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Professional

CORTNEY O'TOOLE

MORGAN

WASHINGTON:

202.378.2389

CORTNEY.MORGAN@

HUSCHBLACKWELL.COM

Iran Sanctions Relief Brings Compliance Headaches

On January 16, 2016, the International Atomic Energy Agency (IAEA) announced that Iran had complied with requirements to curtail its nuclear program. The IAEA announcement marked "Implementation Day" for the Joint Comprehensive Plan of Action (JCPOA) entered into on July 14, 2015, by the P5+1 countries (the United States, United Kingdom, France, Russia, China and Germany) and Iran, a landmark agreement to ease certain U.S., EU and U.N. economic sanctions in exchange for limitations on Iran's nuclear program.

Concurrent with the IAEA announcement, the U.S. and EU confirmed the lifting of some long-standing sanctions against Iran and issued implementing regulations and guidance. Although the EU lifted almost all sanctions, the U.S. lifted only nuclear-related sanctions, leaving significant U.S. sanctions in place creating a complicated compliance environment for U.S. and non-U.S. companies.

With the occurrence of Implementation Day, many questions remain regarding compliance with the complicated regulatory structure. The following is a summary of the extent to which sanctions were lifted and, more important, key points about the sanctions that remain in place.

U.S. Sanctions

What has been lifted or suspended?

Non-U.S. persons – The bulk of the U.S. sanctions relief relates to secondary sanctions. Namely, non-U.S. persons (non-U.S. companies and individuals) will no longer be restricted from transacting business with the following Iranian sectors: (1) financial and banking; (2) oil, gas and

petrochemical; (3) shipping, shipbuilding and port operations; (4) automotive; (5) gold and precious metals; (6) graphite, raw or semi-finished metals, coal and software for integrating industrial processes; and (7) insurance for the foregoing activities. Non-U.S. persons are also authorized to provide any “associated services” – technical assistance, training, insurance, reinsurance, brokering, transportation and financial service – that are necessary and incident to the activity for which sanctions have been lifted. In addition, more than 400 individuals and entities have been removed from the Specially Designated Nationals (SDN) and other U.S. sanction lists.

Foreign entities owned or controlled by a U.S. person – The Office of Foreign Assets Control (OFAC) issued General License H, which authorizes foreign entities owned or controlled by U.S. persons to engage in most of the transactions in which non-U.S. persons are now allowed to engage. The license further authorizes U.S. persons, including senior management of a U.S. parent company or its owned or controlled foreign entities, to be involved in the initial decision to do business with Iran and to engage in activities related to the establishment or alteration of operating policies and procedures to the extent necessary to allow the entity to engage in transactions with Iran. However, the license does not authorize involvement by any U.S. person in the ongoing Iran-related operations or decision-making after the initial actions, nor does it permit the export of U.S. goods or technology, or the transfer of funds through the U.S. financial system.

Foreign financial institutions (FFIs) – FFIs are able to conduct or facilitate transactions with persons removed from the SDN and other sanctions lists. This includes FFIs with branches in the U.S., provided the branches and the U.S. financial system are not involved in the transaction.

U.S. persons (any U.S. citizen and permanent resident alien, wherever located in the world; any entity organized under U.S. law, including foreign branches; or any person physically in the United States) – Provisions were made to allow U.S. financial institutions and insurance providers to process certain payments related to transactions with Iran that are exempt or otherwise authorized by OFAC. OFAC announced a favorable licensing regime that allows U.S. persons and, where there is a nexus to the U.S., non-U.S. persons to apply for authorization to export or re-export commercial aircraft to

Iran for use exclusively in civil aviation, and aircraft spare parts and associated services for the civil aviation sector. Additionally, a general license is being added to the Iranian regulations that will permit importation of Iranian carpets and foodstuffs into the U.S.

What prohibitions remain?

Trade embargo – The U.S. domestic trade embargo on Iran remains in place. Most trade by U.S. persons (individuals and companies), with a few exceptions, remains prohibited until either the U.S. government removes the restrictions or October 2023, whichever is earlier. U.S. persons continue to be prohibited from engaging in transactions or dealings with Iran and the government of Iran. In addition, non-U.S. persons continue to be prohibited from knowingly engaging in conduct that seeks to evade U.S. restrictions on dealings with Iran or that causes the export of goods or services from the U.S. to Iran.

SDN and other sanctions lists – U.S. and non-U.S. persons continue to be prohibited from transactions involving SDNs. Although the U.S. removed more than 400 individuals and entities from various sanctions lists, many individuals and entities remain on the SDN list, including Ansar Bank, Bank Saderat, Bank Saderat PLC and Mehr Bank.

Limitations on fund transit – The transit of funds through the U.S. financial system and U.S. dollar clearing transactions remain prohibited except under a general or specific license.

Other considerations?

Money laundering – Iran remains a Jurisdiction of Primary Money Laundering Concern under a November 2011 finding by the Department of the Treasury's Financial Crimes Enforcement Network (FINCEN), so caution is advised.

Iran-U.S. dual citizens – OFAC issued a frequently asked question to address the status of Iran-U.S. dual citizens. OFAC confirmed that both an Iranian citizen who is a permanent resident alien of the U.S. and an individual who is a dual U.S.-Iranian citizen meet the definition of "U.S. person,"

regardless of where in the world they are located, and must comply with all U.S. sanctions against Iran.

EU Sanctions

What has been lifted or suspended?

There has been almost a complete lifting of EU sanctions on banking, financial services, oil and gas products and services, petrochemical products and services, and shipping and shipbuilding. Additionally, a licensing regime has been introduced for the export of dual use goods and the import of certain metals, diamonds and graphite. A significant number of individuals and entities have been removed from the EU's designated person list. This means that dealings with their funds and economic resources are no longer restricted.

What prohibitions remain?

Numerous Iranian persons and entities remain on the EU sanctions list. It is also prohibited to supply, transfer or lease military goods or items used for internal repression and to invest in Iranian enterprises engaged in manufacturing military goods. Related technical services, brokering services (including negotiating contracts) and financial assistance are also prohibited.

Other considerations?

The governments of all EU member states are actively encouraging and supporting trade with Iran. However, before proceeding with a contract, non-U.S. businesses should check that the transaction does not fall under the EU sanctions that remain in place. They should also be alert to the continuing U.S. restrictions on use of the U.S. financial system in processing payments related to Iran transactions.

What This Means to You

U.S. implementation of its obligations under the JCPOA creates a complicated compliance environment for U.S. and non-U.S. companies, with many areas subject to interpretation. The lines between permissible and prohibited activities are fine ones, particularly in the financial services area. Companies and individuals considering a transaction related to Iran should evaluate all aspects of the transaction and consult with counsel.

Husch Blackwell/Pinsent Masons Iran Working Group

Husch Blackwell has teamed up with the UK firm of Pinsent Masons to provide streamlined and comprehensive legal service to companies in relation to the US and EU sanctions. Services that are available include:

Sanctions and regulatory risk advice

Due diligence and screening

Commercial and contractual advice

Co-ordination and delivery of EU and U.S. advice

For further information, contact Linda Tiller or Cortney Morgan.