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Iran Deal is Implemented: U.S. and EU Remove Nuclear-Related Sanctions on Iran

Jan. 16, 2016 marked “Implementation Day” of the Iran Joint Comprehensive Plan of Action (JCPOA), as the U.S. initiated the removal of its nuclear-related sanctions against Iran and the EU removed the majority of its existing Iran-related sanctions. The final precondition to Implementation Day was met when the International Atomic Energy Agency (IAEA) issued a report verifying that Iran has fulfilled its initial commitments under the JCPOA.

Importantly, while Implementation Day has brought the lifting of many EU sanctions against Iran, U.S. sanctions relief remains largely limited to the lifting of U.S. nuclear-related sanctions only, leaving in place the comprehensive U.S. embargo against Iran. With the exception of certain transactions related to commercial aircraft sales to Iran and the import of Iranian foodstuffs and carpets, U.S. sanctions relief under the JCPOA is restricted to the lifting of sanctions directed at non-U.S. persons only. U.S. individuals and entities will remain prohibited from engaging in most transactions with Iran, whether direct or indirect, for the foreseeable future.

U.S. SANCTIONS RELIEF

JCPOA SANCTIONS RELIEF FOR NON-U.S PERSONS

The Implementation Day sanctions waivers issued by the Department of State suspend a range of existing U.S. secondary sanctions aimed at non-U.S. persons engaged in certain categories of Iran related-transactions. In addition, the United States has removed several hundred Iranian financial institutions, including most of Iran’s largest financial institutions, and other entities from OFAC’s Specially Designated Nationals (SDN), Foreign Sanctions Evaders (FSE), and Non-SDN Iran Sanctions Act lists. A notable exception is Bank Saderat Iran, one of Iran’s largest financial institutions, which remains on the SDN list.

The lifting of the U.S. nuclear related sanctions against Iran is expected to ease significantly non-U.S. firms’ ability to do

business with Iran, restore Iran's access to the international financial system, and expand Iran's ability to again sell petroleum products on the international market. Non-U.S. persons engaged in the following activities will no longer be subject to U.S. sanctions:

- > Transactions with, or on behalf of, Iranian financial institutions
- > Exports of petrochemical products, natural gas, and related services from Iran
- > Investment in Iran's energy sector
- > Provision of products and services in support of Iran's energy sector
- > Provision of U.S. banknotes to Iran
- > Iran-related dealings in precious metals
- > Transactions with Iran's shipping, shipbuilding, and port sectors
- > Sales of goods and services to Iran's automobile sector
- > Underwriting services or the provision of insurance or reinsurance in connection with Iran's shipping and energy sectors

We note that non-U.S. persons remain subject to U.S. sanctions in the event they engage in the categories of transactions listed above with Iranian individuals and entities on the SDN list. In addition, U.S. export laws and regulations prohibiting the export and reexport of U.S.-origin goods and goods containing greater than 10% controlled U.S. content remain in place, even for export transactions undertaken wholly outside the United States.

JCPOA SANCTIONS RELIEF FOR U.S. PERSONS

As noted above, U.S. sanctions relief under the JCPOA remains limited to the lifting of nuclear-related sanctions against Iran only, leaving in place the comprehensive U.S. embargo against Iran. Only two new categories of Iran-related transactions are now available to U.S. persons pursuant to the JCPOA:

Commercial Aircraft Sales Authorized

U.S. sanctions relief under the JCPOA includes provisions authorizing U.S. persons to engage in the sale and export to Iran of commercial aircraft, commercial aircraft parts and components, and the provision to Iran of related services, including leasing services, representing one of the few sanctions relief provisions impacting U.S. persons directly. Effective, immediately, exports and reexports from the United States to Iran of commercial aircraft will be authorized on a case-by-case by the Department of the Treasury's Office of Foreign Assets Control (OFAC). U.S. persons proposing to export or reexport commercial aircraft to Iran must therefore apply to OFAC for a specific license prior to engaging in any aircraft-related export transaction to Iran. Only aircraft-related items and services used exclusively for commercial aviation purposes will be authorized. Exports in support of any military or cargo-related applications will not be authorized.

Imports of Certain Iranian Products Authorized

The sanctions relief provisions of the JCPOA include a requirement for the United States to license the importation into the United States of Iranian carpets and Iranian foodstuffs, including pistachios and caviar, transactions now prohibited under U.S. sanctions. In response, OFAC has prepared a general license authorizing imports into the United States of Iranian carpets and all Iranian foodstuffs destined for human consumption. Once effective upon publication in the Federal Register, anticipated as soon as Jan. 19, 2016, the general license will authorize imports of qualifying Iranian products into the United States without first securing specific authorization from OFAC. The payment and financing of import transactions authorized under the new general license, however, will remain subject to certain restrictions and limitations.

Restrictions Lifted for Non-U.S. Subsidiaries of U.S. Companies

Effective Jan. 16, 2016, non-U.S. entities owned or controlled by U.S. persons will no longer be treated as U.S. persons for purposes of the U.S. sanctions against Iran. Prior to Implementation Day, the non-U.S. subsidiaries of U.S. entities were subject to all of the restrictions and prohibitions of the U.S. sanctions against Iran. Certain important restrictions remain,

however, for the non-U.S. subsidiaries of U.S. companies engaged in Iran-related transactions. Non-U.S. companies remain prohibited from exporting or reexporting to Iran most U.S.-origin items, including items containing greater than 10% U.S.-origin content, and engaging in any transactions with Iranian individuals and entities that remain on the SDN list. Finally, any U.S. persons employees of non-U.S. entities, wherever located, remain subject to all of the provisions and restrictions of the remaining U.S. sanctions against Iran.

RECOGNIZING THE LIMITATIONS OF PERMISSIBLE IRAN ACTIVITIES FOR U.S. PERSONS

Despite the wide scope of the JCPOA's sanction relief provisions, U.S. individuals and entities remain prohibited from engaging in most Iran-related transactions. In addition, while many restrictions have been lifted on the non-U.S. subsidiaries of U.S. companies, important limitations remain, including prohibitions on dealings with SDN's or with U.S.-origin items. Businesses and individuals interested in pursuing opportunities in Iran should continue to exercise extreme caution and carefully review applicable sanctions and export controls rules and regulations to determine whether proposed Iran-related activities are permissible.

The JCPOA requires only the suspension of the Iran nuclear sanctions detailed above. Specifically, the so-called "snap back" provisions of the JCPOA provide for the reinstatement of all suspended sanctions in the event Iran halts its nuclear-related commitments. In addition, despite the suspension of U.S. nuclear sanctions against Iran, the United States appears likely to impose additional sanctions in response to Iran's non-proliferation activities, its support of terrorism, and its human rights violations. For example, on Jan. 17, 2016, only one day after Implementation Day, the United States named an additional eleven individuals and entities to the SDN list in response to a ballistic missile test conducted by Iran.

EU SANCTIONS RELIEF

With the arrival of Implementation Day on Jan. 16, 2016, the EU Council adopted and published Council Decision (CFSP) 2016/37¹ confirming the date of Implementation Day and the legal framework for initial EU sanctions relief. On Implementation Day, the existing limited sanctions relief provided to Iran under the 2013 Joint Plan of Action (JPOA) was superseded by the lifting of all economic and financial sanctions taken in connection with the Iranian nuclear program in accordance with the JCPOA.

SANCTIONS LIFTED BY THE EU

As a consequence of the lifting of the EU economic and financial sanctions taken in connection with the Iranian nuclear program, the following activities, including associated services, are allowed as of Jan. 16, 2016:

Financial, banking and insurance measures

Transfers of funds between EU persons, entities or bodies, including EU financial and credit institutions, and non-listed Iranian persons, entities, or bodies, including Iranian financial and credit institutions,² are permitted and the authorization and notification of transfers of funds are no longer applicable. Banking activities of non-listed Iranian banks in EU Member States are permitted and EU financial and credit institutions are allowed to establish branches, subsidiaries or to open representative offices in Iran, and to establish joint ventures and open bank accounts with Iranian financial and credit institutions. Specialized financial messaging services, including SWIFT, are allowed for Iranian persons and the Central Bank of Iran; and financial support services for trade with Iran such as export credit, guarantees or insurance are now permitted. Commitments for grants, financial assistance and concessional loans to the Government of Iran are permitted, as are the activities such as provision of insurance and reinsurance to Iran and transactions in public or public-guaranteed bonds with Iran.

¹ Council Decision (CFSP) 2016/37 of 16 January 2016 concerning the date of application of Decision (CFSP) 2015/1863 amending Decision 2010/413/CFSP concerning restrictive measure against Iran.

² Exception: Iranian persons, entities or bodies, including financial and credit institutions still subject to restrictive measures after Implementation Day, as set out in Attachment 2 to Annex II of the JCPOA.

Oil, gas and petrochemical sectors

The import, purchase, swap and transport of crude oil and petroleum products, gas and petrochemical products from Iran is allowed. EU persons can export equipment or technology, and provide technical assistance, including training, used in the industries of oil, gas and petrochemicals in Iran, which covers exploration, production and refining of oil and natural gas, to any Iranian person, in or outside Iran, or for use in Iran. Furthermore, investments in Iranian oil, gas and petrochemical industries, by the granting of financial loans or credit to, the acquisition or extension of a participation in, and joint ventures with, any Iranian person that is engaged in these sectors in Iran or outside Iran is permitted.

Shipping, shipbuilding and transport industries

The Notice provides for the following list of shipping and transport activities that are now allowed: the sale, supply, transfer, or export to Iran of naval equipment and technology for shipbuilding, maintenance or refit; the design construction or the participation in the design or construction of cargo vessels and oil tankers for Iran or for Iranian persons; the provision of vessels designed or used for the transport or storage of oil and petrochemical products to Iranian persons, entities, or bodies; and the provision of flagging and classification services, to Iranian oil tankers and cargo vessels.

In addition, cargo flights operated by Iranian carriers or originating from Iran have been granted access to airports under the jurisdictions of EU Member States. Cargo to and from Iran of items that were previously prohibited are no longer subject to seizure by EU Member States.

Gold, other precious metals, banknotes and coinage

The sale, supply, purchase, export, or transfer of gold, other precious metals, and diamonds to and from or for the Government of Iran, its public bodies, corporations and agencies or its Central Bank are now authorized. The provision of related brokering, finance, and security services is also permitted. Finally, the delivery of newly printed or minted banknotes and coinage for the Central Bank of Iran is allowed.

Metals

Certain graphite and raw or semi-finished metals to any Iranian person, entity or body or for use in Iran is no longer prohibited but subject to an authorization regime. However, these metals can be subject to prior authorization that must be granted on a case by case basis by the competent authorities of the EU Member State when listed in Annex VII B to Council Regulation 267/2012 (as amended).

Software

The provision to Iran of Enterprise Resources Planning software and updates thereof in connection with activities consistent with the JCPOA is permitted, but subject to an EU authorization regime.

De-listing of certain persons, entities and bodies

Certain Iranian persons, entities, and bodies on UN and EU listings are delisted and consequently, no longer subject to asset freezes and visa bans.

In sum, many sanctions and restrictions against Iran are no longer prohibited from an EU perspective, although certain exports and transactions remain subject to export license requirements.

OTHER SANCTIONS AND RESTRICTIONS THAT REMAIN APPLICABLE

Notwithstanding the EU sanctions relief provided under the JCPOA, additional EU sanctions against Iran remain in place. These remaining measures include EU proliferation and non-proliferation-related sanctions and restrictions. The former includes the EU arms embargo against Iran, sanctions related to missile technology, restrictions on certain nuclear-related transfers and activities, provisions concerning certain metals and software designed for use in nuclear and military industries which are subject to an EU authorization regime, and certain entities and individuals who remain listed and are subject to EU asset freezes and visa bans. The remaining non-proliferation-related sanctions and restrictions include restrictions related to dual use items.

Moreover, the lifting of the sanctions is linked to the further execution of the nuclear deal by Iran. If Iran does not execute the deal as agreed, the sanctions will be reintroduced, the above-mentioned “snapback” provision. Finally, U.S. sanctions and their extraterritorial application continue to have the potential to cause with respect to Iran-related business activities worldwide.

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