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## Changes to Iran Sanctions Provide a Few Business Opportunities, but Many Hurdles

On January 16, 2016, the International Atomic Energy Agency verified that Iran had implemented nuclear reforms negotiated among the United States, the European Union and Iran, a milestone in the agreement referred to as the Joint Comprehensive Plan of Action (“JCPOA”). The United States and the EU quickly eased elements of the existing sanctions on Iran, but most of these changes, while significant, do not benefit U.S. companies, citizens or residents. Although Iran is on the path to opening business opportunities, those subject to U.S. sanctions laws should move carefully and deliberately.

### What Changed?

U.S. sanctions have historically covered industry sectors in Iran that were thought to have contributed to Iran’s nuclear proliferation activities. To limit this support, the United States (and the EU) sanctioned elements of Iran’s energy, shipping and shipbuilding sector; materials and precious metals sector; the insurance and underwriting sector; the finance, banking and debt sector; and fairly recently, the automotive sector. These sanctions applied to non-U.S. companies, even those without a U.S. nexus.

The U.S. sanctions regime is reflected in a myriad of statutes, regulations and agency guidance. Because there is no single law covering the U.S. sanctions on Iran, the new relief measures are likewise a mishmash of government action that, when taken together, effectively lift many Iran-related sanctions on people and entities who have no nexus to the U.S. and carve out very narrow exceptions to the previous sanctions on those who do have U.S. connections.

We address the most significant changes below.

- **Changes to Lists of Prohibited Parties**

The U.S. Government has now removed approximately 400 persons from the list of Specially Designated Nationals (SDNs), the Foreign Sanctions Evaders List and the Non-SDN Iran Sanctions Act List (collectively, the “Sanctions Lists”). It is important to note that

U.S. persons are still prohibited from entering transactions with any person or property removed from the original Sanctions Lists. This group is now documented as the “13599 List,” named for Executive Order 13599 (dated February 5, 2012), which made effective the initial sanctions on the listed persons and property. This relief, therefore, is almost exclusively limited to non-U.S. persons, who are now no longer subject to sanctions solely for engaging in activity that involves persons included on the 13599 List, provided the activity does not constitute conduct that otherwise remains sanctionable.

Although the Sanctions Lists are now shorter with the removal of the nuclear-related prohibited parties, the Sanctions Lists still include hundreds of prohibited parties that remain off-limits to U.S. and non-U.S. persons. Best practices for avoiding mishaps with the remaining prohibited parties are discussed below.

- **Termination of Executive Orders and Waivers**

Additional measures used to ease specific elements of the Iran sanctions included the termination of Executive Orders, specifically EOs 13574, 13590, 13622, 13645 and specific sections of 13628. In parallel, Secretary Kerry used his authority to waive specific sections of the Iran Freedom and Counter-Proliferation Act (IFCA), the Iran Threat Reduction and Syria Human Rights Act (ITSR), the National Defense Authorization Act (NDAA) and the Iran Sanctions Act (ISA). In aggregate, the termination of Executive Orders and the waivers eased sanctions prohibitions for non-U.S. person engagement in the following sectors: Financial and Banking, Insurance, Energy and Petrochemicals, Gold and Precious Metals, Software and Metals, and Automotive, as specified in Section 4 of the JCPOA Annex II.

- **Relaxation of Controls over Non-U.S. Subsidiaries via General License**

Previously, non-U.S. subsidiaries owned or controlled by U.S. persons (such as parent companies) were prohibited under U.S. regulations at 31 C.F.R. §560.215 from engaging in transactions that would be prohibited for U.S. persons. In effect, this prevented U.S. companies from using (or forming) foreign subsidiaries as a loophole into the Iran market. These restrictions have changed significantly under OFAC’s new General License H, which authorizes certain transactions that were previously blocked by §560.215. General License H does **not**, however, authorize the following with respect to Iran transactions: (1) exporting or reexporting U.S. goods to Iran; (2) using the U.S. financial system; (3) involving a prohibited party; (4) involving any military, intelligence or law enforcement entities of Iran’s government; (5) involving in any way the proliferation of Iran’s weapons of mass destruction, including ballistic missiles, terrorist activity or human rights violations as specified in EOs that remain in place; or (6) involving Iran’s nuclear sector beyond the

approved nuclear activity and procurement channels outlined in the JCPOA (specifically, Section 6 of Annex IV).

Importantly, General License H also authorizes U.S. persons to engage in certain activities that would otherwise be prohibited under the sanctions that remain in place. U.S. persons are not prohibited from establishing or modifying corporate policies and procedures for non-U.S. subsidiaries to conduct proper business under General License H. In the same vein, a U.S. person is authorized to make available to non-U.S. subsidiaries automated and globally integrated computer, accounting, email telecommunications and other business support systems, platforms, databases application and servers necessary for the transaction authorized in General License H.

General License H is self-fulfilling and an OFAC license application is not necessary. However, subsidiaries of U.S. parent companies must still exercise caution to remain within the approved categories of activity and avoid pitfalls and potential penalties by conducting appropriate denied party screening and due diligence for Iran transactions.

- **Allowance of Specific Imports via General License**

It is now lawful to import certain goods from Iran, notably Iranian-origin carpets and specific foodstuffs, such as caviar and pistachios. The details of the authorized goods are specified in the amended ITSR, and imports of these goods must still comply with the other applicable laws and regulations, such as those administered by U.S. Customs and Border Protection and/or the U.S. Food and Drug Administration.

- **Favorable Licensing Policy for Civil Aircraft Industry Exports**

The final measure used to ease trade with Iran came in the form of an OFAC Statement of Licensing Policy (SLP), whereby U.S. and non-U.S. persons may request specific licenses for the export, reexport, sale, lease or transfer to Iran of commercial passenger aircraft, spare parts and components and associated aircraft services such as repairs and warranties. All items exported under an approved license must also comply with other applicable laws and regulations, such as the Iran-Iraq Non-proliferation Act and the Export Administration Regulations (EAR). Although this SLP is one of the few changes applicable for U.S. persons, exporters should be prepared to apply for and receive licenses with language to prevent the use of the items or services for purposes other than for commercial aircraft or transferred in any way to an SDN. If such a diversion is identified, the United States reserves the right to scale back the SLP in whole or in part. In such a case, exporters would be immediately prohibited from performing ongoing or future commitments with prohibited parties or in furtherance of prohibited uses. In addition to

seeking an OFAC license, exporters must evaluate whether export licenses from the Department of Commerce are necessary.

## **Which Sanctions Remain In Place?**

U.S. and non-U.S. companies must approach the easing of Iranian sanctions as very limited-scope relief because many sanctions remain in place.

With the narrow exceptions carved out for commercial aircraft exports and general licenses for carpet and foodstuffs imports from Iran, U.S. persons remain largely prohibited from trading with Iran pursuant to the existing trade embargo. Furthermore, U.S. persons (including citizens, dual-citizens and legal permanent residents) must comply with U.S. sanctions anywhere in the world. U.S. persons traveling or working abroad, even for a non-U.S. company with no U.S. nexus are prohibited from participating in any aspect of trade with Iran. In addition, the existing banking prohibitions largely remain in place for U.S. financial institutions and went largely unaffected by the recent changes.

Non-U.S. persons must be aware that anybody physically in the United States is considered a U.S. person subject to U.S. sanctions. Therefore U.S.-based individuals and those traveling to the United States on business and/or personal matters must use caution not to participate or facilitate a transaction that would be prohibited for a U.S. person, such as making a sales call, approving a contract or organizing a meeting for others to close a deal involving Iran.

In conjunction with the U.S. trade embargo, non-U.S. persons remain prohibited from exporting or reexporting U.S.-origin goods to Iran, as well as exporting or reexporting a product incorporating more than 10% U.S.-origin goods, technology or software. Non-U.S. persons may consider this *de minimis* exception for reexports to Iran of foreign-made items incorporating no more than 10% U.S.-origin content.

As stated above, both U.S. and non-U.S. persons are prohibited from entering transactions with any party on the Sanctions Lists. Companies should be aware that the U.S. Office of Foreign Assets Control (“OFAC”) considers an entity owned or controlled by an SDN to be an SDN, even if not explicitly listed on OFAC’s SDN List. U.S. persons are further prohibited from entering transactions with those on the 13599 List, or those that were removed from the other Sanction Lists under the JCPOA. In addition, the United States maintains sanctions with respect to Iran on specific activities generally involving Support for Terrorism, the Iranian Revolutionary Guard Corps (IRGC), Human Rights Abuses in Iran, Syria and Yemen, Proliferation of Weapons of Mass Destruction, providing specialized financial messaging services to financial institutions to support any of the above, or by facilitating banking transactions for any of the above.



Finally, the United States added additional persons to the SDN List the day after Implementation Day, a strong indicator that the U.S. Government plans to enforce, and apparently bolster, the sanctions that remain in place.

## Conclusion

The Iran-sanctions relief that went into effect in January 2016 provide very limited changes for U.S. persons, moderate changes for U.S. person owned or controlled foreign subsidiaries and significant changes for non-U.S. persons with no U.S. nexus. U.S. persons have been, and will continue to be, generally prohibited from conducting business with Iran or Iranian nationals, with few and narrow exceptions. Non-U.S. persons received relief from some sanctions, but must tread carefully to avoid business with prohibited parties or prohibited uses. Non-U.S. companies must also be aware of U.S. content in their foreign-made products and the restrictions U.S. person employees or partners pose on deals involving Iran.

Companies should implement or enhance their denied party screening and due diligence processes to identify and address red flags and properly document these activities to be prepared for an audit or government investigation. Companies should become familiar with the nuances of these new rules and conduct thorough internal analyses to determine the extent to which their products and services will be affected. Early evaluation will allow U.S. and non-U.S. businesses to maximize the limited benefits the JCPOA was intended to provide while minimizing the exposure to risks inherent in a changing regulatory regime.

This article is for informational purposes only and is not intended to be legal advice. Please consult a Shipman & Goodwin international trade attorney before trading with Iran, as compliance analyses are heavily fact-specific.

## Questions or Assistance?

If you have any questions regarding this alert, please contact Ross Garber at (860) 251-5901 or rgarber@goodwin.com or Alfredo Fernandez at (860) 251-5353 or afernandez@goodwin.com.

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