

# KIRKLAND ALERT

January 2016

## Iran Sanctions: A New Era Announced

On January 16, 2016, the U.S. and EU announced that a number of sanctions on Iran have been lifted under the Joint Comprehensive Plan of Action (“JCPOA”), following verification by the International Atomic Energy Agency that Iran has met its initial commitments to scale back key aspects of its nuclear program (“Implementation Day”).

The U.S. regulatory changes primarily affect non-U.S. companies and non-U.S. subsidiaries “owned and controlled” by U.S. persons, whose activities with Iran previously were subject to U.S. sanctions. With very limited exceptions (and some modest changes), U.S. persons remain subject to broad U.S. sanctions prohibiting business dealings with Iran and Iranian parties.

EU economic and financial sanctions on Iran’s nuclear program have been broadly lifted. These changes now permit transactions in a number of key business sectors, including the banking, finance and insurance and oil and gas sectors. A number of restrictions remain, including an arms embargo, restrictions on supply of missile technology, and a requirement to seek authorization to supply certain nuclear, metals and software goods. A number of individuals and entities remain subject to an asset freeze. Pre-existing EU sanctions on Iran relating to human rights abuses have not been lifted.

### “Implementation Day” — Summary of Changes and Remaining Restrictions

#### *U.S. Lifting of Sanctions*

Pursuant to its commitments under the JCPOA, the U.S. has lifted sanctions targeting Iran in several key ways:

- Lifting certain so-called “secondary sanctions,” so that non-U.S. persons will no longer be targeted with sanctions for engaging activities and providing “associated services” relating to certain sectors of the Iranian economy, such as financial and banking; insurance; energy and petrochemical; shipping, shipbuilding, and ports; automotive; gold and other precious metals; and software and metals. The U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) has provided guidance that “associated services” include the following where “necessary and ordinarily incident” to the activity in these sectors:
  - technical assistance
  - training
  - insurance

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- re-insurance
  - brokering
  - transportation
  - financial services
- Issuing General License H (“GL H”), which permits non-U.S. entities that are “owned or controlled” by a U.S. person to engage in activities that had been prohibited under OFAC’s sanctions regulations. U.S. persons generally are not authorized to participate in foreign subsidiaries’ business with Iran, although, GL H expressly permits U.S. companies to modify policies and procedures “*to the extent necessary*” to implement GL H.
  - Permitting U.S. persons to engage in limited activities related to Iran, particularly: (i) *where a specific license is requested and granted from OFAC*, the provision of certain goods and services to Iran’s civil aviation industry, and (ii) the importation of carpets and foodstuffs from Iran (e.g., pistachios, caviar); and
  - Removing more than 400 individuals and entities from OFAC’s sanctions lists.

### *EU Lifting of Sanctions*

Economic and financial sanctions imposed in connection with the Iranian nuclear program have been lifted effective January 16, 2016. This includes the de-listing of a large number of persons, entities and bodies, removing them from the asset freeze and visa ban restrictions. This also includes the lifting of the following sectorial sanctions:

- Financial transfers to and from Iran are no longer prohibited, and there is no longer a requirement to seek authorization or provide notification for transfers of funds.
- The prohibitions on banking activities are also lifted. EU and Iranian financial institutions are now permitted to deal with each other.<sup>1</sup> The Central Bank of Iran is no longer subject to any restrictive measures.
- It is now possible to provide financial support for trade with Iran, such as export credit, guarantees or insurance, and to provide commitments for grants, financial assistance and concessional loans to the Government of Iran. It is also possible to provide insurance and reinsurance to Iran.
- Restrictions on the oil, gas and petrochemical sectors have been lifted, and it is now permitted to import, purchase, swap and transport crude oil and petroleum products, gas and petrochemical products from Iran, and provide technical assistance to or investment in those industries.
- Restrictions on the shipping, shipbuilding and transport sectors have been lifted. It is permitted to supply naval equipment and technology, and the design

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and construction of cargo vessels and oil tankers and vessels designed for the transport or storage of oil and petrochemical products is now allowed. Iranian cargo flights now have access to EU airports, and it is possible to provide services (such as ship supply, fuel, maintenance and engineering) to Iranian vessels (provided no prohibited items are being carried).

- The restrictions on gold and precious metals, diamonds, and the provision of related services have been lifted.
- Prohibitions relating to the provision of graphite and raw or semi-finished metals, and Enterprise Resource Planning software, have been lifted (but remain subject to a requirement to seek authorization).

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### *Restrictive Measures Remain in Force in the U.S. and EU*

While the changes to Iran sanctions are significant, broad restrictive measures, including the comprehensive U.S. embargo on Iran, will continue to present considerable compliance challenges for U.S., European and other enterprises. Greater efforts will be required to keep U.S.-based business units of non-U.S. companies and U.S. personnel of multinational corporations appropriately walled off from business with Iran, which for U.S. persons is still mostly prohibited.

Despite the wide-ranging lifting of EU restrictive measures on Iran, a number do still remain following Implementation Day. These include the following:

- An arms embargo.
- A prohibition on the supply of certain missile technology.
- A requirement to seek prior authorization for the transfer of certain listed proliferation-sensitive goods and technology and associated services.
- A requirement to seek prior authorization for the transfer of Enterprise Resource Planning software designed specifically for use in nuclear and military industries, and of certain graphite and raw or semi-finished metals and the provision of associated services.
- Certain individuals and entities remain subject to an asset freeze for nuclear-proliferation related activities. It remains prohibited to make funds and economic resources available (directly or indirectly) to or for the benefit of such persons.

The JCPOA did not include the EU restrictive measures taken against Iran in view of human rights violations. There is therefore a continued asset freeze and visa ban on a number of individuals and entities responsible for human rights violations in Iran, and there remains a ban on exports to Iran of equipment which might be used for internal repression or monitoring telecommunications.

OFAC has cautioned that it will continue to enforce the broad U.S. sanctions regime that remain in place, including those measures that relate to Iran's support for terrorism, regional destabilization, human rights abuses, and ballistic missile program. Dealings by non-U.S. persons with parties on U.S. sanctions lists (e.g., with individuals or entities designated on OFAC's Specially Designated Nationals and Blocked Persons List) largely remain subject to U.S. sanctions.

As if to underscore the intention to continue to enforce remaining U.S. sanctions, the day after announcing liberalization of sanctions under the JCPOA, OFAC announced new designations of Iranian entities and individuals on its Specially Designated Nationals List relating to such entities' and individuals' support for Iran's ballistic missile program. Additionally, the President recently signed into law a bill passed by the U.S. Congress that targets persons requesting U.S. visas who have visited Iran and other sanctioned countries.

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## New U.S. Sanctions in Response to Iran's Ballistic Missile Testing

On January 17, 2016, OFAC designated 11 entities and individuals involved in procurement on behalf of Iran's ballistic missile program. Most of the newly sanctioned entities were designated for providing support to Navid Composite Material Company, an Iranian entity designated in December 2013, for its relation to Iran's missile program. The entities, which were designated under existing Presidential Executive Order 13382, include: Anhui Land Group Co. Limited (Hong Kong), Mabrooka Trading Co. LLC (including its United Arab Emirates ("UAE") and Chinese subsidiaries), and Candid General Trading LLC (UAE).

## New U.S. Visa Restrictions for Travelers from Iran and Other Sanctioned Countries

On December 18, 2015, President Obama signed into law a provision to deny U.S. visa waivers to persons who, since March 1, 2011, have traveled to or maintain citizenship of Iran, Syria, and Iraq; countries that have repeatedly provided support for acts of international terrorism; or any other "countries or areas of concern," as designated by the U.S. Secretary of State or U.S. Department of Homeland Security ("DHS"). The FY 2016 omnibus spending bill amended the United States Visa Waiver Program, which waives "B" nonimmigrant visa requirements and permits stays within the United States of up to 90 days by persons from 38 approved countries, without the consular visit or additional background checks that would otherwise be required. However, concerns in Congress after recent Islamic State-inspired attacks prompted the changes to deny Visa Waiver Program privileges to persons from certain countries, including Iran.

Some EU Member States have alleged that the loss of visa-free travel privileges to the U.S. could persuade business leaders to refrain from visiting Iran after Implementation Day to negotiate potential trade deals and have threatened to retaliate against U.S. passport holders. Iran has assailed the provision as a contravention of the JCPOA.

## Key Takeaways

U.S. companies with centralized functions (e.g., compliance, executive management, data storage, customer service, etc.), or that use U.S. currency or U.S. financial institutions in transactions, must think through many issues very carefully prior to non-U.S. affiliates' engagement with Iran. U.S. parent companies and directors, officers, managers, and employees, absent a specific request and grant of license authority from OFAC, are generally prohibited from participating in any way in a foreign subsidiary's business operations involving Iran. Going forward, it will be critical for U.S. companies to ensure that U.S. persons are effectively walled off from Iran-related business in order to avoid liability for prohibited facilitation of restricted activities. Moreover, certain U.S. restrictions will continue to apply to non-U.S. affiliates (as more fully described below). Therefore, the question of whether to permit a non-US subsidiary to engage in otherwise authorized activities with Iran is, first and foremost, an enterprise risk management question for boards and senior management teams.

- Exports and re-exports of U.S.-origin parts, technology, software and other goods remain subject to restrictions enforced by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS").
- Performing sanctions- and export-related diligence on counterparties remains critical, as many Iranian individuals and entities involved in the Iranian economy are still designated on relevant sanctions lists.
- EU economic and financial sanctions imposed in connection with Iran's nuclear program have been broadly lifted, and it is now possible for EU persons to conduct business in Iran in a number of sectors. Financial transfers and banking activities are now permitted, and the oil, gas and petrochemical sector has been opened up.
- A number of EU economic and financial sanctions remain, and companies involved in supplying nuclear proliferation-sensitive technology, missile technology, metals and Enterprise Resource Planning software should take particular care when dealing with Iran to ensure EU sanctions are not violated. A number of individuals and entities remain listed, and so diligence should continue to be carried out in respect of all dealings with Iran. Other EU sanctions regimes (such as the sanctions targeting human rights abuses in Iran, and non-geographical regimes such as those targeting specific terrorist groups) remain in force.
- New sanctions, unrelated to Iran's nuclear program, may be imposed and thereby further restrict business with Iran. Any breach by Iran of commitments under the JCPOA could result in the "snap back" of U.S. and EU sanctions, which could immediately impair contracts and other business relationships.
- Finally, it is important to note that the lifting of sanctions from Implementation Day does not constitute an amnesty for previous breaches, either of U.S.

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or EU sanctions. Persons who have breached sanctions while they were in force will remain liable for prosecution. Due diligence in relation to companies' past dealings with Iran (whether subject to U.S. sanctions, EU sanctions or both) will continue to remain a key focus area for corporate transactions.

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<sup>1</sup> Note that certain Iranian banks remain listed under EU sanctions following Implementation Day: Ansar Bank, Bank Saderat Iran, Bank Saderat plc and Mehr Bank.

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The United States, the EU and other countries scrutinize or regulate international business activities to advance priority national security, foreign policy and other objectives. If not addressed effectively, such governmental scrutiny or regulation can adversely impact business strategy and investment decisions, lead to significant individual and corporate civil and criminal penalties, and may even result in imprisonment for responsible persons.

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