

# Morgan Lewis

## LAWFLASH

# IRAN SECONDARY SANCTIONS RELAXATION: EFFECT ON SHIPPING AND RELATED ACTIVITIES

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Shipping companies should be mindful of restrictions that still apply.

The relaxation of Iran sanctions that the United States implemented on January 16, 2016—"Implementation Day" for the Joint Comprehensive Plan of Action (JCPOA)—resulted in (1) very few changes for US individuals and US companies ("US Persons"); (2) somewhat greater changes for foreign companies that are owned or controlled by US Persons ("US-owned or controlled Foreign Entities"); and (3) rather significant changes for foreign individuals and companies that have no controlling US Person ownership ("Foreign Persons") and that are involved in Iranian transactions with no US nexus (such as any US-origin items).

The sanctions relaxation that did occur is almost exclusively from the US government's revision of certain "secondary" Iran sanctions that were imposed to curb Iran's pursuit of nuclear development. US secondary Iran sanctions were directed toward Foreign Persons for specified conduct (involving certain sectors of the economy in Iran) that occurs entirely outside of US jurisdiction and does not involve US Persons.

The US secondary sanctions have been generally lifted on Iran's financial, banking, energy, petrochemical, shipping, shipbuilding, and automotive sectors; Iran's port operators; and on the provision by Foreign Persons of insurance, reinsurance, and underwriting services. Correspondingly, US secondary sanctions were lifted in connection with the provision by Foreign Persons of "associated services" for each of these categories. "Associated services" include technical assistance, training, insurance, reinsurance, brokering, transportation, or financial services necessary and ordinarily incident to the underlying activity for which sanctions have been lifted. US Persons cannot perform such associated services.

Therefore, the effect on Foreign Persons of secondary sanctions being lifted means that US secondary sanctions related to shipping and insurance services (including associated services) will not be applied by the current US administration. This includes Foreign Persons that provide shipping transportation services, insurance, or reinsurance in connection with shipping activities in the energy, shipping, and shipbuilding sectors of Iran for National Iranian Oil Company (NIOC) or National Iranian Tanker Company (NITC), or for vessels that transport crude oil, natural gas, liquefied natural gas, petroleum, and petrochemical products to or from Iran.

## **SPECIFIC RESTRICTIONS**

Please note that the following constraints must all apply in all factual situations related to the general lifting of US secondary sanctions on Foreign Persons in connection with shipping to/from Iran:

- None of the contemplated transactions or actions may involve or include any US Person in any way, including US Persons stationed in or working in the United States or anywhere else in the world.
- The US financial system may not be used for settlement of any Iran-related shipping or insurance transaction, account, clearing, or any other payment, and thus the US dollar should not be used for settlement of any Iran-related insurance transaction, account, clearing, or any other payment.
- No Office of Foreign Asset Control (OFAC) Specially Designated National (SDN) listed entity or person will be involved in any of the contemplated transactions in any capacity.

## **ADDITIONAL CONSIDERATIONS CONCERNING FOREIGN PERSONS SHIPPING TO/FROM IRAN**

- We recommend that shipping companies be mindful that the cargo, goods, items, or technology that they transport are not subject to the export jurisdiction of the United States Department of Commerce or US Department of State. A shipping company should ascertain that the applicable exporter or re-exporter has obtained the necessary US export or re-export license or other authorization required, if any is required for the cargo. In other words, a shipping company should be satisfied that cargo, goods, items, or technology entering or transiting Iran are doing so in accordance with US export laws and regulations.
- We also recommend that shipping companies require all counterparties to contract and agree that such counterparties will comply with any applicable US Iran sanctions and export license requirements for cargo transported, and indemnify the shipping company for any breach.
- Certain Iran-related activities are reportable by an “issuer” in periodic US Securities and Exchange Commission (SEC) reports pursuant to Section 13(r) of the Securities Exchange Act of 1934 (a/k/a Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012). It should be noted that such activities are reportable even though they might not be violations or otherwise sanctionable under US law. Issuers required to file an annual or quarterly report to the SEC must disclose if, during the period covered by the report, the issuer (or an “affiliate” of the issuer) engaged in certain Iran-related activities under Section 13(r)(1)(A) -13(r)(1)(D) of the Securities Exchange Act of 1934.
- Foreign shipping company personnel who travel to Iran to negotiate deals may face new difficulties in entering the United States. Many non-US citizens rely on the US Visa Waiver Program (VWP), which allows visa-free entry into the United States for visitors from certain eligible countries (e.g., EU countries and Japan), provided that such individuals participate in a registration process. The Bipartisan Budget Act of 2015 signed by US President Barack Obama tightened the eligibility criteria for VWP. The VWP was modified to prohibit individuals who have travelled to Iraq, Syria, Iran, or Sudan (or other countries designated by the US government) at any time on or after March 1, 2011, as well as individuals with double nationalities in such countries, from participating in the VWP. Such persons will now be required to go through the regular (and more time-consuming) visitor visa application process at the US Embassy/Consulate in their home country.
- “Snap Back.” Shipping companies should be aware that the United States, at any time and without prior

- notice to the public, can re-impose or “snap back” part or all of the sanctions relief if Iran does not fulfill its JCPOA obligations. Moreover, this year is a presidential election year in the United States, and several of the candidates for US President have stated that, if elected, they will abandon the Iran agreement and re-impose US sanctions on Iran, unilaterally if necessary.

## **CONTACTS**

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