

CLIENT ALERT:

**U.S. SUSPENDS NUCLEAR-RELATED SECONDARY
SANCTIONS AGAINST IRAN**

January 19, 2016

INTRODUCTION

On January 16, 2016, the International Atomic Energy Agency ("IAEA") issued a report confirming that Iran has complied with its commitments to curtail its nuclear program, as set forth in the Joint Comprehensive Plan of Action ("JCPOA") of July 14, 2015. Under the terms of the JCPOA, this IAEA verification initiated "Implementation Day" on January 16, and the U.S. suspended its nuclear-related secondary sanctions (i.e., those directed at foreign persons, as opposed to U.S. persons) against Iran.

NOTE: the suspension of sanctions does not apply to U.S. persons¹, who are still generally prohibited from dealing with Iran or the Government of Iran, unless such activities are exempt from regulation or authorized by the Office of Foreign Asset Control ("OFAC").

In broad terms, the suspension of nuclear-related sanctions means that:

- The purchase, acquisition or transport of Iranian petroleum, petroleum products and petrochemicals by non-U.S. persons is no longer prohibited.
- Non-U.S. persons are free to provide significant financial, material, technological, or other support to, or goods and services in support of any activity or transaction on behalf of or for the benefit of a person determined to be part of the energy, shipping, or shipbuilding sectors of Iran, or to operate a port in Iran, or to person or entities listed in Attachment 3 to Annex II of the JCPOA.
- Non-U.S. persons are no longer prohibited from engaging in transactions for the sale, supply or transfer to or from Iran of precious metals or specified metals (graphite, raw or semi-finished materials such as aluminum, steel, coal and software for integrating industrial processes).

¹ The term "United States person" or "U.S. person" means any United States citizen, permanent resident alien, entity organized under the laws of the U.S. or any jurisdiction within the U.S. (including foreign branches), or any person in the U.S. Foreign entities that are U.S.- owned or U.S.-controlled are not "U.S. persons," but they are eligible to participate in transactions or activities subject to the lifting of sanctions under the JCPOA only to the extent that the transactions or activities are exempt from regulation or authorized by the Office of Foreign Asset Control ("OFAC"). See Section I below.

The suspension of the U.S. nuclear-related sanctions against Iran is not a wholesale repeal of all U.S. sanctions against Iran. The U.S. nuclear-related sanctions regime against Iran consists of a series of interlocking, and sometimes overlapping, statutes, regulations and Executive Orders. The lifting of certain sanctions has been effectuated by the termination, via Executive Order, of certain other Executive Orders and by the waiver of certain statutory sanctions. To assist the navigation of the sanctions relief, the U.S. Departments of Treasury and State have jointly issued a detailed *Guidance Relating to the Lifting of Certain U.S. Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day*, as well as an extensive set of *Frequently Asked Questions*. Those documents can be accessed at the links available on OFAC's website at <https://www.treasury.gov/resource-center/sanctions/Programs/pages/iran.aspx>.

Before resuming trade with Iran, clients are urged to carefully review the published Guidance and to seek legal counsel if it is not clear whether a particular trade or transaction is permitted. It should also be noted that:

- The lifting of secondary sanctions does not apply to persons who remain on or who are added to the Specially Designated Nationals ("SDN") List. Along with the lifting of certain sanctions, approximately 400 Iranian persons and entities, and others, have been removed from the SDN List, although about 200 remain on the list for other reasons (support of terrorism, human rights abuses, etc.). Transactions that are currently prohibited with those persons remain sanctionable after Implementation Day.

The Islamic Revolutionary Guard Corps ("IRGC"), which controls large sectors of the Iranian economy, remains on the SDN List.² The individuals and entities removed from the SDN List are set forth in Attachment 3 to Annex II of the JCPOA.³

- The lifting of secondary sanctions also applies to associated services, which are interpreted as "any service – including technical assistance, insurance, re-insurance, brokering, transportation, or financial services – necessary and ordinarily incident to the underlying activity for which sanctions have been lifted." However, U.S. persons or U.S.-owned or U.S.-controlled foreign entities remain prohibited from providing such associated services, unless the underlying transactions or activities are exempt from regulation or are authorized by OFAC. (See Section I below regarding an OFAC general license permitting U.S.-owned or U.S.-controlled foreign entities to engage in some dealings with Iran.)

² OFAC recommends that persons intending to engage in business with Iran exercise due diligence to insure that they are not dealing with the IRGC or with other entities on the SDN List.

³ Attachment 3 to Annex II of the JCPOA places an asterisk next to those names which are being removed from the SDN List, but who have previously been identified by OFAC as meeting the definition of the "Government of Iran" or "Iranian financial institution." U.S. persons, wherever located, are still obligated to block the property and interests in property of those entities and any other entities which meet the foregoing definitions, even if not specifically identified by OFAC.

- The lifting of sanctions does not apply to sanctions existing under legal authorities not included within the scope of Section 4 of Annex II of the JCPOA. Those authorities include those addressing Iran's support for terrorism; human rights abuses in Syria and otherwise; threats to the peace, security or stability of Yemen; and ballistic missile programs. The U.S. retains the right to impose sanctions under these legal authorities.
- Because the lifting of sanctions does not apply to U.S. persons, U.S. banks still cannot process financial transactions relating to Iran. Therefore, for example, even though a non-U.S. person may now be free to acquire, purchase or transport Iranian petroleum, the payment for the petroleum itself, or for the ocean freight for its transport, cannot not be paid in U.S. dollars, as a U.S. bank cannot process the payment.
- Non-U.S. persons are still prohibited from knowingly engaging in conduct that seeks to evade U.S. restrictions on transactions with Iran or that causes the export of U.S. goods or services from the United States to Iran.

DETAILS OF THE NUCLEAR-RELATED SECONDARY SANCTIONS RELIEF

A. Financial and Banking-related Sanctions

With the lifting of certain U.S. secondary sanctions, **non-U.S. persons** and foreign financial institutions can now engage in the following activities, which are no longer sanctionable:

1. Financial and banking transactions with individuals and entities set out in Attachment 3 to Annex II of the JCPOA, including the Central Bank of Iran ("CBI")⁴, the National Iranian Oil Company ("NIOC"), the Naftiran Intertrade Company ("NICO"), the National Iranian tanker Company ("NITC"), and other individuals and entities identified as the Government of Iran by OFAC.
2. Transactions involving the Iranian rial.
3. Providing U.S. bank notes to the Government of Iran.
4. The transfer of Iranian assets held abroad.
5. Significant financial transactions by Foreign Financial Institutions ("FFIs") for the sale, supply or transfer to or from Iran of significant goods or services used in the energy, shipping or shipbuilding sectors of Iran, including, NIOC, NITC and the Islamic Republic of Iran Shipping Lines ("IRISL").
6. Financial transactions by FFIs for the sale, supply or transfer of natural gas to Iran.
7. Financial transactions by FFIs for the sale, supply or transfer to of from Iran of precious metals or specified metals (graphite, raw or semi-finished materials such as aluminum, steel, coal and software for integrating industrial processes).

⁴ However, §1245(d)(1) of NDAA 2012 still prohibits significant financial transactions with Iranian banks on the SDN List (except for those blocked solely pursuant to E.O. 13599), including Ansar Bank, Bank Saderat, Bank Saderat PLC and Mehr Bank.

8. Financial transactions by FFIs for the purchase, acquisition, sale, transport or marketing of petroleum or petroleum products from Iran.
9. Financial transactions by FFIs for the purchase, acquisition, sale, transport or marketing of petrochemical products from Iran.
10. Providing significant financial, material, technological, or other support to, or goods and services in support of any activity or transaction on behalf of or for the benefit of a person determined to be part of the energy, shipping, or shipbuilding sectors or Iran, or to operate a port in Iran or to person or entities listed in Attachment 3 to Annex II of the JCPOA.
11. Providing underwriting services, insurance or reinsurance in connection with the foregoing activities.

B. Sanctions Related to Insurance

Non-U.S. insurers are now free to provide underwriting services, insurance and reinsurance for the following previously prohibited activities:

1. Significant financial transactions by FFIs for the sale, supply or transfer to or from Iran of significant goods or services used in the energy, shipping or shipbuilding sectors of Iran, including, NIOC, NITC and IRISL.
2. Transactions by non-U.S. persons who sell, supply or transfer to or from Iran significant goods or services used in the energy, shipping or shipbuilding sectors of Iran, including, NIOC, NITC and IRISL.
3. Transactions by non-U.S. persons who provide significant financial, material, technological, or other support to, or goods and services in support of any activity or transaction on behalf of or for the benefit of a person determined to be part of the energy, shipping, or shipbuilding sectors or Iran, or to operate a port in Iran or to person or entities listed in Attachment 3 to Annex II of the JCPOA.
4. Transactions by non-U.S. persons who have materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of, NIOC, NITC, or the CBI, or the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran.
5. The transport to or from Iran of crude oil, natural gas, liquefied natural gas, petroleum, petroleum products or petrochemicals by non-U.S. vessels.
6. Transactions by non-U.S. persons for the sale, supply or transfer to or from Iran of precious metals or specified metals (graphite, raw or semi-finished materials such as aluminum, steel, coal and software for integrating industrial processes).

NOTE: The lifting of certain sanctions includes the waiver of §1246(a) of the Iran Freedom and Counter-proliferation Act ("IFCA"), which provided for the imposition of penalties on any person who knowingly provided underwriting services, insurance or reinsurance for any activity that violated any U.S. sanction relating to Iran. Section 1246(a) has been waived in respect of all

nuclear-related sanctions.

However, §1246(a) continues to apply to any person who knowingly provides underwriting service, insurance or reinsurance to any entity designated on the SDN List in connection with Iran's proliferation of Weapons of Mass Destruction or Iran's support for international terrorism. SDNs in both categories are designated with the "[IFSR]" program tag on the list.

C. Sanctions Related to Iran's Energy and Petrochemical Sectors

The U.S. has now ceased its efforts to restrict Iran's sale of crude oil, both as to the quantities sold and the nations purchasing crude oil. In addition, the following previously prohibited activities, and all associated services, including insurance and transportation, are now permissible by non-U.S. persons:

1. The purchase, acquisition, sale, transportation or marketing of petroleum, petrochemical products and natural gas from Iran.
2. The transport by vessel of crude oil from Iran to another country.
3. The export, sale or provision of refined petroleum products to Iran.
4. Transactions with Iran's energy sector, including with NIOC, NICO, and NITC.
5. The sale, supply or transfer to Iran of significant goods or services used in the energy, shipping or shipbuilding sectors of Iran, including NIOC, NITC and IRISL.
6. The provision of underwriting services, insurance or reinsurance, for NIOC or NITC.
7. Transactions by non-U.S. persons for the sale, supply or transfer to or from Iran of precious metals or specified metals (graphite, raw or semi-finished materials such as aluminum, steel, coal and software for integrating industrial processes).
8. Investment by non-U.S. persons in Iran's oil, gas and petrochemical sectors, including joint ventures and the provision of goods, services, technology and technological expertise.
9. Investments that could significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources.
10. The provision to Iran of goods, services, technology, information or support that could directly and significantly facilitate the maintenance or enhancement of Iran's domestic production of refined petroleum products.
11. The provision to Iran of goods, services, technology, information or support that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products.
12. The participation in joint ventures for the development of petroleum resources outside of Iran.
12. The provision to Iran of goods, services, technology, information or support that could directly and significantly facilitate the maintenance or enhancement of Iran's ability to develop petroleum resources in Iran, or domestic production of refined petrochemical products.

D. Sanctions Related to Iran's Shipping and Shipbuilding Sectors and Port Operators

As with the energy sector, non-U.S. persons are now permitted to engage in previously prohibited transactions with the Iranian shipping and shipbuilding sectors and with port operators. The following activities by non-U.S. persons are now permitted:

1. Transactions for the sale, supply or transfer to Iran of significant goods or services used in the shipping or shipbuilding sectors of Iran, including NIOC, NITC and IRISL.
2. The provision of underwriting services, insurance or reinsurance to NIOC or NITC.
3. The provision of port services, such as bunkering and inspection, classification and financing, and the sale, leasing and provision of vessels to Iran, including to IRISL, NITC, and South Shipping Line or their affiliates.
4. Transactions with Iran's shipping and shipbuilding sectors, and port operators, including IRISL, NITC, South Shipping Line and the port operators of Bandar Abbas.

NOTE: FAQ E.2 states that dealings with the port operator at Bandar Abbas are not sanctionable, as long as that port operator is not on the SDN List. The FAQ also states that while Tidewater Middle East Co. ("Tidewater") is still on the SDN List, it does not appear that Tidewater is the port operator at Bandar Abbas. However, the FAQ cautions that because Tidewater remains on the SDN List, dealings with Tidewater by either U.S. persons or non-U.S. persons remain sanctionable.

E. Sanctions Related to Gold and Precious Metals

Non-U.S. persons are now permitted to sell, supply, export, or transfer, directly or indirectly, to or from Iran, gold and other precious metals, to conduct or facilitate a financial transaction relating to the foregoing, or to provide security, insurance and transportation. All associated services to such trade are also permitted. However, any such transactions with persons on the SDN List remain sanctionable.

F. Sanctions Relating to Software and Metals

Non-U.S. persons are now permitted to trade with Iran in respect of graphite, raw or semi-finished materials such as aluminum and steel, coal and software for integrating industrial processes. All associated services to such trade are also permitted. Once again, any such transactions with persons on the SDN List remain sanctionable. Furthermore, the transfers of such material for use in the military or ballistic missile programs of Iran remain prohibited.

G. Sanctions Related to the Automotive Sector

Transactions by non-U.S. persons for the sale, supply, or transfer to Iran of significant goods or services for use in the automotive sector of Iran are no longer sanctionable, and the provision of associated services for such transactions is also permitted. However, no transaction can be conducted with persons on the SDN List. In addition, a non-U.S. person cannot reexport to Iran, directly or indirectly, from a third country, any goods, technology or services that have been exported from the United States, if they know or have reason to know that the reexportation is intended specifically for Iran or the Government of Iran, and the items are controlled for export from the U.S. to Iran.

H. Statement of Licensing Policy ("SLP") for Activities Related to the Export or Reexport to Iran of Commercial Passenger Aircraft and Related Parts and Services

OFAC has issued a SLP establishing a favorable licensing policy under which U.S. persons can seek licenses for (1) the export, reexport, sale, lease or transfer to Iran of commercial passenger aircraft exclusively for civil aviation use; (2) the export, reexport, sale, lease or transfer to Iran of spare parts and components for such aircraft; and (3) the provision of associated services, provided they are used exclusively for civil aviation. This SLP will also apply to non-U.S. persons where there is a nexus to the United States.

I. General License Authorizing Activity by Non-U.S. Persons that are Owned or Controlled by a U.S. Person

OFAC has issued General License H ("GL H") which permits U.S.-owned or U.S.-controlled foreign entities⁵ to engage in transactions with the Government of Iran or a person subject to the jurisdiction of the Government of Iran that would otherwise be prohibited by §560.215 of the Iran Transactions and Sanctions Regulations ("ITSR"). However, GL H sets forth an extensive list of activities that are not authorized by the general license including:

- The exportation to Iran, directly or indirectly of any goods, technology or services from the U.S. prohibited by 31.C.F.R. § 560.204, without separate authorization from OFAC.
- Any transfer of funds to, from or through a U.S. depository institution.
- Any transaction involving a person on the SDN List that could be prohibited to a U.S. person.
- Any transaction involving a person on the List of Foreign Sanctions Evaders that could be prohibited to a U.S. person.
- Any activity involving any item subject to the Export Administration Regulations, that is prohibited by, or otherwise requires a license under part 744 of the EAR; or participation in any transaction involving a person whose export privileges have been denied under the EAR.

⁵ Section 560.215 generally prohibits U.S.-controlled and U.S.-owned foreign entities from engaging in activities with Iran that would be prohibited if engaged in by a U.S. person. See 31 C.F.R. §560.215. An entity established or maintained outside the U.S. is "owned" or "controlled" by a U.S. person if the U.S. person: (1) holds a 50% or greater equity interest by vote or value in the entity; (2) holds a majority of seats on the board of directors of the entity; or (3) otherwise controls the actions, policies or personnel decisions of the entity.

- Any activity involving any military, paramilitary, intelligence or law enforcement entity of the Government of Iran, or any official, agent or affiliate thereof.
- Any activity that is sanctionable under various Executive Orders relating to Iran's proliferation of weapons of mass destruction (including its ballistic missile program), international terrorism, Syria, Yemen, or Iran's commission of human rights abuses against its citizens.
- Any nuclear activity involving Iran that is subject to the procurement channel established pursuant to paragraph 16 of United Nations Security Council Resolution 2231 (2015).

Any U.S.-owned or U.S.-controlled entity that contemplates dealing with Iran under GL H is advised to review that general license, and the relevant FAQs, very carefully, and perhaps to seek guidance from OFAC or counsel, to ensure that any activity undertaken falls within the scope of the license.

J. General License Authorizing the Importation of Iranian-Origin Carpets and Foodstuffs

OFAC will be issuing, effective when published in the Federal Register, a general license authorizing the importation into the U.S. of Iranian-origin carpets and certain Iranian-origin foodstuffs, including pistachios and caviar. U.S. depository institutions are authorized to process letters of credit for the payments of such goods and U.S. persons are authorized to act as brokers for the purchase or sale of carpets and foodstuffs authorized to be imported into the U.S. under this general license.

There are specific regulations governing how the trades authorized by this general license may be conducted. Any party considering entering these trades should review the relevant regulations carefully and thoroughly.

K. Snap-Back Provision

The JCPOA contains a "snap-back" provision which permits the re-imposition of U.S. sanctions against Iran within 30 days after a determination that Iran has breached the JCPOA. If sanctions snap-back, they would not be applied retroactively against legitimate business undertaken after Implementation Day.

However, the JCPOA does not provide for the grandfathering of contracts entered into before the re-imposition of sanctions. When sanctions have been implemented in the past, the U.S. has had a practice of working with U.S. and foreign companies to attempt to minimize the impact of sanctions on legitimate business activities undertaken before the imposition of sanctions. The newly issued FAQs indicate that the U.S. intends to follow that practice in the event of a snap-back of sanctions.

Any person intending to enter a contract of any duration relating to Iranian business might consider including a contract term permitting either suspension or termination of the contract in the event that the prior secondary sanctions snap-back into place or if new secondary sanctions are imposed.

SUMMARY

The U.S. primary sanctions against Iran (*i.e.*, those directed at U.S. persons) remain in place and there continues an effective trade embargo against Iran, generally preventing U.S. persons from engaging in any dealings with Iran. OFAC has issued General License H authorizing U.S.-owned or U.S.-controlled entities to have some dealings with Iran, but there are numerous restrictions on that authorization.

The U.S. nuclear-related secondary sanctions against Iran, applicable to non-U.S. persons, have been largely lifted. However, non-U.S. persons still cannot deal with Iranian persons and entities on the U.S. SDN List. In considering any transactions, care should be taken to ensure that no entities designated on the SDN list are involved. Payments in U.S. dollars still are not permitted in connection with Iranian transactions (even if the underlying transaction is permissible) and no U.S.-origin goods can be exported to Iran. Non-U.S. persons must also be mindful that other U.S. sanctions against Iran, relating to international terrorism, human rights abuse and the proliferation of weapons of mass destruction, remain in effect.

Disclaimer: This Client Alert provides only a general summary of the current lifting of certain U.S. sanctions against Iran, and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding trade with Iran. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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