

## CLIENT MEMORANDUM

# Changes to Iran Sanctions Post-Implementation Day

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## AUTHORS

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On January 16, 2016 (“Implementation Day”), the United States, European Union, and United Nations Security Council suspended certain sanctions on Iran pursuant to the Joint Comprehensive Plan of Action (“JCPOA”) after the International Atomic Energy Agency (IAEA) verified that Iran had complied with key nuclear-related obligations under the JCPOA.

Non-U.S. persons, including the foreign subsidiaries of U.S. companies, can now engage in most business transactions involving Iran without the threat of sanctions. The United States has also authorized U.S. persons to provide some facilitation of the activities of non-U.S. persons involving Iran. However, a number of significant direct or indirect transactions with Iran remain subject to sanctions. Moreover, the longstanding U.S. trade embargo against Iran remains in place. U.S. persons – entities organized in the United States or any person that is a citizen, a resident, or present in the United States – are still broadly prohibited from engaging in transactions involving Iran.

Violations of the remaining sanctions could result in significant penalties, and those engaging in sanctionable business with Iran overseas could be severed from the U.S. financial system. Moreover, the situation remains fluid, as evidenced by the January 17 announcement of new U.S. sanctions on 11 individuals and entities connected to recent prohibited ballistic missile launches in Iran. Both U.S. and non-U.S. companies should ensure they have adequate compliance programs in place and are protected from potential exposure to penalties or sanctions in their investments and relationships with customers, vendors, financial services providers, and other business partners.

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### I. Non-U.S. Persons

#### A. Permissible Activities for Non-U.S. Persons

Non-U.S. persons can now engage generally in the following transactions involving Iran and associated services without the threat of “secondary sanctions” (i.e. restrictions on access to the U.S. market). The European Union has similarly suspended sanctions to permit these activities. Non-U.S. companies can engage in many transactions that may have been previously sanctionable, including:

- Financial and banking-related transactions with Iran, including the Central Bank of Iran;
- The provision of underwriting services, insurance, or reinsurance to Iran;
- The purchase of oil, petrochemicals, or natural gas from Iran, and other business involving Iran’s energy sector, including transactions with the National Iranian Oil Company;
- Transactions involving Iran’s shipping and shipbuilding sectors and port operators;
- The provision of gold and other precious metals to Iran; and
- The sale, supply, or transfer of goods and services for Iran’s automotive sector.

The United States also removed over 400 individuals and entities from the list of Special Designated Nationals and Blocked Persons (“SDN List”), allowing non-U.S. persons to engage in transactions with these persons without the risk of sanctions. The EU has similarly de-listed a large number of individuals and entities from its list of sanctions targets subject to an asset freeze.

#### B. Permissible Activities for Foreign Subsidiaries

While the foreign subsidiaries of U.S. companies (“foreign subs”) also are now permitted to engage in many transactions involving Iran, those companies will be subject to certain specific exceptions. The U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued a general license authorizing foreign subs to engage in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran. However, foreign subs are still subject to some restrictions and may not, for example, transfer funds through a U.S. depository institution; engage in transactions with Iranian military, paramilitary, intelligence, or law enforcement entities; or engage in transactions with any person on OFAC’s SDN List or any other activity that would be prohibited by OFAC sanctions for a U.S. person.

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As described further below, the general license also authorizes U.S. persons to facilitate the business of foreign subs involving Iran through the development of policies and procedures and the provision of automated and globally integrated business support systems.

### C. Activities Remaining Subject to Sanctions for Non-U.S. Persons

Non-U.S. persons remain at risk for secondary U.S. sanctions for transactions with:

- Iranian persons on the SDN List;
- The Islamic Revolutionary Guard Corps (IRGC) and its designated agents or affiliates; and
- Any other person who remains designated in connection with Iran's nuclear program, ballistic missile activities, or support for international terrorism.

In addition, all foreign companies remain at risk of significant penalties for "causing" a violation by a U.S. person of the continuing trade embargo against Iran, including routing a transaction involving Iran through a U.S. bank or company. For example, a European bank is prohibited from clearing dollar transactions involving Iran through a U.S. financial institution.

Persons subject to EU jurisdiction also remain subject to several restrictions, including prohibitions on:

- The export of arms and missile technology to Iran;
- The transfer of certain nuclear and dual-use technology items without a license from the relevant member state; and
- Transactions with individuals and entities who remain designated, including for human rights abuses and support for terrorism.

## II. U.S. Persons

### A. Authorized Activities for U.S. Persons

While U.S. persons remain generally prohibited from engaging in business involving Iran, the United States did create additional exceptions on Implementation Day:

- U.S. persons may establish or alter policies and procedures to enable the foreign subs to engage in authorized business involving Iran and may make available automated and globally integrated support systems for their subsidiaries' use in conducting such business;

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- U.S. companies may now import Iranian-origin carpets and foodstuffs into the United States; and
- The United States will provide specific licenses for the sale of commercial passenger aircraft and related parts and services to Iran.

Pre-existing general licenses continue to authorize activities by U.S. persons with respect to Iran, including the authorization for exports to Iran of agricultural commodities, medicine, and medical supplies.

### **B. Prohibited Activities for U.S. Persons**

Beyond the limited relaxation of sanctions described above, U.S. persons remain generally prohibited from engaging in business involving Iran directly or indirectly, including the export of U.S.-origin goods and technology to Iran. Non-U.S. persons also are broadly prohibited from exporting U.S.-origin goods and technology to Iran. Such transactions are permitted only if licensed or subject to an exemption, including those detailed above.

The actions taken on Implementation Day are both complex and sensitive, and we therefore anticipate that initial efforts by foreign subs of U.S. companies and by U.S. persons will be carefully scrutinized by the U.S. Government and that compliance and enforcement activity will be aggressive. It will be vital, especially at the outset, to review in advance the specific details of any proposed transaction involving Iran to assure that it complies with the current sanctions requirements.

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