

CLIENT ALERT

Iran Sanctions and the Iran Nuclear Agreement Part Three: Nuclear-Related Sanctions Lifted, General License Issued for Foreign Subsidiaries

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On January 16, 2016, the United States lifted its nuclear-related sanctions on Iran, as agreed under the Joint Comprehensive Plan of Action (JCPOA). The JCPOA was signed on July 14, 2015, by the United States, the European Union, Iran, and several other countries. Under the JCPOA, Iran was due to receive certain sanctions relief once the International Atomic Energy Agency (IAEA) verified that Iran had implemented key commitments to dismantle its nuclear program. The IAEA has now verified that these steps have occurred and the U.S. Secretary of State has confirmed. Accordingly, January 16, 2016, was Implementation Day.¹

Impact

As noted in our prior [briefing](#), the sanctions that have been lifted are mostly “secondary” sanctions that prevented Iran and Iranian businesses from making use of the international financial system by penalizing non-U.S. persons that facilitated certain transactions. Lifting these sanctions will allow non-U.S. companies to engage in business with Iran without risking violations under U.S. law **provided** the transactions do not involve U.S. entities or individuals and are not, to any extent, carried out in the territory of the United States. Most transactions denominated in U.S. dollars, for example, remain subject to sanctions because international currency clearing for dollar-denominated payments generally must take place in the United States. Further, General License H does not permit foreign subsidiaries of U.S. persons to engage in transactions with any entity on OFAC’s list of specially designated nationals (the SDN List).

The lifted sanctions will have little direct impact on most U.S. businesses, which remain subject to the broad and long-standing U.S. embargo against Iran.

Foreign Subsidiaries: General License

The developments include the issuance of a general license allowing foreign subsidiaries of U.S. persons to engage in business with Iran. Previously, a foreign entity owned or controlled by a U.S. person was prohibited by U.S. sanctions from engaging in business with Iran.

On January 16, 2016, the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) issued General License H: Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person. This general license authorizes U.S.-owned or controlled foreign entities to engage in certain transactions involving Iran, including transactions with the Government of Iran. However, civil penalties are still possible if the U.S.-owned or controlled foreign entity engages in activity outside the scope of the general license (e.g., the general license prohibits transactions involving nuclear activity not approved of under the JCPOA). In addition, it is critically important that U.S. parent companies, affiliates, employees, and independent contractors take precautions to avoid facilitating transactions by non-U.S. entities and individuals with Iran. Please see our prior [briefing](#).

Although Iranian sanctions still apply to U.S. businesses, certain actions are permitted with respect to transactions undertaken pursuant General License H. U.S. businesses are permitted to participate in the establishment or alteration of operating policies and procedures of a foreign subsidiary to the extent necessary to allow the foreign subsidiary to engage in transactions with Iran authorized by General License H. OFAC has interpreted this to mean that senior management of a U.S. parent company or its foreign subsidiary may be involved in the initial determination to engage in activities with Iran as well as the establishment of Iran-related policies and procedures. This authorization also covers U.S. persons who may be hired as outside legal counsel or consultants to draft, alter, advise, or consult on such operating policies and procedures. The U.S. parent would be allowed to provide certain general services such as computer, accounting, e-mail, and telecommunications assistance to its foreign subsidiaries doing business with Iran.

However, U.S. persons may not be involved in the Iran-related day-to-day operations of a U.S. business’s foreign subsidiary, including actions such as approving, financing, facilitating, or guaranteeing any Iran-related transaction.

Conclusion

OFAC has acknowledged that Iranian sanctions relief will be iterative, and it is likely that further interpretive guidance will be given.

While certain Iran-related secondary sanctions have been lifted as a result of the JCPOA, a number of sanctions remain, and U.S. citizens and companies generally remain subject to U.S. restrictions on trade and transactions with Iran. Given the complexity of sanctions regulations as well as the potential for facilitation violations by U.S. persons, parties with overseas subsidiaries interested in doing business with Iran should seek sound legal advice before taking action in this area. U.S. companies providing financing to foreign subsidiaries operating under the General License also should analyze their involvement to ensure that such financing is not deemed facilitation of transactions with sanctioned Iranian entities. Companies should seek advice as to whether specific transactions would be deemed facilitation, and also as to the advisability of applying for specific licenses.

¹ While some OFAC Iranian sanctions were lifted on Implementation Day, Iran remains a “Jurisdiction of Primary Money Laundering Concern” under the USA PATRIOT Act.

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