
Iran Nuclear Sanctions Relief Implemented: New Opportunities Await Non-US Companies, but Comprehensive US Transaction and Export Restrictions Remain in Effect

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On January 16, 2016, the United States, its negotiating partners and Iran announced the arrival of Implementation Day for the Joint Comprehensive Plan of Action (JCPOA), to which the parties agreed on July 14, 2015 with respect to the Iranian nuclear program. In return for Iran meeting certain nuclear benchmarks, the United States and European Union (EU) have implemented measures to lift the “nuclear-related” trade and financial sanctions against Iran pursuant to the JCPOA [Sanctions Annex](#), superseding interim sanctions relief that had been in place since 2013. Although the EU has lifted nearly all sanctions against Iran, most restrictions applicable to US persons and firms will remain in effect.

In the United States, sanctions relief was provided through the issuance of a new Executive Order, new general licenses, a new statement of licensing policy, and new Guidance and FAQs; the adoption of several statutory waivers; and the delisting of various individuals and entities from the Specially Designated Nationals and Blocked Persons (SDN) and other sanctions lists. These measures lift nearly all secondary sanctions applicable to the activities of non-US persons relating to Iran, as well as restrictions on the Iran-related activities of non-US entities that are owned or controlled by US persons.

By contrast, the vast majority of US sanctions against Iran will remain in force. “Primary” US sanctions against Iran that are applicable to US persons and firms,¹ in addition to sanctions targeting Iran’s support for terrorism, human rights abuses, ballistic missile development and destabilizing regional activities, will remain in effect.² The prohibition on “facilitation” by US persons of the Iran-related transactions of non-US persons also remains in effect, albeit with limited exceptions related to the alteration of internal company policies and procedures and use of global business support systems in the context of foreign entities owned or controlled by US persons, as explained more fully below.

In the EU, sanctions relief took the form of an EU Council decision implementing legislation on sanctions relief, including the delisting of Iran-related persons and entities from its sanctions lists. In contrast to US sanctions relief, EU relief will be relatively comprehensive by lifting most

restrictions applicable to EU persons and entities, although certain sanctions relating to proliferation, missile technology, human rights and terrorism will remain in effect.

The United Nations will also lift nuclear-related sanctions against Iran pursuant to Security Council [Resolution 2231](#), but will maintain the conventional arms embargo against Iran for the next five to eight years.

The next major milestone under the JCPOA will be Transition Day in eight years or earlier if the International Atomic Energy Agency certifies that all nuclear material in Iran is being used for peaceful activities. At that time, the United States and the EU will remove additional entities from their respective sanctions lists and seek legislative action to repeal additional Iran sanctions measures

As described below, these US and EU measures will create a variety of new compliance challenges for firms in the US, EU and elsewhere. Most prominently, Implementation Day marks a significant divergence between US and EU sanctions requirements, which poses unique risks to firms with global operations. Financial institutions and their risk appetites are likely to play a pivotal role in the implementation of this sanctions relief. Those headquartered or doing business in the EU will need to navigate a complex framework of legal nuances if they choose to permit Iran-related transactions on behalf of their clients.

US Sanctions Relief

New Executive Order

The United States has issued a series of statutory [waivers](#) and a new [Executive Order](#) that revoke or amend the following previous Executive Orders:

- Executive Order 13574 of May 23, 2011 (authorizing the implementation of certain sanctions set forth in the Iran Sanctions Act of 1996, as amended);
- Executive Order 13590 of November 20, 2011 (authorizing the imposition of certain sanctions with respect to the provision of goods, services, technology, or support for Iran's energy and petrochemical sectors)
- Executive Order 13622 of July 30, 2012 (authorizing additional sanctions with respect to Iran)
- Executive Order 13645 of June 3, 2013 (authorizing the implementation of certain sanctions set forth in the Iran Freedom and Counter-Proliferation Act of 2012 and additional sanctions with respect to Iran); an
- Executive Order 13628 of October 9, 2012 (authorizing the implementation of certain sanctions set forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and additional sanctions with respect to Iran)

General Licensing for Foreign Entities Owned or Controlled by US Person

The US Department of the Treasury's Office of Foreign Assets Control (OFAC) has issued [General License H](#) (GL H) authorizing foreign subsidiaries and joint ventures of US firms to engage in Iran-

related business.³ GL H is not limited to specific sectors, but OFAC's [Guidance](#) and [FAQs](#) accompanying the publication of GL H emphasize that authorized activities do not include those involving SDNs; US-origin items controlled for export; or any Iranian Government military, intelligence or law enforcement entity, among other restrictions.

Notably, GL H does not authorize US persons to directly engage in any Iran-related activities, and the general prohibition on facilitation by US persons of the Iran-related activities of non-US persons—such as by approving, financing or guaranteeing such activities—remains in effect.⁴ However, GL H provides for certain limited exceptions from the prohibition on facilitation by authorizing US persons to engage in an initial set of activities to give effect to GL H:

- activities related to the establishment or alteration of operating policies and procedures of a United States entity or a US-owned or -controlled foreign entity, to the extent necessary to allow a US-owned or -controlled foreign entity to engage in transactions authorized by GL H; an
- activities to make available to those foreign entities that the US person owns or controls 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 authorized transactions.

OFAC has clarified that these exceptions to the prohibition on facilitation are intended to authorize the involvement of US persons who are “board members, senior management, and employees of either a US parent company or a US-owned or -controlled foreign entity in the establishment or alteration of operating policies and procedures,” as well as “outside legal counsel or consultants to draft, alter, advise, or consult on such operating policies and procedures.” It also authorizes the provision by US persons of “training, advice, and counseling on the new or revised operating policies and procedures.”

GL H does not authorize US persons to become involved in the ongoing Iran-related operations or decision making of US-owned or controlled foreign entities, including their day-to-day operations. GL H also does not authorize US persons to facilitate *any* activity by a foreign entity that is *not* US-owned or controlled, including even initial alterations to those entities' policies and procedures.

General License for the Importation of Iranian Foodstuffs and Carpets

OFAC issued a new general [license](#) authorizing imports into the United States, and dealings in, Iranian-origin carpets and certain foodstuffs, including pistachios and caviar.

Statement of Licensing Policy Relating to Iranian Commercial Passenger Aircraft

OFAC issued a new [Statement of Licensing Policy](#), pursuant to which US or non-US firms may request specific authorization to engage in transactions for the sale or export of commercial passenger aircraft, spare parts and components, and associated services to Iran. Unlike previous licensing policies in this sector, the new policy does not require that the transaction be focused solely on the safety of civil aviation in Iran but allows for commercial sales more broadly.

Delisting From the SDN and Other Sanctions Lists

OFAC has also removed more than 400 Iranian and non-Iranian individuals and entities from the SDN, Foreign Sanctions Evaders and Non-SDN Iran Sanctions Act Lists, as set forth in [Annex II](#) of the JCPOA.

As described further below, many individuals and entities will remain on the SDN List and therefore subject to asset freezes under various sanctions authorities. The Government of Iran and certain Iranian financial institutions will remain SDNs pursuant to Executive Order 13599 and other legal authorities, and US persons must continue to block the property and interest in property of all such entities unless otherwise authorized. Secondary sanctions, by contrast, will no longer apply to such E.O. 13599 designees, and OFAC has published a new [E.O. 13599 List](#) that will assist with compliance by identifying entities that qualify as the “Government of Iran” and “Iranian financial institution.”

EU Sanctions Relief

The EU adopted Council Decision (CFSP) [2016/37](#) on Implementation Day to give effect to the October 2015 Council Decision (CFSP) [2015/1863](#) setting forth the terms of the EU's Iran sanctions relief. The European Council also published a comprehensive Information Note on EU sanctions relief.

In contrast to US sanctions relief, EU relief will be relatively comprehensive, lifting sanctions on nearly all financial and commercial dealings between the EU and Iran. These include financial transfers to and from Iran, including use of the SWIFT financial messaging services by non-listed Iranian entities. Certain non-listed Iranian banks will be able to open branches, subsidiaries or representative offices in the EU, and EU financial institutions may also open offices in Iran. The EU also lifted nearly all sanctions on the Iranian oil, gas and petrochemical sectors; the shipping and shipbuilding sectors; the precious metals sector; and others

Like the United States, the EU removed many Iranian and non-Iranian individuals and entities from its sanctions list, as set forth in [Annex II](#) of the JCPOA, and will continue to apply certain limited types of sanctions against Iran, including an arms embargo and sanctions related to missile technology proliferation, human rights abuses, anti-terrorism and Iran's destabilizing regional policies.

Implications for the Financial Services Sector

US and EU sanctions relief will create both opportunities and compliance risks for global financial institutions. The United States has removed secondary sanctions that apply to non-US firms engaging in certain financial and banking transactions with certain Iranian financial institutions, including with the Central Bank of Iran. This includes transactions involving the Iranian rial, provision of US bank notes to the Government of Iran, dealings in Iranian sovereign debt, issuance of credit cards to Iranian persons and provision of financial messaging services to certain Iranian institutions. The EU has likewise lifted nearly all financial sanctions relating to Iran, as described above.

By contrast, and with only limited exceptions, US financial institutions are still prohibited from engaging in any Iran-related transactions. These prohibitions continue to include dollar-denominated “U-Turn” transactions involving Iran that are cleared through the US financial system. US firms are also still generally prohibited from engaging in any transactions with the Central Bank of Iran. Foreign financial institutions may also be subject to US secondary sanctions for facilitating certain transactions with Iranian financial institutions or other Iranian entities that remain on the SDN List following Implementation Day (again, except for those on the E.O. 13599 List). To the extent that foreign financial institutions decide to process Iran-related transactions on behalf of clients, these divergent US and EU sanctions requirements will create compliance challenges.

Finally, OFAC has noted that the JCPOA does not impact the November 2011 finding by the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) that Iran is a “Jurisdiction of Primary Money Laundering Concern” and that FinCEN can require US financial institutions to undertake “special measures” with respect to Iran, pursuant to Section 311 of the USA PATRIOT Act.

Implications for the Energy Sector

US and EU sanctions relief will also have broad implications for the global energy sector. The United States has lifted all secondary sanctions that apply to non-US firms dealing with the Iranian energy sector, including investment in and provision of goods, services or technology in support of Iran’s oil, gas and petrochemical sectors. Non-US firms are also permitted to deal in Iranian-origin petroleum, petrochemical and natural gas. The United States will cease global efforts to impede Iran’s crude oil sales and to limit how Iranian oil revenues can be utilized. EU sanctions relief has also resulted in the lifting of nearly all sanctions applicable to the Iranian energy sector.

By contrast, US energy firms will still generally be prohibited from engaging in nearly all transactions involving the Iranian energy sector, unless otherwise authorized.

Continuing Sanctions Against Iran

Despite the broad easing of nuclear-related sanctions against Iran, a variety of restrictions and Iran disclosure obligations will remain in place.

First, the US trade embargo against Iran will remain in effect. Under these primary sanctions, US persons and firms will remain prohibited from engaging in any transactions or dealings directly or indirectly with Iran, including the indirect export of goods or services to Iran, unless otherwise authorized. US and non-US persons are also prohibited from evading US sanctions or “causing” a sanctions violation by a US person, such as by stripping or omitting information from transaction documents involving Iran.

Second, both US and non-US persons continue to face restrictions on the export and re-export to Iran of US-origin goods or technology controlled under the Export Administration Regulations or International Trafficking in Arms Regulations.

Third, the United States retains various authorities to impose sanctions in response to Iran’s

support for terrorism (e.g., Iran will remain designated as a State Sponsor of Terrorism under various statutes), human rights abuses, proliferation of weapons of mass destruction and their means of delivery, and destabilizing regional policies, such as in Syria and Yemen. The Government of Iran, including the Iranian military and intelligence establishment, remains sanctioned under these authorities.

Fourth, non-US persons remain exposed to US secondary sanctions for engaging in or facilitating transactions with persons or entities that will remain on the SDN list, unless such entities are on the E.O. 13599 List by virtue of their affiliation with the Government of Iran. SDN designees include the Iranian Revolutionary Guard Corps, an arm of the Iranian military with a pervasive presence in the Iranian economy, and other persons and entities engaged in conventional weapons proliferation or support for terrorism.

Fifth, so-called “Section 219” Securities and Exchange Commission (SEC) disclosure requirements under the Iran Threat Reduction Act will remain in place following sanctions relief. Section 219 does not prohibit any specific conduct, but instead requires that “issuers” under the Securities Exchange Act of 1934 disclose in reports filed with the SEC various types of transactions in Iran undertaken by the issuer or its “affiliates.” In some cases, such activities may be permissible under US and/or EU law, yet remain reportable. Reportable activities under Section 219 include any transaction with the Government of Iran, its subdivisions and agencies, and the Central Bank of Iran and activities supporting the Iranian petroleum industry, among other activities. Indeed, many of the activities triggering Section 219 disclosures will become permissible under the JCPOA.

Compliance Challenges

Iran sanctions relief creates significant new opportunities for global firms, in addition to compliance risks. First, for most US firms, nearly all direct dealings with or exports to Iran will remain prohibited. US exporters should, where appropriate, undertake additional due diligence to ensure that their global distribution networks understand the continuing restrictions, potentially through representations and warranties and other compliance measures.

Second, non-US firms contemplating new business with Iran will need to ensure that no US persons are directly involved in Iran operations (including by facilitating such operations, except as authorized by GL H) and that any transactions do not transit through the US financial system (e.g., dollar-denominated transactions), unless authorized by OFAC. Non-US firms could also face exposure to remaining US secondary sanctions for transactions with Iranian individuals and entities that remain on the SDN List. Firms should also consider whether their due diligence policies and procedures are appropriately designed to examine beneficial ownership to ensure that any counterparty is not 50% or more owned by a sanctioned party, individually or in aggregate, under OFAC’s “50% Rule.”

Third, US and foreign issuers on US exchanges should review their internal compliance procedures related to Section 219 disclosure requirements, which could become more complex following Iran sanctions relief.

Fourth, OFAC is expected to vigorously enforce all remaining sanctions against Iran and will expect

firms to undertake a “risk-based” approach to compliance. Many firms will also have to weigh reputational concerns related to entering the Iranian market in light of Iran's ongoing designation as a state sponsor of terrorism and other sanctions measures.

Fifth, the JCPOA envisions a “snapback” of all Iran-related sanctions in the event of Iranian non-compliance. OFAC has noted that the “JCPOA does not grandfather contracts signed prior to snapback” and that it will be “unable to predict how far in advance notice will be given in the event that sanctions snap back.”

¹ The term “US person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States. 31 C.F.R. §560.314.

² Indeed, a day after Implementation Day, OFAC imposed new sanctions against eleven persons and entities due to their involvement in recent ballistic missile tests in violation of UN Security Council resolutions.

³ OFAC has explained that non-US entities covered by General License H are those in which a US person (1) holds a 50 percent 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.

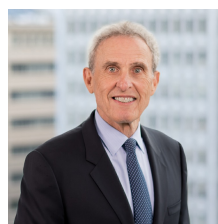
⁴ The existing Iranian Transaction and Sanctions Regulations provide that “no United States person, wherever located, may approve, finance, facilitate, or guarantee any transaction by a foreign person where the transaction by that foreign person would be prohibited by this part if performed by a United States person or within the United States.” 31 C.F.R. §560.208. Such facilitation would occur where the US person “[a]lters its operating policies or procedures, or those of a foreign affiliate, to permit a foreign affiliate to accept or perform a specific contract, engagement or transaction involving Iran”; “refers to a foreign person purchase orders, requests for bids, or similar business opportunities involving Iran”; or “[c]hanges the operating policies and procedures of a particular affiliate.” 31 C.F.R. §560.417.

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