

Saturday, 16 January 2016 marked Implementation Day of the Joint Comprehensive Plan of Action (JCPOA) between the the E3/EU+3 (China, France, Germany, the Russian Federation, UK and US, in conjunction with the High Representative of the European Union for Foreign Affairs and Security Policy) and the Islamic Republic of Iran (Iran). On Implementation Day, the International Atomic Energy Agency (IAEA) verified that Iran had implemented its key nuclear-related measures described in the JCPOA. In the US, Secretary of State John Kerry confirmed the IAEA's verification, and the US and EU simultaneously lifted certain agreed-upon nuclear-related sanctions.

We previously published an Alert on this matter, [The Iran Deal: What's In It and Who Will It Impact](#), which provided a substantive overview of the JCPOA's provisions. This Alert, rather than reiterating those provisions, highlights key components of the US and EU sanctions relief that took effect on Implementation Day and raises considerations for US and non-US companies as they consider conducting business with or involving Iran.

## US Sanctions Relief

### Key Documents

With Implementation Day came a flurry of legal and explanatory documents from a variety of US sources, such as those issued by President Obama, the US State Department, and the US Treasury Department's Office of Foreign Assets Control (OFAC). We highlight the below documents, which are critical for any company considering doing business with Iran.

- [Guidance Relating to the Lifting of Certain US Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day](#)
- [Frequently Asked Questions Relating to the Lifting of Certain US Sanctions Under the Joint Comprehensive Plan of Action \(JCPOA\) on Implementation Day](#)
- [General License H – Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person](#) (effective as of Implementation Day)
- [Statement of Licensing Policy for Activities Related to the Export or Re-Export to Iran of Commercial Passenger Aircraft and Related Parts and Services](#) (effective as of Implementation Day)
- [General Licenses Relating to the Importation into the United States of Iranian-Origin Carpets and Foodstuffs, Including Pistachios and Caviar](#) (effective as of 21 January 2016)

### Sanctions Relief After Implementation Day: US Persons

As discussed in our previous Alert, despite Implementation Day, US primary sanctions remain in place and US companies generally continue to be unable to do business with or involving Iran. Nonetheless, US companies should be aware of the below changes to US sanctions:

- **US-Owned or- Controlled Foreign Entities:** In our previous Alert, we noted that the US committed to license US-owned or -controlled foreign entities (foreign subsidiaries) to engage in activities with Iran that are "consistent with" the JCPOA, cautioning that the scope of this commitment was unclear. OFAC clarified the scope through General License H, which authorizes foreign subsidiaries to engage in almost all Iran-related transactions that a purely non-US company could engage in without triggering the possible imposition of US sanctions. The General License enumerates eight categories of transactions that remain prohibited to foreign subsidiaries (e.g., transactions with persons on the SDN List). Foreign subsidiaries engaging in business with Iran must familiarize themselves with these eight categories.

Further, General License H authorizes US persons to establish or alter operating policies and procedures to enable foreign subsidiaries to engage in the type of Iran-related transactions that are allowed under the General License. However, US persons continue to be prohibited from doing or facilitating business with Iran. Thus, depending on the circumstances, a multinational company might nonetheless conclude that because of the frequent and continuous interaction between their foreign subsidiaries and the US parent and affiliates, it would be impractical to attempt to set policies and procedures that would enable foreign subsidiaries to conduct business with Iran.

- **Imports and Exports:** On the export side, OFAC established a favourable licensing policy under which US persons (and non-US persons) can request a specific license to engage in transactions for the sale of commercial passenger aircraft and related parts and services to Iran. However, persons on the SDN List cannot be involved in the transaction. On the import side, on 21 January OFAC published a general license that authorizes the importation into the United States of, and dealings in, certain Iranian-origin foodstuffs, carpets and related transactions. Companies must carefully review any proposed transaction under this general license to ensure that the transaction does not exceed the general license's scope.

## Sanctions Relief After Implementation Day: Non-US Persons<sup>1</sup>

As discussed in our previous Alert, on Implementation Day the US suspended the threatened imposition of sanctions directed toward non-US persons that related to several of Iran's economic sectors. Nevertheless, the US sanctions regime targeting Iran remains complex, and non-US companies must still continue to conduct compliance due diligence to avoid violation of US law and/or the freezing of funds. We highlight below some important considerations for non-US companies.

- **E.O. 13599 List:** On Implementation Day, the US [removed](#) the individuals and entities specified in Attachment 3 to Annex II of the JCPOA from the Specially Designated Nationals (SDN) List, the Foreign Sanctions Evaders (FSE) List, and/or the Non-SDN Iran Sanctions Act (NS-ISA) List, as required under the JCPOA. However, certain individuals and entities remain "blocked" under Executive Order 13599,<sup>2</sup> meaning that US banks will block any funds transfers if a "blocked" person has any interest in the funds.
- **US Person Involvement:** Non-US companies must confirm that no unlicensed US person or affiliate is involved in any transaction involving Iran.
- **US Content or Technology:** Non-US companies must confirm that no US content or technology is involved in any transaction with Iran, unless such US content or technology is permitted under US law.
- **US Dollar Transactions:** Prior to 10 November 2008, US banks were authorized to process "U-turn" transactions that involved Iran as long as the funds transfer began and ended with a non-Iranian bank. However, since that time, "U-turn" transactions have been prohibited, and they continue to be prohibited even after Implementation Day. Accordingly, non-US companies must confirm that any transaction involving Iran is not denominated in US Dollars and does not touch a US financial institution.
- **Remaining Sanctions:** Non-nuclear-related sanctions, such as those related to Iran's support for terrorism, regional destabilization, human rights abuses, and ballistic missile program, remain unchanged. Non-US companies must take care not to violate any remaining US sanctions targeting Iran. For instance, the threatened imposition of sanctions on companies who transact with Iran-related persons on the SDN List remains in effect. Thus, even if a transaction fits into a category for which sectoral sanctions have been lifted, such as the automotive sector, non-US companies could nevertheless be exposed to sanctions if the transaction involves an Iran-related SDN.

## EU Sanctions Relief

### Key Documents

On Implementation Day, the EU Commission, and national regulators issued useful guidance documents summarizing the EU sanctions relief. These include:

- Bercy's comprehensive [table](#) summarizing the EU and US sanctions relief (in French)
- The UK Export Control Organization [guidance](#) on the sanctions relief with respect to export of goods and technology to Iran
- HM Treasury's guidance on the financial sanctions relief
- BAFA's [guidance](#) on the sanctions on Iran (in German)

### EU Sanctions Relief After Implementation Day

On 18 January 2016, the EU adopted Decision (CFSP) 2016/37, which brought into effect Decision (CFSP) 2015/1863 and Regulation (EU) 2015/1861 amending EU sanctions regulation 267/2012.

As such, since 16 January 2016, the majority of EU sanctions in connection with the Iran's nuclear programme, both economic and financial, have now been lifted. As a consequence of this, restrictions on the following activities (and associated activities) and sectors have been removed for companies and individuals subject to EU laws:

- Financial transfers to and from Iran (the requirement to seek authorization or to give notification is no longer applicable).
- Banking activities such as the establishment of branches, subsidiaries or representative offices of Iranian banks in EU member states, and conversely the establishment of branches, subsidiaries, representative offices, joint ventures or the funds opening bank accounts in Iran by EU entities.
- The insurance and reinsurance of Iranian entities.
- Import (and export by EU persons), purchase, swap and transfer of oil, gas and petrochemical products, and investment in the Iranian oil, gas and petrochemicals sector in general.
- Shipping, shipbuilding and transport sectors. Flights operated specifically by Iranian carriers or originating from Iran will now have access to airports under the jurisdiction of EU member states.
- The supply, sale, purchase, export, transfer or transport of gold, precious metals and diamonds is now allowed, as well as the delivery of newly printed/minted banknotes and coinage.
- The supply, sale, export or transfer of certain graphite and raw or semi-finished metals is now allowed.
- The supply, sale, export or transfer of Enterprise Resource Planning software is allowed so long as it is to be used in connection with activities consistent with the JCPOA.

A significant amount of goods and technology can now be exported to Iran, if authorized by the competent regulators. The EU has lifted an asset freeze on 34 individuals and 298 entities, and Iran will also be given access to financial messaging services, including SWIFT. Additionally, post Implementation Day, UK Export Finance will also reintroduce cover for Iran in Pounds Sterling and Euros.

<sup>1</sup> For the purposes of this Alert, we use the term non-US person to mean any individual or entity that is not (i) a US citizen, permanent resident alien, entity organized under the laws of the US or any jurisdiction within the US (including foreign branches), (ii) a person physically present in the US, or (iii) an entity owned or controlled by a US person.

<sup>2</sup> Executive Order 13599, Blocking Property of the Government of Iran and Iranian Financial Institutions (Feb. 6, 2012) available at: [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran\\_eo\\_02062012.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_eo_02062012.pdf).

Although many sanctions have now been lifted post Implementation Day, certain nuclear-related sanctions remain in force. These include the EU arms embargo and missile technology sanctions. In addition, certain individuals and entities remain subject to restrictive measures such as asset freezes and visa bans, and the sanctions adopted with respect to terrorism and human rights concerns in Iran are not lifted.

As a consequence, individuals and entities should remain cautious and follow compliance processes to ensure that these remaining sanctions are not breached. Violation of sanctions is a criminal offence in the UK.

## Going Forward

The sanctions relief provided under the JCPOA presents massive business opportunities for European companies while US companies and, in certain respects, US-owned or -controlled companies are still left with significant restrictions. But any company (whether US, US-owned or -controlled, entirely European, or otherwise) that is considering engaging in new businesses with Iran should still consider a number of issues. These include making sure that they comply with the remaining set of sanctions in force against Iran. Also, companies should be aware that sanctions that are relieved under the JCPOA could “snap back” into place if Iran is determined not to be complying with the JCPOA’s requirements. Finally, even if the JCPOA remains in place, Iran may see additional sanctions imposed for non-nuclear-related activities. In this regard, the day following Implementation Day, the US announced the designation of 11 entities and individuals involved in procurement on behalf of Iran’s ballistic missile program.

Bearing in mind the cautious approaches taken by banks and financial institutions with respect to business in Iran, EU and US companies must continue to follow thorough compliance processes in response to the shifting Iranian landscape. Our Export Controls & Sanctions team is available to assist companies in complying with the EU and US sanctions.

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## About Our Team

Our Export Controls & Sanctions team is built on the ability to advise on the shifting regulatory framework on both sides of the Atlantic. We have extensive experience in advising and representing a wide range of companies and financial intuitions in Europe, the US and other jurisdictions on export control and sanctions from a multijurisdictional perspective. The team is part of our overall International Trade Practice, providing a “one-stop” solution to global trade compliance through rapid, professional and tailored advice and compliance tools to fit your business needs and processes. If you have any questions relating to sanctions, please contact a member of our EU or US Sanctions team listed herein. You can also email [InternationalTradeCompliance@squirepb.com](mailto:InternationalTradeCompliance@squirepb.com) for assistance.

### Resources to Strengthen Compliance

We encourage you to visit [TradePractitioner.com](http://TradePractitioner.com) where you will find more updates on export controls, sanctions and other international trade topics. In addition, organizations engaged in trade of items specially designed for military or space applications are encouraged to download our complimentary *International Traffic in Arms Regulations (ITAR) Practitioner's Handbook* covering the ITAR and the US Department of Commerce “600 Series”.

Download a copy of the handbook [here](#).

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

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