessing, enrichment-related, heavy water-related or other activities inconsistent with the JCPOA, (iii) software designed specifically for use in nuclear and military industries, and (iv) certain graphite and raw or semi-finished metals.

Finally, non-nuclear proliferation-related sanctions and restrictive measures imposed by the EU, such as asset freezes and visa bans imposed in connection with concerns on the human rights situation remain in place.

NEXT STEPS AND RISKS

The next relevant date under the JCPOA is “Transition Day”, which will occur upon either October 18, 2023, or the date that the IAEA has reached the broader conclusion that all nuclear material in Iran is used for peaceful activities, whichever is the earlier. Upon Transition Day, the United States Government will remove additional names from the SDN List, and will seek legislative approval of further sanctions relief. The EU will lift proliferation-related sanctions, including arms and missile technology sanctions.

“IT IS ADVISABLE TO CONDUCT THOROUGH DUE DILIGENCE OF IRANIAN BUSINESS PARTNERS. THE POSSIBILITY OF A 'SNAP BACK' SHOULD BE APPROPRIATELY ADDRESSED IN THE RELEVANT AGREEMENTS.”

If the E3/EU+3 determine that Iran has violated the JCPOA, following certain procedures, the Iran sanctions may “snap back.” In such case, permitted transactions undertaken before the snap-back date would not be violations, but there may or may not be a “winding down” period to terminate on-going transactions. Furthermore, there may be a risk that following the 2016 U.S. presidential election, the next U.S. president will reverse some or all of the U.S. sanctions relief implemented by President Obama, although this would constitute a breach of the JCPOA by the United States, which could permit Iran to terminate the agreement.

For businesses seeking to benefit from the new opportunities in Iran, it will be essential to take close note of the small print of the sanctions that remain in the United States and the EU. Due diligence of Iranian business partners should be conducted and the possibility of a “snap back” should be addressed by appropriate sanction clauses including force majeure and termination clauses in the relevant agreements. It remains to be seen how quickly trade relations with Iran return to normal, particularly given the understandable reluctance from some institutions to finance Iranian business after penalties were levied for U.S. sanctions violations. The challenge for all parties – Iranian and non-Iranian – is to chart a new course in compliance with the remaining sanctions to reach new opportunities.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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