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SANCTIONS UPDATE: U.S. AND EU EASE SANCTIONS AGAINST IRAN

On January 20, 2014, the interim agreement with Iran to halt the progress of its nuclear program during a six-month negotiation period went into effect. As described in our e-alerts of November 25, 2013 and November 27, 2013, the November 24 Joint Plan of Action ("JPOA") between Iran and China, France, Germany, the Russian Federation, the United Kingdom, and the United States (the "P5+1 group") provides for very limited and reversible relief from certain sanctions Iran has faced in recent years in exchange for Iran taking specified steps to halt the progress of its nuclear weapons program and allow increased transparency and monitoring by the International Atomic Energy Agency ("IAEA").

Upon confirmation from the IAEA that Iran had taken the first steps to curtail its nuclear program, the JPOA went into effect and both the U.S. and EU governments released detailed information on the sanctions relief provided under the deal. While some sanctions relief is effective immediately, certain measures (namely, the release of certain restricted Iranian funds) will be rolled out over the course of the six-month negotiation period ending on July 20, 2014.

These measures are expected to provide Iran with approximately $7 billion in sanctions relief, but U.S. officials have emphasized that the overwhelming majority of the U.S. and international sanctions regime remains in place, including key oil, energy, banking, insurance, and financial sanctions, as well as sanctions on Iran's energy, shipping, and port sectors. Officials have also stressed that the existing sanctions will be vigorously enforced. Further, although the easing measures are already in effect, they are easily reversible. If Iran fails to meet its commitments under the JPOA, the U.S. government, in particular, has stated that it will move not only to terminate the limited sanctions relief, but also to increase the U.S. sanctions on Iran.

I. U.S. SANCTIONS RELIEF

Under the U.S. sanctions relief, the Administration will immediately ease measures applicable to:

- exports of petrochemical products from Iran;
- transactions involving Iran's automotive industry;
- Iran's purchase and sale of gold and other precious metals;
- exports of safety-related U.S.-origin parts and services for Iran's civilian aviation industry; and
- exports of Iranian crude oil to Iran's current customers.

The U.S. government has also committed to establishing financial channels to facilitate humanitarian trade with Iran and other financial transfers, such as the payment of Iran's United Nations obligations, tuition assistance for Iranian students studying abroad, and the release of certain restricted Iranian funds.

Relying on waiver authorities in various of the sanctions measures,[1] the U.S. government has lifted certain limited aspects of the U.S. retaliatory sanctions that affect non-U.S. persons not otherwise subject to U.S. sanctions (*i.e.,* non-U.S. entities that are not owned or controlled by a U.S. person) who engage in specified dealings involving Iran. With the narrow exception of a more favorable licensing policy for exports of U.S.-origin parts and services relating to civilian aircraft, there are virtually no changes to the sanctions applicable to U.S. persons and non-U.S. entities owned or controlled by U.S. persons.

In guidance and a Frequently Asked Questions document released on January 20, 2014, the U.S. government provided additional details about the easing of the sanctions and set forth certain "ground rules" for the application of the easing measures. In particular, the government emphasized the following points:

- The measures apply only to conduct initiated and fully completed (including related payments, deliveries, and services) during the six-month term of the JPOA.
- Unless otherwise specifically noted, these measures do not apply to transactions with persons listed on the U.S. Treasury Department, Office of Foreign Assets Control's ("OFAC") List of Specially Designated Nationals and Blocked Persons ("SDN List"). (The exceptions include Iranian financial institutions designated only for their association with the Iranian government.)
- The U.S. government retains the authority to revoke this limited sanctions relief at any time if Iran fails to meet its commitments under the JPOA.

The guidance document also provides a detailed overview of the sanctions measures that are being eased. The following provides a summary of the targeted changes to the U.S. sanctions against Iran.

1. **Exports of Petrochemical Products from Iran.** The Administration has temporarily suspended its retaliatory sanctions related to exports of qualified petrochemical products from Iran and associated services.[2] In particular, the United States will not block the property or interests in property of non-U.S. persons that *materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of*, specified petrochemical companies[3] for exports of petrochemical products from Iran. Likewise, the U.S. will not impose "menu-based" retaliatory sanctions on non-U.S. persons who knowingly engage in a significant transaction for the *purchase, acquisition, sale, transport, or marketing* of qualified petrochemical products from Iran. The term "menu-based" retaliatory sanctions refers to the list of available retaliatory sanctions which may be imposed on a party engaging in the specified activity.[4]

[1] These authorities are found in section 1245(d)(1) of the National Defense Authorization Act for Fiscal Year 2012, section 302 of the Iran Threat Reduction and Syria Human Rights Act of 2012 ("ITRA"), section 5(A)(7) of the Iran Sanctions Act of 1996 (as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010), and various sections of the Iran Freedom and Counter-Proliferation Act of 2012.

[2] For purposes of the JPOA sanctions relief, the U.S. Government interprets the term "associated service" to mean any necessary service — including any insurance, transportation, or financial service — ordinarily incident to the underlying activity covered by the JPOA. However, unless otherwise specifically noted, such services may not involve persons identified on the SDN List (with the exception of Iranian financial institutions designated only for their association with the Iranian government).

[3] The specified petrochemical companies are listed in an Annex to the U.S. Government's guidance. *See* Guidance Relating to the Provision of Certain Temporary Sanctions Relief in Order to Implement the Joint Plan of Action Reached on November 24, 2013, between the P5+1 and the Islamic Republic of Iran, http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_guidance.pdf.

[4] These sanctions include, among other things, the blocking of that person's property or interests in property, a prohibition on making any transfers of credit or payments between U.S. financial institutions, a denial of

However, these measures do not lift the retaliatory sanctions imposed under Executive Order 13590 (November 21, 2011) and section 201 of the ITRA, which authorize the U.S. Secretary of State to impose retaliatory sanctions on persons who provide goods, services, technology, or support that could contribute to the maintenance or expansion of Iran's *domestic* production of petrochemical products.

2. **Transactions Related to Iran's Auto Industry.** In addition to easing the sanctions on exports of qualified petrochemical products from Iran, the Administration eased certain retaliatory sanctions imposed on Iran's automotive industry under Executive Order 13645. Effective July 1, 2013, Executive Order 13645 authorized the U.S. Secretary of State to impose "menu-based" sanctions on any person who knowingly engaged in a significant transaction for the *sale, supply, or transfer* to Iran of significant goods or services used in connection with the automotive sector of Iran. However, as of January 20, 2014, the Administration will not impose any of the "menu-based" retaliatory sanctions under section 6 of Executive Order 13645 on non-U.S. persons for engaging in such transactions during the temporary suspension of sanctions.

3. **Purchase and Sale of Gold and other Precious Metals.** Similarly, the JPOA provides for the temporary suspension of U.S. sanctions related to the purchase and sale to or from Iran of precious metals and associated services. Prior to the implementation of the JPOA, Executive Orders 13622 and 13645 authorized the U.S. Treasury Secretary to block the property or interests in property of any person who *materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of*, the purchase or acquisition of precious metals to or from Iran or by the Government of Iran. The U.S. has now temporarily suspended these sanctions, and will not impose blocking sanctions on non-U.S. persons engaging in such activities, provided that the funds for purchases of precious metals are not drawn from Iran's "Restricted Funds."[5]

4. **Transactions Executed by Non-U.S. Financial Institutions.** In addition to easing sanctions on non-U.S. persons engaging in transactions with Iran relating to petrochemicals, Iran's automotive sector, and precious metals, the United States has also eased the retaliatory sanctions applicable to non-U.S. financial institutions engaging in financial transactions relating to these items. Specifically, the United States has agreed not to impose retaliatory sanctions on non-U.S. financial institutions for knowingly conducting or facilitating any significant financial transaction:

   - for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran;
   - for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran; or
   - for the purchase or acquisition of precious metals to or from Iran.

   Prior to January 20, 2014, non-U.S. financial institutions could have their ability to maintain correspondent or payable-through accounts in the United States cut off or restricted for knowingly engaging in such transactions.

5. **Easing of Sanctions Related to the Safety of Iran's Civil Aviation Industry.** As part of the sanctions easing under the JPOA, the U.S. government has established a favorable licensing policy under which U.S. persons, U.S.-owned or -controlled entities, and non-U.S. persons

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Export-Import Bank financing in connection with the export of any goods or services to that person, and denial of U.S. export or reexport licensing.

[5] "Restricted Funds" are defined in the guidance as "(i) any existing and future revenues from the sale of Iranian petroleum or petroleum products, wherever they may be held, and (ii) any Central Bank of Iran (CBI) funds, with certain exceptions for non-petroleum CBI funds held at a foreign country's central bank."

involved in the export of items subject to U.S. jurisdiction can request specific authorization from OFAC to engage in transactions to ensure the safe operation of Iranian commercial passenger aircraft, including transactions with Iran Air. According to OFAC's Statement of Licensing Policy on Activities Related to the Safety of Iran's Civil Aviation Industry, the activities that may be licensed include, but are not limited to, the exportation and reexportation of services related to the inspection of commercial aircraft and parts in Iran or a third country; services related to the repair or servicing of commercial aircraft in Iran or a third country; and exports or reexports of goods or technology, including spare parts, to Iran or a third country. However, as we noted in our e-alert of November 27, the range of civil aircraft parts that OFAC may license under this new policy may be restricted to non-sensitive parts classified as "EAR99" under the Export Administration Regulations.[6]

The U.S. government will also not impose retaliatory sanctions on non-U.S. financial institutions that conduct or facilitate financial transactions relating to the type of activities covered under OFAC's Licensing Policy, or on non-U.S. persons who *materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of* Iran Air in connection with activities intended to ensure the safe operation of commercial passenger aircraft.

6. **Exports of Crude Oil to Iran's Current Customers.** The Administration will pause its efforts to further reduce Iran's crude oil sales to its current customers. In particular, the United States will not impose retaliatory sanctions on non-U.S. financial institutions that conduct or facilitate transactions for exports of petroleum and petroleum products from Iran to China, India, Japan, the Republic of Korea, Taiwan, and Turkey, and for associated insurance and transportation services. Likewise, the United States will not impose blocking or other "menu-based" retaliatory sanctions on non-U.S. persons who *materially assist, sponsor, or provide financial, material, or technological support for, or goods or services in support of*, exports of petroleum and petroleum products from Iran, and associated insurance and transportation services, to those six countries. Such transactions are not sanctionable provided that they do not involve persons listed on the SDN List other than the National Iranian Oil Company, the National Iranian Tanker Company, or any Iranian depositary institutions listed solely pursuant to Executive Order 13599 for their association with the government of Iran. Other sanctions on Iran's energy sector remain fully in force.

7. **Creation of Financial Channels to Facilitate Certain Payments to or from Iran.** The P5+1 are also establishing mechanisms to facilitate the purchase of, and payment for, exports of food, agricultural commodities, medicine and medical devices to Iran, as well as to facilitate payments of Iran's UN obligations, medical expenses incurred abroad by Iranian citizens, and tuition assistance for Iranian students studying abroad. Non-U.S. financial institutions whose involvement in these new mechanisms is sought will be contacted by the U.S. Treasury Department and provided with specific guidance. The Administration has emphasized that the new mechanism for humanitarian trade transactions is not the exclusive means of permissibly facilitating the sale of qualified products to Iran, which is not generally sanctionable as long as the transaction does not involve parties designated in connection with Iran's support for terrorism or weapons proliferation.

[6] OFAC's licensing policy states that all specific license applications will be evaluated in light of the Iran-Iraq Arms Nonproliferation Act of 1992 ("Iran-Iraq Act"), which contains a provision that has historically been construed to require the denial of license applications for exports or reexports to Iran of U.S.-origin goods listed on the Export Administration Regulations' Commerce Control List. Although the Iran-Iraq Act does have a provision allowing the President to waive such restrictions, it is not clear that he has done so or would be prepared to do so.

8. **Installment Payments from Restricted Funds.** The United States will also work to facilitate the release, in installments, of $4.2 billion of Iran's Restricted Funds. The installments will be authorized for release according to a set schedule which is contingent on Iran meeting certain milestones with respect to its commitments under the JPOA (*e.g.*, the dilution of a certain percentage of its stockpile of near-20% enriched uranium).

II. EU SANCTIONS RELIEF

On January 20, 2014, the Council of the European Union ("EU Council") adopted Regulation 2014/42/EU (the "amending Regulation"), which suspends or amends certain measures imposed by Regulation 267/2012 concerning EU sanctions against Iran. The amending Regulation entered into force on the day of its adoption. The amendments to Regulation 267/2012 are as follows:

1. **Suspension of Prohibitions on the Transport, Insurance, and Re-insurance of Certain Iranian Crude Oil and Petroleum Products.** The amending Regulation suspends the prohibition against the transport of crude oil and petroleum products originating in or exported from Iran that fall under Harmonized System (HS) Code 2709 00 *Petroleum oils and oils obtained from bituminous minerals, crude.* (Certain other petroleum products remain subject to restrictions, however.) In addition, the amending Regulation suspends the prohibition on insurance or re-insurance related to the import, purchase, or transport of the above-mentioned products. Notably, however, the prohibition against the purchase and import of crude oil and petroleum products originating in or exported from Iran continues to apply.
2. **Suspension of Embargo on Iranian Petrochemical Products.** The amending Regulation suspends prohibitions on: (i) the import of petrochemical products originating in or exported from Iran; (ii) the purchase of petrochemical products located in or originating from Iran; (iii) the transport of petrochemical products originating in or exported from Iran; and (iv) the provision of financing, financial assistance, insurance, or re-insurance services related to the import, purchase, or transport of such products.
3. **Suspension of Embargo on Iranian Gold and Precious Metals.** The amending Regulation suspends prohibitions on: (i) the sale, supply, transfer, or export of gold and precious metals to the Government of Iran, its public bodies, corporations, and agencies, and associated persons and entities; (ii) the purchase, import, or transport of such materials from the Government of Iran, its public bodies, corporations, and agencies, and associated persons and entities; and (iii) the provision of technical assistance, brokering, financing, or financial assistance related to such materials to the Government of Iran, its public bodies, corporations, and agencies, and associated persons and entities.
4. **Suspension of the Prohibition on Supplying Vessels Designed for the Transport or Storage of Oil and Petrochemical Products.** The prohibition against the making available of vessels designed for the transport or storage of oil and petrochemical products to Iranian persons, entities, or bodies or any other parties that could use the vessels to carry or store oil or petrochemical products that originate in Iran or are exported from Iran has also been suspended.
5. **Release of Funds to the Iranian Ministry of Petroleum.** The amending Regulation also allows Member State authorities (such as HM Treasury in the United Kingdom) to authorize the release of economic resources owned or controlled by the Iranian Ministry of Petroleum, an entity that is designated under Regulation 267/2012, and the making available of funds and economic resources to the Ministry where those funds / economic resources are necessary for the import or purchase of petrochemical products that originate in Iran or have been imported from Iran.
6. **Loosening of Funds Transfers Restrictions.** Finally, the amending Regulation relaxes restrictions on funds transfers involving Iranian parties by raising the thresholds applicable to *authorization*

obligations. Importantly, however, the notification thresholds established in Regulation 267/2012 *remain unchanged*. This means that as of January 20, 2014:

- funds transfers between EU and Iranian financial institutions related to foodstuffs, healthcare, medical equipment, or for agricultural or medical purposes require prior authorization from a Member State authority if they are equal to or exceed EUR 1,000,000. (The prior threshold for such transfers was EUR 100,000.) Note that these transfers remain subject to a notification requirement if they are equal to or exceed EUR 10,000, however;
- funds transfers between EU and Iranian financial institutions related to personal remittances must only be authorized if they are equal to or exceed EUR 400,000. (The prior threshold was EUR 40,000.) Again, these transfers remain subject to a notification requirement if they are equal to or exceed EUR 10,000;
- all other funds transfers between EU and Iranian financial institutions — *i.e.*, transfers not relating to foodstuffs, healthcare, medical equipment, agricultural or medical purposes or personal remittances — with a value equal to or exceeding EUR 100,000 must be pre-authorized. (Previously, authorization was required for transfers equal to or above EUR 10,000.);
- funds transfers between EU and other Iranian parties equal to or exceeding EUR 400,000 that do not involve Iranian financial institutions require authorization. (The prior threshold was EUR 40,000.) Again, these transfers; they remain subject to a notification requirement if they are equal to or exceed EUR 10,000;
- funds transfers between EU and other Iranian parties that do not involve Iranian financial institutions and are related to foodstuffs, healthcare, medical equipment, or agricultural or medical purposes do not have to be authorized (as under the prior rules.) They remain subject to a notification requirement if they are equal to or exceed EUR 10,000.

III. PROSPECTS FOR ADDITIONAL U.S. SANCTIONS LEGISLATION

Some members of Congress have expressed disapproval of the Administration's easing of sanctions without Congressional input and without greater concessions from Iran, and have proposed legislation which, if passed, has the potential to derail the JPOA and the ongoing negotiation of a comprehensive agreement. In particular, the Nuclear Iran Prevention Act of 2013 (H.R. 850) — which would expand the U.S. sanctions against Iran — passed overwhelmingly in the House of Representatives in July, and is currently pending in the Senate. Similarly, the Nuclear Weapons Free Iran Act of 2013 — which would, among other things, require the President to certify every 30 days that a host of conditions have been met in order to defer new sanctions — is pending in the Senate.

Opponents of the proposed legislation worry that the passage of either bill could provide Iran with an excuse to leave the negotiating table, and may undermine the President's ability to negotiate a final nuclear deal. In particular, Senator Patrick Leahy warned this week that the passage of such legislation would be a "mistake" because such legislation could also alienate the other members of the P5+1 group who are involved in the negotiations.

IV. NEXT STEPS

Over the next six months, the P5+1 group will continue to negotiate a comprehensive, longer-term nuclear agreement with Iran.

Companies that are considering engaging in activities with Iran that may not be sanctionable under these revised sanctions measures should enter into such transactions cautiously. As the U.S. government has emphasized, these easing measures can quickly be revoked. Further, the easing measures are narrow and apply only to the specifically described activities. As such, ensuring that the company's activities do not stray outside these narrow bounds may be difficult.

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We are closely following the developments in the implementation of the JPOA and will provide additional updates as new information becomes available. We are well-positioned to assist clients in understanding how the changes in the Iran sanctions may affect their operations and business opportunities.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our international trade controls practice group:

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