

January 26, 2016

## Significant Changes to U.S. and E.U. Sanctions Against Iran

### Overview

On January 16, 2016, the United States and the European Union lifted or substantially amended many nuclear proliferation-related sanctions against Iran. This date constitutes Implementation Day as specified in the Joint Comprehensive Plan of Action (“JCPOA”).

The terms of the JCPOA were agreed between Iran and what is known as the P5+1 in the United States and the E3/EU+3 in Europe<sup>1</sup> on July 14, 2015. The JCPOA provides for a phased lifting of nuclear-related sanctions over an eight- to ten-year period if Iran meets various conditions relating to its nuclear program. The United States and European Union both significantly modified their sanctions related to Iran on Implementation Day after the International Atomic Energy Agency verified that Iran had complied with its initial nuclear-related commitments under the JCPOA.

While the media is reporting that it is open season to conduct business in Iran, there are in fact notable differences between the current U.S. and E.U. sanctions regimes. While the European Union lifted all but a select subset of sanctions on Iran, the United States made far fewer changes to its Iranian sanctions program. U.S. companies remain generally prohibited from doing business with Iran as was the case prior to Implementation Day. A few exceptions apply as will be detailed below.

Both the United States and the European Union have removed hundreds of Iranian individuals and entities from their respective sanctions and suspended or modified sanctions previously imposed on Iran’s financial, transport, and energy sectors in response to Iran’s development of nuclear weapons. Notwithstanding these changes, U.S. and E.U. sanctions directed at Iran and Iranian persons for human rights abuses, terrorism, and other types of conduct continue to remain in force.

While the modifications to the Iranian sanctions programs present new opportunities for many companies, particularly foreign entities owned or controlled by U.S. Persons and other companies outside the United States, they also create a host of new compliance challenges. For example, both the U.S. and E.U. sanctions regimes prohibit most dealings with the Iranian Revolutionary Guard Corps (“IRGC”) and related entities. Given the lack of robust ownership records in Iran, it will be difficult to conduct thorough due diligence to determine whether a potential business partner or investment target is connected to the IRGC.

### New U.S. Iranian Sanctions Regime

On Implementation Day, the United States fulfilled its obligations under the JCPOA to lift certain sanctions on Iran. While the United States slightly expanded the scope of conduct that U.S. Persons can be involved in with respect to Iran, the majority of sanctions relief relates to the United States’ so-called “secondary sanctions” that applied exclusively to non-U.S. Persons located in foreign countries. The United States had previously imposed secondary sanctions on non-U.S. Persons, including entities operating in the finance and banking, energy and petrochemical, insurance, shipping, and automotive sectors, to discourage companies in those industries from doing business with Iran. On Implementation Day, the United States lifted most but not all of these secondary sanctions.

U.S. Persons hoping to conduct business in Iran are likely to be disappointed by the changes effectuated on Implementation Day. Subject to a few modifications, the comprehensive “primary sanctions” that prohibit U.S. Persons from engaging in nearly all dealings with Iran remain in place. U.S. Persons continue to be prohibited from

directly or indirectly exporting or importing most goods, products, and services to or from Iran. In addition, U.S. Persons also remain obligated to block the property and interests of persons included on the Executive Order 13599 List, which includes Iranian financial institutions and Iranian government entities. U.S. financial institutions remain prohibited from participating in Iran-related transactions. U.S. banks will need to ensure that any dollar-denominated transactions involving Iran are not cleared through the United States. Furthermore, U.S. sanctions relating to Iranian support of terrorism, human rights abuses, and select other areas (e.g., support for the government of Syria) will also remain in place for U.S. Persons.

The United States has made only minor modifications to its primary sanctions regime:

- *Iranian Commercial Passenger Aircraft*: Through a Statement of Licensing Policy, the United States has created a specific process that allows for the licensing of individuals and entities on a case-by-case basis seeking to export, re-export, sell, lease, or transfer to Iran commercial passenger aircraft, and related parts and services, for exclusive use in the commercial passenger aviation section; and
- *Iranian-origin Carpets and Foodstuffs*: The United States Department of Treasury Office of Foreign Assets Control (“OFAC”) issued a general license authorizing the importation into the United States of Iranian-origin carpets and foodstuffs.

In addition, U.S. Persons are authorized to engage in activities involving Iran pursuant to general licenses or specific licenses.

OFAC also issued a general license on January 16, 2016, authorizing foreign entities owned or controlled by a U.S. Person to do business with Iran, subject to certain limitations. This general license is only applicable to entities incorporated outside of the United States and does not apply to foreign branches of U.S. entities. The license, however, contains a lengthy list of exceptions that U.S.-owned or -controlled foreign entities as well as their U.S. parent will need to consider carefully before entering into any dealings in Iran:

- Any export, re-export, sale, or supply, directly or indirectly, from the United States of any goods, technology, or services to Iran or the government of Iran unless subject to an OFAC general or specific license;
- Any activity involving items subject to Export Administration Regulations unless subject to an OFAC general or specific license, or involving a person whose export privileges have been denied, unless authorized by the Department of Commerce;
- Any transfer of funds to, from, or through a U.S. depository institution or a U.S.-registered broker or dealer in securities;
- Any person on OFAC’s Specially Designated Nationals List (“SDN List”) or the List of Foreign Sanctions Evaders (“FSE List”);
- Any dealings that would be prohibited by other provisions of OFAC sanctions if engaged in by a U.S. Person or in the United States;
- Any dealings with a military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate;
- Any activity that is subject to sanctions under Executive Orders related to Iran’s proliferation of weapons of mass destruction, international terrorism, human rights abuses against its own citizens or the people of Syria, support for the government of Syria, or support for persons threatening the peace, security, or stability of Yemen; and
- Any nuclear activity involving Iran that has not been approved through the United Nations/JCPOA procurement channel process.

Dealings with Iran by foreign entities owned or controlled by U.S. Persons generally must not involve U.S. Persons, U.S. territory, U.S.-origin goods, or the U.S. financial system. U.S. Persons, including U.S. citizens working for foreign entities owned or controlled by an entity incorporated in the United States, are prohibited from being involved in day-to-day business dealings with Iran, subject to a few exceptions. U.S. Persons may:

- Modify the policies and procedures of a U.S. entity or a U.S.-owned or -controlled foreign entity to the extent necessary to allow a U.S.-owned or -controlled foreign entity to engage in authorized transactions with or in Iran.
- Participate in an initial decision as to whether a U.S.-owned or -controlled foreign entity will conduct business in Iran under the new general license.
- Make available an automated and globally integrated technology and communication system to handle documents and information related to authorized transactions.

U.S. Persons and U.S.-owned or -controlled foreign entities alike are still generally restricted from most dealings with Iranian individuals and entities on the SDN List. While more than 400 Iran-related individuals and entities were removed from the list on Implementation Day, more than 200 Iran-related individuals and entities remain on the SDN List. U.S. Persons and U.S.-owned or -controlled foreign entities will also be prohibited from most dealings with the IRGC and related entities, as well as non-Iranians on the SDN List as a result of their connection to Iran’s proliferation of weapons of mass destruction or international terrorism.

U.S. Persons, Entities Owned or Controlled by U.S. Persons, and Non-U.S. Persons	
U.S. Persons Defined	<ul style="list-style-type: none"> <li>• U.S. citizens or residents (including Iranian citizens who are also U.S. residents or citizens)</li> <li>• Entities incorporated under the laws of the United States</li> </ul>
Entities Owned or Controlled by U.S. Persons	Entities in which a U.S. Person: <ul style="list-style-type: none"> <li>• Holds a 50 percent or greater equity interest by vote or value in the entity</li> <li>• Holds a majority of seats on the entity's Board of Directors</li> <li>• Otherwise controls the actions, policies, or personnel decisions of the entity</li> </ul>
Non-U.S. Person Defined	Any individual or entity excluding: <ul style="list-style-type: none"> <li>• Any U.S. citizen or permanent resident alien</li> <li>• Any entity organized under the laws of the United States or any jurisdiction within the United States (including branches of foreign entities)</li> <li>• Any person in the United States</li> </ul>

### New E.U. Iranian Sanctions Regime

In contrast to the more limited changes implemented by the United States, the European Union has lifted or otherwise amended all sanctions against Iran with respect to nuclear proliferation, which were originally implemented by Council Decision 2010/413/CFSP in 2010. In accordance with the European Union’s sectorial approach to sanctions legislation, the changes introduced by Council Decision 2016/37/CFSP vary according to industry and sanctions target. The changes are summarized in the chart below.

Notably, a large number of individuals and entities included on the E.U. Consolidated List, and therefore subject to E.U. sanctions and asset freezes, have been de-listed. Prior to Implementation Day, the list included approximately 93 people and 467 entities. The number of individuals and entities has been reduced to 29 and 94. Most significantly,

the Central Bank of Iran has been removed from the List. The prohibition on the transfer of funds between E.U. persons and entities and Iranian counterparts has been lifted and along with it the obligation to notify or obtain authorization for the transfer of funds to and from Iran.

However, several banks remain subject to asset freezes, including one of Iran’s largest, Bank Saderat. In addition, the export of sensitive goods and technology and the provision of associated services related to nuclear proliferation activities remain subject to strict controls and will require advance authorization from the competent authority of the relevant Member State (in the United Kingdom, this is the Export Control Organization). The ban on exports of arms and related materials specified in the E.U. Common Military List will remain in place until Transition Day, when the European Union and the United States will lift the remaining nuclear-related sanctions against Iran, which will occur when the International Atomic Energy Agency reaches a “broader conclusion” that all nuclear material in Iran relates to peaceful activities. Sanctions imposed by the European Union in relation to human rights, support for terrorism and related grounds are not part of the JCPOA and will remain in place.

**European Union: Overview of Changes to Iranian Sanctions**

Sector	Example of prohibitions in this sector before implementation date	Position after 16 January 2016
Finance, Banking, and Insurance	Restriction on (i) transfers of funds to and from Iran without requirement to obtain authorizations or notification; (ii) provision of insurance and reinsurance; and (iii) E.U. banks establishing offices or subsidiaries in Iran (and vice-versa).	<b>Prohibitions lifted.</b> Note: the prohibitions will remain in force for banks that remain listed on the E.U. Consolidated List.
Oil, Gas, and Petrochemicals	Prohibitions on (i) the import, purchase or transport of Iranian crude oil and petrochemical products; (ii) the export of key equipment for oil and petrochemical products; and (iii) related financial services.	<b>Prohibitions lifted.</b>
Shipping, Shipbuilding, and Transport	Prohibitions against (i) sale, supply, or transfer of certain naval equipment and technology relating to shipbuilding; and (ii) construction or participation in construction of oil tankers.	<b>Prohibitions lifted.</b> Note: certain restricted goods will remain subject to sanctions until Transition Day.
Gold, Precious Metals, Bank Notes, and Coinage	Prohibition on exports or transport sales/supply of gold and other precious metals /diamonds (and related services).	<b>Prohibitions lifted.</b>
Other Metals	Prohibition against exports or transport sales/supplies of certain metals (e.g., raw and semi-finished) to Iran (and related services).	<b>Prohibitions lifted.</b> Note: some metals and materials may be subject to separate sanctions related to military use.
Software	Prohibition on the sale of certain software to Iran.	<b>Prohibitions lifted.</b> Note: certain software may be subject to separate sanctions related to military use.
Arms and Related Materials	Restrictions on the export/import of goods and technology on the E.U. Common Military List (and related services) to/from Iran.	<b>Prohibitions will remain in force until Transition Day.</b>

Dual-use and other Controlled Goods	Prohibition on import/export of dual-use items and other listed nuclear-related items to Iran.	<b>Prohibition lifted.</b> Note: certain exports may still require a license.
Asset Freezers	Prohibition against making funds available to listed persons and obligation to freeze their funds.	<b>Prohibitions lifted except for entities and individuals that remain listed on the E.U. Consolidated List.</b>

**Conclusion**

The U.S. and E.U. sanctions regimes against Iran will remain fluid for years to come. Some of the key considerations to keep in mind going forward are:

- i. *The Risk of Snap-Back:* Under the JCPOA, the European Union and the United States retain the right to reinstate sanctions if Iran fails to perform its ongoing JCPOA commitments with respect to its nuclear program (referred to as “snap-back” provisions). Given this possibility, those seeking to conduct business or invest in Iran need to evaluate the potential financial risks associated with snap-back and negotiate appropriate provisions into contracts with Iranian persons.
- ii. *Individuals/Entities that Remain Subject to Sanctions:* In addition to the general prohibition on U.S. Persons doing business with Iran, those outside the United States must be mindful that certain individuals and entities in Iran remain subject to specific sanctions and asset freezes under both U.S. and E.U. sanctions regimes.
- iii. *Differences between the United States and European Union:* There will continue to be key differences between the U.S. and E.U. sanctions regimes going forward. Individuals and entities subject to both regimes should be mindful of their potentially evolving obligations under both regimes. For now, the United States continues to enforce broader sanctions, particularly with respect to U.S. Persons. OFAC may issue further guidance in the future to clarify gray areas created as a result of these recent changes.

**FAQ's**

**Q: Moving forward, what kind of due diligence will I need to carry out before doing business in Iran?**

A: Prior diligence on business partners and counterparties is important because a significant number of individuals and entities remain subject to U.S. and E.U. sanctions. Sanctions lists are likely to continue to be modified.

Businesses will also need to investigate whether their counterparties are directly or indirectly owned or controlled or otherwise related to individuals and entities that are subject to U.S. or E.U. sanctions. This may prove challenging in Iran due to the lack of thorough public records.

**Q: What would happen to my business interests in Iran if sanctions “snap-back” due to non-compliance under the JCPOA?**

A: The European Union states that it would “provide adequate protection for the execution of contracts concluded in accordance with the JCPOA while sanctions relief was in force.” What that adequate protection will entail, however, will only be set out in detail should a “snap-back” occur.

U.S. Persons and foreign entities owned or controlled by U.S. Persons are likely more at risk in the event of a “snap-back.” While OFAC’s Guidance suggests that it would also establish a wind-down period and that it will work with countries to “minimize the impact of sanctions on [] legitimate activities,” the agency will not grandfather existing contracts.

To mitigate the risk of “snap-back” during this period of sanctions relief, those looking to do business in Iran should seek appropriate contractual protections such as robust termination and wind-down provisions.

**Q: For individuals and entities seeking to transfer funds to Iran, are there any restrictions that apply?**

A: While many Iranian banks have been removed from U.S. and/or E.U. sanctions lists, there are a number that remain listed.

U.S. Persons are generally prohibited from transferring money to Iran. Furthermore, U.S. financial institutions are prohibited from clearing any transactions related to Iran.

**Q: Can foreign entities owned or controlled by a U.S. Person share profits/revenue associated with business dealings in Iran with the parent U.S. entity?**

A: No. Any revenue or profits derived from business dealings in Iran or with Iranian individuals or entities cannot flow to the U.S. parent unless the transaction has the benefit of a general or specific OFAC license.

**Q: Do U.S. issuers still have to file disclosures under the Iran Threat Reduction and Syria Human Rights Act of 2012 (“ITRSHRA”)?**

A: Yes, obligations to file disclosures under ITRSHRA have not changed.

**Q: As a U.S. corporation with a foreign subsidiary looking to do business in Iran, what are we allowed to do to facilitate its entry into the market and subsequent business dealings?**

A: An entity incorporated in the United States can be involved in the initial process to decide whether its foreign subsidiary is going to do business in Iran. Staff at the U.S. parent entity may also assist revising the parent's and the subsidiary's policies and procedures to address Iranian business operations and provide training on those policies to staff at both the parent and the foreign subsidiary. Any involvement in actual business transactions involving Iran is not permitted and would be considered facilitation of business dealings in Iran by a U.S. Person, which remains prohibited by the U.S. sanctions regime.