

CLIENT ALERT

JCPOA: 'Implementation Day': What It Means for U.S. and Non-U.S. Business

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On Saturday, January 16, the United States and European Union formally suspended or relaxed a series of 'nuclear-related' sanctions on Iran after the International Atomic Energy Agency (IAEA) verified to the United Nations that Iran had undertaken the nuclear suspensions to which it agreed in the Joint Comprehensive Plan of Action (JCPOA) on July 14, 2015 (See previous alert, "[Iran Nuclear Deal Reached: No Change to Sanctions Anytime Soon](#)"). Key aspects of the several hundred pages of new regulations, guidance, and policy positions announced by the United States and EU are summarized below.

United States

To implement its JCPOA commitments, the United States undertook an extensive series of measures that will have a different effect on (a) U.S. persons, (b) non-U.S. subsidiaries of U.S. persons, and (c) non-U.S. persons as follows:

- **U.S. Persons:** For U.S. persons (which includes U.S. companies (including foreign branches) and U.S. citizens and permanent residents), the full U.S. embargo on Iran and virtually all of its restrictions remain in place. The JCPOA only contains two exceptions for U.S. persons (although implementation has provided a third exception discussed below):
 - A [favorable licensing policy](#) for the export of commercial passenger aircraft, parts and components and associated services, for use exclusively in the civil aviation sector;
 - A [general license](#) to authorize the importation of all Iranian-origin food stuffs and carpets and other textile floor coverings.
- **Entities "Owned or Controlled" by U.S. Persons:** Before the JCPOA, entities that were "owned or controlled" by U.S. persons had been subject to the same restrictions as their U.S. parent companies since January 2013. The United States has now issued a new [General License H](#) authorizing entities owned or controlled by U.S. persons to engage in all activities that would be otherwise prohibited for U.S. persons.
 - **Conditions:** This authorization is subject to an extensive series of conditions including, *inter alia*, that the transactions cannot involve: any persons that remain on various lists of U.S. prohibited persons (*e.g.*, SDNs or Entity List), U.S. origin products (*i.e.*, items 'subject to the Export Administration Regulations), military, intelligence, or law enforcement end users in Iran, or any funds transfer through a U.S. financial institution.
 - **U.S. Person Involvement:** To assist in implementing the new authority, the general license provides certain exceptions to OFAC's prohibition on facilitation that authorize U.S. persons (*e.g.*, Executives, Directors, or other employees) to: (1) assist in establishing or altering policies or procedures to enable activity by non-U.S. subsidiaries; (2) be involved in the initial decision to allow a non-U.S. subsidiary to engage in transactions against Iran; and (3) make available "automated and globally integrated business support systems".
- **Non-U.S. Persons:** The broadest U.S. relaxations, necessary to give effect to the relaxations undertaken by the EU (see below), apply to non-U.S. persons (secondary sanctions), where the United States has indicated it will not enforce its existing secondary sanctions on non-U.S. persons who undertake the following types of identified activity in the following sectors:

- Financial and Banking. Transactions involving the Iranian financial sector, including transactions with the Central Bank of Iran, or otherwise involving the Iranian Rial.
- Insurance. Insurance or reinsurance transactions in connection with activities consistent with the JCPOA.
- Energy and Petrochemical. Transactions relating to the energy and petrochemical sectors, including investment, purchase, acquisition, sale, transportation or marketing of petroleum, petrochemical products and natural gas from Iran.
- Shipping, Shipbuilding, and Ports. Transactions involving shipping, shipbuilding and ports, including the operation or use of a vessel used to transport crude and operating a port or provision of vessels to certain designated entities. Gold and Precious Metals. Transactions for the sale or supply of gold and other precious metals to Iran.
- Software and Metals. Transactions involving trade with Iran in graphite, raw, or semi-finished metals. Transactions for the sale or supply of certain software for integrating industrial processes.
- Automotive. Transactions involving the sale, supply and transfer of goods and services in connection with the automotive sector.
- **Designations:** Consistent with the JCPOA, the United States also removed several hundred names from its SDN list. Importantly, however, it retained its existing restrictions on transactions with the Government of Iran. Therefore, U.S. persons continue to be prohibited from transacting with any entities that have been identified as the Government of Iran, even if these entities have been removed from the SDN List. OFAC published a new E.O. 13599 List containing those entities that meet these criteria and with which U.S. persons continue to be prohibited from transacting.

Existing U.S. sanctions related to human rights, weapons of mass destruction, and terrorism will remain in force and will be actively enforced as demonstrated by the United States' announcement on January 16 of 11 additional designations of Iranian persons for their roles in Iran's ballistic missile testing.

The United States published a comprehensive guidance document and associated Frequently Asked Questions to further explain these changes.

European Union

To implement its JCPOA commitments, the European Union has lifted its nuclear-related sanctions against Iran, removing a substantial portion of its existing restrictions on Iran. On January 16, the provisions of the EU's already adopted measures to implement the JCPOA – EU Council Decision 2015/1863 of 18 October 2015, EU Council Regulation 2015/1861 of 18 October 2015 and Council Implementing Regulation (EU) 2015/1862 of October 2015 – entered into effect as follows.

- The EU has lifted sanctions relating to:
 - The Financial Sector. (1) The establishment of Iranian banks (and correspondent accounts) in the EU; (2) access to the Society for Worldwide Interbank Financial Telecommunication (SWIFT); and (3) transfers of funds between EU persons and Iran;
 - Oil and Gas Sector. The import, purchase, swap and transport of Iranian crude, gas and petrochemicals; exporting equipment, investing in, and providing technical assistance for the oil, gas, petrochemical, and naval sectors;

- Shipping, Shipbuilding and Transport. Transactions involving the transport sector and those related to shipping and shipbuilding; and
- Gold and other Precious Metals, Banknotes and Coinage. The sale, supply, purchase, export, transfer or transport of gold and precious metals, diamonds and the provision of related brokering, financing and security services to/from the Government of Iran; and delivery of banknotes and coinage for the Central Bank.
- The EU has replaced its previous sanctions with a prior authorization regime in the following sectors:
 - Metals. The sale, supply, transfer or export of certain metals, such as graphite, raw and semi-finished metals are allowed under an authorization regime.
 - Software. Certain software can be sold, supplied, transferred, or exported to Iran, subject to prior authorization and for activities consistent with the JCPOA.
- In parallel to the delistings undertaken by the United Nations and the United States, the EU has de-listed a large number of people and entities from the EU's targeted asset freezes on Iran.

Similar to the United States, the EU is not lifting sanctions related to:

- Human rights (Reg. No. 359/2011 as amended); and
- Terrorism (portions of Reg. No. 267/2012 as amended).

The EU published an Information Note to provide further clarity regarding the scope of its changes.

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