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Maritime

January 16th Marked Changes in U.S. Sanctions on Iran

Action Item: January 16, 2016, marked Implementation Day under the Joint Comprehensive Plan of Action (“JCPOA”), an agreement between Iran and the EU3+3 nations (the United Kingdom, France, Germany, Russia, China, and the United States) to ease international trade sanctions in exchange for constraints on Iran’s nuclear capabilities. As of January 16, the United States lifted a number of nuclear-related sanctions on Iran, particularly the so-called “secondary sanctions” related to non-U.S. persons. With limited exceptions, U.S. persons and companies continue to be broadly prohibited from engaging in transactions with Iran, but a limited exception has been implemented to permit foreign subsidiaries of U.S. entities to do business with Iran in some circumstances.

New Development

January 16, 2016, was Implementation Day under the JCPOA. On this day, the International Atomic Energy Agency verified that Iran implemented all primary nuclear-related requirements under the JCPOA. As a result of this verification, the United States, along with the European Union and United Nations, lifted a host of nuclear-related sanctions on Iran. The U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) released several documents on January 16 to assist in understanding the effect of the changes, including *Guidance Relating to the Lifting of Certain Sanctions Pursuant to the Joint*

Comprehensive Plan of Action on Implementation Day and Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action on Implementation Day, among others. The OFAC guidance documents are available [here](#).

Background

The JCPOA was reached on July 14, 2015, between the EU3+3 and Iran to ensure Iran’s nuclear program will be exclusively peaceful. The JCPOA was formally adopted in October 2015 and participants began implementing their JCPOA requirements. On January 16, 2016, the U.S. Secretary of State confirmed that the International Atomic Energy Agency verified that Iran had met all of its key commitments under the JCPOA. As a result of this verification, January 16, 2016, is known as Implementation Day and participants in the JCPOA, including the United States, took steps to implement their sanctions commitments.

Certain U.S. Secondary Sanctions Lifted

As a result of Implementation Day, the United States lifted nuclear-related secondary sanctions on a number of Iran’s business sectors and related services. As a general matter, the sanctions lifted are secondary sanctions that address non-U.S. persons, including broad sanctions on Iran’s shipping, shipbuilding, ports, energy, and financial services sector.

However, the core provisions of the U.S. embargo on Iran remain in place. U.S. persons continue to be broadly prohibited from engaging in transactions or dealings directly or indirectly with Iran or its government. In addition, non-U.S. persons continue to be prohibited from knowingly engaging in conduct to evade U.S. restrictions on transactions or dealings with Iran or that causes the export of goods or services from the United States to Iran. U.S. persons remain required to block the property of the Government of Iran, and U.S. export control requirements continue to prohibit exports or re-exports of goods and technology under U.S. jurisdiction directly or indirectly to Iran (with limited exceptions, such as agricultural commodities, medicine, and medical supplies).

Sanctions Related to Iran's Shipping and Shipbuilding Sectors and Port Operators: Secondary sanctions that apply to non-U.S. persons related to shipping and shipbuilding and port operators were lifted. It is no longer sanctionable for non-U.S. persons to engage in transactions with Iran's shipping and shipbuilding sectors and port operators, including the Islamic Republic of Iran Shipping Lines ("IRISL"), South Shipping Line, the National Iranian Tanker Company, and the port operators of Bandar Abbas, if not on the list of Specially Designated Nationals. These activities also encompass activities such as providing support services such as bunkering, inspection, and classification.

Financial and Banking-Related Sanctions: Secondary sanctions that apply to non-U.S. persons engaging in certain financial and banking activities related to Iran were lifted. Specifically, it is no longer sanctionable for a non-U.S. person to conduct financial and banking transactions with certain individuals and entities, including the Central Bank of Iran, the National Iranian Oil Company, the Naftiran Intertrade Company, the National Iranian Tanker Company, other specified Iranian financial institutions and individuals and entities identified as the Government of Iran, and a broad range of individuals and entities that were removed from OFAC's List of Specially Designated Nationals ("SDN List") on Implementation Day. It is also no longer sanctionable for non-U.S. persons to engage in transactions involving the Iranian rial or maintaining funds or accounts outside of Iran denominated in the Iranian rial. It is no longer sanctionable for non-U.S. persons to provide U.S. bank notes to the Government of Iran or to purchase, subscribe to, or facilitate the issuance of Iranian sovereign debt. Finally, it is no longer sanctionable for a non-U.S. person to provide specialized financial messaging services to the Central Bank of Iran and certain Iranian financial institutions. Recent press reports have noted Iranian banks are

taking steps to reestablish SWIFT connections with non-Iranian financial institutions, but western banks are moving cautiously on reestablishing correspondent banking ties in light of the remaining U.S. sanctions.

Sanctions Related to Insurance: Secondary sanctions that apply to non-U.S. persons who provide underwriting services, insurance, or re-insurance in connection with activities consistent with the JCPOA were lifted, including underwriting services, insurance, and re-insurance in connection with activities in the energy, shipping, and shipbuilding sectors of Iran, for the National Iranian Oil Company or the National Iranian Tanker Company, or for vessels that transport crude oil, natural gas, liquefied natural gas, petroleum, or petrochemical products to or from Iran. In the global shipping sector, this creates an opportunity for marine insurers and P&I Clubs to move back into Iran trade, but pooling and reinsurance arrangements that indirectly involve U.S. persons in such trade remain a source of significant compliance concern.

Sanctions Related to Iran's Energy and Petrochemical Sectors: Secondary sanctions that apply to non-U.S. persons who engage in certain Iranian energy sector activities also were lifted. It is no longer sanctionable for non-U.S. persons to invest in Iran's oil, gas, and petrochemical sectors or purchase, acquire, sell, transport, or market petroleum, petrochemical products, and natural gas from Iran. Nor is it sanctionable for non-U.S. persons to export, sell, or provide refined petroleum and petrochemical products to Iran. Finally, it is no longer sanctionable for non-U.S. persons to conduct transactions with Iran's energy sector, including the National Iranian Oil Company, National Iranian Tanker Company, and Naftiran Intertrade Company.

Sanctions Related to Gold and Precious Metals: Secondary sanctions that apply to non-U.S. persons trading in gold and other precious metals were lifted. Such activities include supplying, exporting, or transferring gold and other precious metals to or from Iran, along with facilitating related financial transactions or providing relating services, insurance, or transportation.

Sanctions Related to Software and Metals: Secondary sanctions that apply to non-U.S. persons trading with Iran in graphite, raw, or semi-finished metals, such as aluminum and steel, coal, and software for integrating industrial processes in connection with activities consistent with the JCPOA, were lifted.

Sanctions Related to the Automotive Sector: Secondary sanctions that apply to non-U.S. persons selling, transferring, or supplying goods and services in connection with Iran’s automotive sector were lifted.

Limited Relief for U.S. Persons and Entities

Pursuant to the JCPOA, the United States agreed to license three categories of activity that would otherwise be prohibited, including (1) export or re-export to Iran of commercial passenger aircraft and related parts and services; (2) activities by non-U.S. persons that are owned or controlled by a U.S. person; and (3) importation of Iranian origin carpets and certain foodstuffs. However, no transactions may involve individuals or entities on the SDN List.

With regard to activities by non-U.S. persons that are owned or controlled by a U.S. person, OFAC issued General License H, which authorizes U.S.-owned or controlled foreign entities to engage in certain transactions involving Iran that would otherwise be prohibited by the Iranian Transactions and Sanctions Regulations (“ITSR”). General License H does not, however, permit U.S.-owned or controlled foreign entities to engage in activities involving:

- direct or indirect exportation or re-exportation of goods, technology, or services from the United States;
- transfer of funds to, from, or through the U.S. financial system;
- any individual or entity on the SDN List or Foreign Sanctions Evaders List (“FSE List”);
- activity prohibited by, or requiring a license under, U.S. Export Administration Regulations;
- any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any officials, agents, or affiliates thereof; and
- certain sanctionable activity relating to proliferation of weapons of mass destruction, international terrorism, Syria, Yemen, and Iran’s human rights abuses against its citizens.

As a result, a number of U.S. companies are examining the possibility of permitting foreign subsidiaries to resume dealings with Iran. However, such operations would have to be undertaken without any review, approval, or other facilitation by the U.S. parent, or any U.S.-citizen or resident employees, officers, or board members. Such constraints give rise to significant challenges with regard to governance and compliance.

With regard to export to Iran of commercial passenger aircraft and related parts and services, OFAC issued a Statement of Licensing Policy establishing a licensing regime for the authorization of export, re-export, sale, lease, or transfer to Iran of commercial passenger aircraft for exclusively civil aviation use, along with spare parts, components, and services for such aircraft.

Finally, with regard to importation of Iranian origin carpets and foodstuffs, OFAC issued an amendment to the ITSR authorizing the importation of Iranian origin carpets and foodstuffs, including pistachios and caviar.

Conclusion and Recommendations

The JCPOA Implementation Day brought significant changes to the United States’ Iran sanctions with regard to non-U.S. persons. However, with limited exceptions, the sanctions applicable to U.S. persons remains largely unchanged.

Given the complexity of the recent changes to the Iran sanctions landscape and the remaining U.S. restrictions, we recommend that any new operations involving Iran be reviewed carefully with counsel to ensure that any compliance risks are minimized.

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