CLIENT ALERT

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U.S. Government Licenses Certain Iran-Related Transactions Conducted by Foreign Subsidiaries of U.S. Companies

SPEED READ

After implementation of the Joint Comprehensive Plan of Action, the U.S. Government has lifted certain sanctions on Iran, including by authorizing the foreign subsidiaries of U.S. companies to engage in most transactions involving Iran while allowing U.S. parent companies to establish their subsidiaries' operating policies and to make available automated business systems related to transactions with Iran. But these new authorizations do not significantly alter the primary U.S. sanctions that prohibit U.S. persons from engaging in the majority of transactions involving Iran.

On January 16, 2016, the International Atomic Energy Agency verified that Iran had carried out its nuclear commitments under the Joint Comprehensive Plan of Action ("JCPOA"), triggering reciprocal obligations by the United States. Although U.S. companies and persons continue to be barred from most transactions involving Iran, the Office of Foreign Assets Control ("OFAC") has issued an important new authorization that will expand the ability of foreign companies owned or controlled by U.S. interests to engage in Iran business. The authorization will be of particular interest to multinational companies headquartered in the United States, U.S. private equity firms with foreign investments, and other U.S. persons whose foreign interests can now lawfully engage in certain trade with Iran.

General License H authorizes transactions by any "entity owned or controlled by a United States person and established or maintained outside the United States" with "the Government of Iran or any person subject to the jurisdiction of the Government of Iran," ***other than*** transactions with or involving:

- The exportation, reexportation, sale, or supply, directly or indirectly, of any goods, technology, or services from the United States or a U.S. person with knowledge or reason to know that they are intended for Iran;
- Any activity involving any item (including information) subject to the Export Administration Regulations that is prohibited or requires a license;
- Any transfer of funds to, from, or through a U.S. depository institution or a U.S.-registered broker or dealer in securities;
- Any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate thereof;
- Any person, entity, aircraft or vessel on OFAC's list of Specially Designated Nationals or Foreign Sanctions Evaders or who has been denied export privileges by the Department of Commerce's Bureau of Industry and Security;
- Any activity related to the proliferation of weapons of mass destruction or ballistic missiles, international terrorism, Iran's support for the Syrian regime, Iran's destabilizing activities in Yemen, or Iranian human rights abuses; and
- Any covered nuclear activity involving Iran outside of the official procurement channel established by the JCPOA.

Importantly, the bar against U.S.-person "facilitation" of Iran-related transactions conducted by a non-U.S. person remains in effect—in other words, without OFAC authorization, U.S. persons cannot facilitate, assist, guarantee, or otherwise participate directly or indirectly in any Iran-related business. But General License H removes two critical obstacles raised by that bar that will make it easier for U.S.-owned/controlled foreign subsidiaries to take advantage of the license.

First, General License H authorizes U.S. persons—including U.S.-person board members, senior management, and employees—to be directly involved in establishing operating policies and procedures under which the non-U.S. subsidiary can achieve the operational separation necessary for it to transact with Iran. (Previously, such involvement would have been a prohibited "facilitation.") Once the procedures are established, the foreign subsidiary must work under them without participation by U.S. persons in matters relating to Iran.

Second, General License H authorizes the U.S. parent to make available to its foreign subsidiaries who lawfully trade with Iran "any automated and globally integrated computer, accounting, email, telecommunications, or other business support system, platform, database, application, or server necessary to store, collect, transmit, generate, or otherwise process documents or information related to [the Iran] transactions." This means a U.S. parent can provide common email, enterprise resource planning, and other back-office services to a foreign subsidiary in connection with the latter's Iran trade, provided the services are fully automated (they must operate passively and without human intervention, other than maintenance of the systems) and are broadly available to the group of companies under U.S. control.

The U.S. government also announced its intention to issue a general license authorizing the importation into the United States of Iranian-origin carpets and foodstuffs, and has published a statement of licensing policy under which OFAC will view favorably applications seeking authorization to export or re-export to Iran commercial passenger aircraft and related parts, components, and services. And OFAC has removed from the SDN list over 400 individuals and entities sanctioned because of their nuclear-related roles and activities.

Two important caveats to the opportunities created by these changes are (1) the possibility of a so-called "snap back" of the sanctions should Iran fail to continue to abide by its obligations under the agreement (contracts entered into lawfully would not benefit from any grandfathering if sanctions were snapped back), and (2) that any penalties for a foreign subsidiary's noncompliance with General License H, or the U.S. sanctions against Iran generally, are assessed against the U.S. parent.

Despite these regulatory changes, significant sanctions against Iran remain, stemming from its support of international terrorism, regional destabilization, ballistic missile program, and human rights abuses. These sanctions prohibit most transactions with Iran by U.S. persons. In a move that emphasizes the considerable U.S. sanctions authority that is not affected by these changes, on January 17, OFAC announced new sanctions against 11 individuals and entities involved in procurement for Iran's ballistic missile program.

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If you would like additional information about the issues addressed in this Client Alert, please contact Rich Matheny, who chairs Goodwin Procter's National Security & Foreign Trade Regulation Practice, or the Goodwin Procter attorney with whom you typically consult.

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