

United States, EU Implement Significant Iran Sanctions Relief

January 17, 2016

International Trade Controls

On January 16, 2016, the United States and the European Union (“EU”) significantly eased their sanctions against Iran, following verification by the International Atomic Energy Agency (“IAEA”) that Iran had carried out its commitments under the Joint Comprehensive Plan of Action (“JCPOA”), the multilateral agreement signed in mid-July 2015 in which Iran agreed to accept certain limitations on its nuclear program. We described the terms of the JCPOA in detail in a [prior alert](#).

Specifically, the United States dramatically reduced—but did not altogether eliminate—its “secondary” sanctions, which target non-U.S. companies not owned or controlled by U.S. persons that engage in certain activities in or involving Iran. In contrast, and as expected, the “primary” U.S. sanctions that prohibit U.S. persons and their owned or controlled non-U.S. affiliates from engaging in virtually any dealings with Iran (absent U.S. government licensing) will remain in place. Significantly, however, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued general licenses and a statement of licensing policy that ease certain aspects of these “primary” U.S. sanctions. (OFAC also has issued extensive [guidance](#) and [frequently asked questions](#) detailing many aspects of the sanctions relief.)

Most notably, OFAC issued a [general license](#) that broadly authorizes non-U.S. companies owned or controlled by U.S. persons to trade and otherwise deal with Iran, subject to certain continuing restrictions on the involvement of U.S. persons and the provision of U.S.-regulated goods and technologies. The OFAC general license also authorizes U.S. persons to engage in activities related to the establishment or alteration of policies and procedures of a U.S. company or its owned or controlled non-U.S. subsidiaries to the extent necessary to allow the non-U.S. subsidiaries to engage in otherwise newly permissible dealings with Iran. In addition, the general license permits U.S. parent companies to make available to their non-U.S. subsidiaries certain automated and globally integrated information technology systems necessary to process documents or information related to the non-U.S. subsidiaries’ permissible Iran-related dealings.

Additionally, consistent with the JCPOA, the United States removed more than 400 Iranian individuals and entities from its various sanctions lists, including the List of Specially Designated Nationals and Blocked Persons (“SDN List”). As a general matter, U.S. persons and their owned or controlled non-U.S. subsidiaries still cannot deal with parties that remain on the SDN List (or entities owned 50% or more, individually or in the aggregate, by one or more SDNs) absent U.S. government licensing, and dealings with SDNs also may give rise to the imposition of various secondary sanctions that remain in place. However, neither the OFAC guidance nor the frequently asked questions address whether the secondary sanctions that remain in place will reach persons engaging in sanctionable conduct with or involving non-listed entities owned 50% or more, individually or in the aggregate, by one or more SDN-listed parties.

Further, on January 17, in a move underscoring that the sanctions relief implemented pursuant to the JCPOA was related only to Iran's decision to curtail key aspects of its nuclear program, [OFAC designated 11 individuals and entities](#) involved in procurement on behalf of Iran's ballistic missile programs. These new designations come in the wake of ballistic missile tests conducted by Iran in October and November 2015.

Finally, as expected, the EU has eased its Iran sanctions program to a much more substantial extent than the United States. Although a number of key EU restrictions remain in place (described below), the EU has now removed most of its Iran sanctions program, including asset freezing measures against a number of major Iranian financial institutions and oil/gas companies, energy sector investment and related trade controls restrictions, notification / authorization requirements for certain transfers of funds to or from Iranian parties, and prohibitions against the provision of insurance and other financial services to Iranian parties.

U.S. Sanctions Relief

The U.S. sanctions relief is significant and wide-ranging, and impacts both the secondary and primary sanctions against Iran. Importantly, the benefits of the U.S. sanctions relief will largely be limited to non-U.S. persons and companies, including non-U.S. subsidiaries of U.S. companies.

Broad Relief from Secondary Sanctions

As agreed in the JCPOA, the United States has ceased the application of its "nuclear-related" secondary sanctions, which are measures targeting non-U.S. persons that are not owned or controlled by U.S. persons and that engage in certain Iran-related activities. This sanctions relief does not extend to secondary sanctions related to Iran's support for terrorism, human rights abuses, or weapons proliferation and missile activities, or to dealings with the Islamic Revolutionary Guard Corps ("IRGC") and its designated agents and affiliates.

Specifically, the United States has ceased the application of the following secondary sanctions by terminating certain executive orders and waiving certain statutory provisions that imposed such sanctions.

Energy and Petrochemicals

The United States will no longer impose sanctions against non-U.S. persons for engaging in the following activities, provided that the transaction does not involve an individual or entity on the SDN List:

- Knowingly selling, supplying, or transferring to or from Iran significant goods or services used in connection with the Iranian energy sector.
- Knowingly making an investment of \$20 million or more (or a series of investments of at least \$5 million each, that equal or exceed \$20 million within a 12-month period) that directly and significantly contributes to Iran's ability to develop petroleum resources.
- Knowingly selling, leasing, or providing to Iran goods, services, technology, information, or support with a fair market value of at least \$1 million (or \$5 million in the aggregate over a 12-month period) that could directly and significantly: (i) facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products,

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(ii) contribute to the enhancement of Iran's ability to import refined petroleum products, (iii) contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources located in Iran, or (iv) contribute to the maintenance or enhancement of Iran's domestic production of refined petroleum products.

- Knowingly selling or providing to Iran refined petroleum products with a fair market value of at least \$1 million (or \$5 million in the aggregate over a 12-month period).
- Knowingly participating in a joint venture with Iran with respect to the development of petroleum resources outside of Iran.
- Knowingly selling, leasing, or providing to Iran goods, services, technology, or support with a fair market value of at least \$250,000 (or \$1 million in the aggregate over a 12-month period) that could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of petrochemical products.
- Knowingly engaging in a significant transaction for the purchase or acquisition of petroleum, petroleum products, or petrochemical products from Iran.
- Materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company ("NIOC") or the Naftiran Intertrade Company ("NICO").

Additionally, the United States has ceased efforts to reduce Iran's crude oil sales, including limitations on the quantities of Iranian crude oil sold and the nations that can purchase such crude oil, and to restrict Iran's use of the proceeds from its sales of crude oil.

Shipping and Shipbuilding

The United States will no longer impose sanctions against non-U.S. persons for knowingly selling, supplying, or transferring to or from Iran significant goods or services used in connection with the Iranian shipping or shipbuilding sectors (including port operators), provided that the transaction does not involve an individual or entity on the SDN List. As a result of this action, the United States will no longer sanction transactions with entities determined to be part of the shipping or shipbuilding sectors of Iran (including the Islamic Republic of Iran Shipping Lines ("IRISL"), South Shipping Line, and the National Iranian Tanker Company ("NITC"), and persons determined to be Iranian port operators (including the port operator(s) of Bandar Abbas, provided that such persons are no longer controlled by a person, such as Tidewater Company, that remains on the SDN List).

Additionally, the United States will no longer impose sanctions against non-U.S. persons for owning, operating, controlling, or insuring a vessel used to transport crude oil from Iran or used in a manner that conceals the Iranian origin of crude oil or refined petroleum products transported by the vessel.

Automotive

The United States will no longer impose sanctions against non-U.S. persons for knowingly engaging 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, provided that the transaction does not involve an individual or entity on the SDN List.

Metals and Software

The United States will no longer impose sanctions against non-U.S. persons for knowingly selling, supplying, or transferring, directly or indirectly, a precious metal to or from Iran, provided that the transaction does not involve an individual or entity on the SDN List. Subject to the same limitation, the United States will no longer impose sanctions against non-U.S. persons for (a) knowingly selling, supplying, or transferring, directly or indirectly, to or from Iran graphite, raw or semi-finished metals (e.g., aluminum and steel), coal, or software for integrating industrial processes, or (b) materially assisting, sponsoring, or providing financial, material, or technological support for the purchase or acquisition of precious metals by the Government of Iran.

Financial and Banking

The United States will no longer impose sanctions against foreign financial institutions for engaging in the following activities, provided that the transaction does not involve an individual or entity on the SDN List:

- Knowingly conducting or facilitating a significant financial transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran.
- Knowingly conducting or facilitating a significant financial transaction with NIOC or NICO, or for the purchase or acquisition of petroleum, petroleum products, or petrochemical products from Iran.
- Knowingly conducting or facilitating a significant financial transaction for the sale, supply, or transfer to or from Iran of a precious metal, graphite, raw or semi-finished metals (e.g., aluminum and steel), coal, or software for integrating industrial processes, under certain circumstances.
- Knowingly conducting or facilitating a significant transaction related to the purchase or sale of Iranian rials or a contract whose value is based on the exchange rate of the Iranian rial, or maintaining significant funds or accounts outside of Iran denominated in Iranian rials.
- Knowingly conducting or facilitating a significant financial transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran.
- Knowingly purchasing, subscribing to, or facilitating the issuance of sovereign debt of the Government of Iran or debt of an entity owned or controlled by the Government of Iran.
- Materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services in support of, the Central Bank of Iran or for the purchase or acquisition of U.S. bank notes by the Government of Iran.
- Knowingly conducting or facilitating a significant financial transaction with the Central Bank of Iran or any other Iranian financial institutions that have been removed from the SDN List.
- Knowingly and directly providing specialized financial messaging services to, or knowingly enabling or facilitating direct or indirect access to such messaging services for, the Central Bank of Iran or Iranian financial institutions that have been removed from the SDN List.

Certain Iranian financial institutions will remain on the SDN List, including importantly Bank Saderat and Bank Saderat plc.

Insurance

The United States will no longer impose sanctions against non-U.S. persons for knowingly providing underwriting services or insurance or reinsurance for any activity with respect to which sanctions have been eased, provided that the transaction does not involve an individual or entity on the SDN List.

Certain Key Secondary Sanctions Remain in Place

The Obama Administration has made clear that the JCPOA is focused only on Iran's nuclear program, and therefore that the secondary sanctions relief implemented pursuant to the JCPOA is limited to the U.S. secondary sanctions measures that are "nuclear-related." Accordingly, a variety of key secondary sanctions measures—those related to Iran's support for terrorism, human rights abuses, or weapons proliferation and missile activities—remain in place, as do sanctions for dealings with the IRGC and its designated agents and affiliates.

For example, the United States will continue to maintain the ability to impose sanctions on non-U.S. persons for engaging in the following activities, among others:

- Knowingly providing significant financial, material, technological, or other support to, or goods or services in support of, any activity or transaction on behalf of or for the benefit of an Iranian person on the SDN List.
- Knowingly facilitating a significant financial transaction with Iranian financial institutions that remain on or are added to the SDN List, including Bank Saderat.
- Knowingly and directly providing specialized financial messaging services to, or knowingly enabling or facilitating direct or indirect access to such messaging services for, a financial institution whose property is blocked in connection with Iran's weapons of mass destruction ("WMD") or terrorism activities.
- Materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services in support of, Iran's IRGC or any of its blocked officials, agents, or affiliates.
- Selling, supplying, or transferring, directly or indirectly, to or from Iran graphite, raw or semi-finished metals (e.g., aluminum and steel), coal, and software for integrating industrial processes, under certain circumstances, for use in connection with Iran's military or ballistic missile program.

Significantly, non-U.S. parties that undertake dealings in or with Iran will remain subject to U.S. reexport controls that generally prohibit the supply to Iran, directly or indirectly, of any U.S.-origin items that are classified at a level more restrictive than EAR99 under the Commerce Department's Export Administration Regulations ("EAR") or any non-U.S.-origin items that incorporate more than 10 percent controlled U.S.-origin content by value.

Limited Relief from Primary U.S. Sanctions

The primary U.S. sanctions that prohibit U.S. persons and their owned or controlled non-U.S. affiliates from engaging in virtually any dealings with Iran (absent U.S. government licensing)

remain in place. However, OFAC has taken steps to authorize three key categories of Iran-related activities that were previously prohibited.

General License for Non-U.S. Entities Owned or Controlled by U.S. Persons

Since October 2012, non-U.S. entities that were owned or controlled by U.S. persons have been prohibited from engaging in virtually any Iran-related dealings, unless authorized by OFAC. As part of the sanctions relief implemented pursuant to the JCPOA, however, OFAC has issued, effective January 16, 2016, General License H, which generally authorizes such non-U.S. entities to engage in Iran-related dealings that are consistent with the JCPOA and that generally do not involve U.S. persons, including the subsidiary's U.S. parent company. This authorization will permit non-U.S. subsidiaries to undertake a broad range of new dealings in and with Iran, provided the subsidiaries are sufficiently independent from their U.S. parent companies and do not involve other U.S. persons—including any U.S. person officers, directors, or employees of the non-U.S. subsidiary—in the Iran-related dealings (including in the supply of items for Iran). The general license is not sector-specific, and thus applies to non-U.S. subsidiary dealings with Iran across a range of commercial (non-defense) areas.

General License H does not authorize non-U.S. subsidiaries of U.S. parent companies to:

- Source any goods, technology, or services from the United States or any U.S. person with knowledge or reason to know that the goods, technology, or services are intended specifically or predominantly for Iran.
- Use U.S. banks to process Iran-related transactions (including as correspondent banks for U.S. dollar-denominated transactions).
- Supply to Iran, directly or indirectly, any U.S.-origin items that are classified at a level more restrictive than EAR99 under the Commerce Department's EAR or any non-U.S.-origin items that incorporate more than 10 percent controlled U.S.-origin content by value.
- Engage in transactions involving parties on the SDN List (or entities owned 50% or more, individually or in the aggregate, by one or more SDNs), the Foreign Sanctions Evaders List,¹ or Iranian military, paramilitary, intelligence, or law enforcement entities (even if such military/law enforcement entities are not on the SDN or Foreign Sanctions Evaders Lists).
- Engage in sanctionable activities relating to Iran's proliferation of WMD, support for terrorism, commission of human rights abuses, or destabilizing activities in Yemen.
- Engage in any nuclear activities outside of the procurement channel established pursuant to the JCPOA, if such activities are subject to that procurement channel.

In addition, trade with Iran in defense articles and defense services subject to the U.S. International Traffic in Arms Regulations ("ITAR") continues to be broadly prohibited.

¹ The Foreign Sanctions Evaders List is maintained by OFAC and identifies non-U.S. individuals and entities determined to have: (1) violated, attempted to violate, conspired to violate, or caused a violation of U.S. sanctions against Syria or Iran; or (2) facilitated deceptive transactions for or on behalf of persons subject to U.S. sanctions. Activities by U.S. persons or within the United States involving individuals and entities on the Foreign Sanctions Evaders List are prohibited.

One key question raised by General License H is the extent to which U.S. persons—particularly U.S. parent companies and U.S. person employees, officers, or directors of non-U.S. subsidiaries—may become involved in the Iran-related business activities that the non-U.S. subsidiary is now allowed to undertake. As a general rule, U.S. persons are prohibited from facilitating the otherwise permissible Iran-related activities of non-U.S. persons. This includes virtually any involvement in the Iran-related business of owned or controlled non-U.S. subsidiaries by their U.S. parent companies or their U.S. person employees, officers, or directors.

Significantly, however, General License H carves out two exceptions to the prohibition on facilitation by U.S. persons. Under the general license, U.S. persons may engage in activities: (1) related to the establishment or alteration of policies and procedures of a U.S. company or its owned or controlled non-U.S. subsidiary to the extent necessary to allow the subsidiary to engage in otherwise permissible dealings with Iran, including involvement in the initial determination of the subsidiary to engage in authorized activities with Iran; and (2) to make available to the non-U.S. subsidiary any “automated” and “globally integrated” computer, accounting, email, telecommunications, or other business support systems, platform, database, application, or server necessary to store, collect, transmit, generate, or otherwise process documents or information related to the non-U.S. subsidiary’s permissible Iran-related dealings.

These exceptions do not permit the ongoing involvement by U.S. persons or the U.S. parent company in a non-U.S. subsidiary’s dealings in or with Iran, including by approving, financing, facilitating, or guaranteeing any Iran-related transaction by the non-U.S. entity. OFAC has stated in published guidance, however, that U.S. persons, including employees and outside legal counsel, may provide training, advice, and counseling on new or revised operating policies and procedures of the parent company or non-U.S. subsidiary, provided that such services are not provided to facilitate transactions in violation of U.S. law.

In addition, OFAC has made clear that the term “automated” refers to authorized business support systems that operate passively and without human intervention to facilitate the flow of data between and among the U.S. parent company and its owned or controlled non-U.S. entities. U.S. persons, including U.S. person third-party providers, are, however, allowed to engage in activities relating to the establishment or maintenance of such authorized business support systems, including engaging in routine or emergency maintenance on them.

For example, OFAC’s guidance indicates that an enterprise resource planning (“ERP”) system that utilizes a U.S.-based server—without any human intervention in the United States—to generate a purchase order initiated by a Dubai-based, non-U.S. person employee of a U.S.-owned or -controlled non-U.S. entity would be considered “automated” for the purposes of General License H. If, however, the ERP system requires the intervention of a person in the United States to complete the Dubai entity’s request, such as a U.S. person performing data entry or internal processing for creation of a customer record, such system would not be considered automated.

OFAC also has indicated that systems and databases maintained in the United States that are not broadly available to the U.S. parent company’s non-U.S. entities or lines of business performed by such entities would not be considered “globally integrated” for the purposes of General License H.

Under the general license, U.S. third-party service providers are authorized to make available to a non-U.S. entity owned or controlled by a U.S. parent the authorized business support system that they provide to the U.S. parent on a contract basis, but the general license does not appear to authorize U.S. third-party service providers to provide such business support services to non-U.S. entities in other circumstances relating to their dealings with or involving Iran.

Statement of Licensing Policy Relating to Commercial Passenger Aircraft

OFAC also has issued a statement of licensing policy related to the export or reexport to Iran of commercial passenger aircraft and related parts, components, and services. The statement of licensing policy provides that OFAC will view favorably applications by U.S. and, when there is a connection to U.S. jurisdiction, non-U.S. persons for licenses to engage in the following transactions, provided that the items and services are used exclusively for commercial passenger aviation:

- Export, reexport, sell, lease, or transfer to Iran commercial passenger aircraft for exclusively civil aviation end-use.
- Export, reexport, sell, lease, or transfer to Iran spare parts and components for commercial passenger aircraft.
- Provide associated services, including warranty, maintenance, and repair services and safety-related inspections for the foregoing activities.

The types of aircraft that will be considered commercial passenger aircraft under the statement of licensing policy are wide-body, narrow-body, regional, and commuter aircraft used for commercial passenger aviation. Cargo aircraft, state aircraft, unmanned aerial vehicles, military aircraft, and aircraft used for general aviation or aerial work do not qualify as commercial aircraft.

In some cases, the export or reexport of items to Iran under this policy also could require licensing from the Department of Commerce under the EAR, depending on the end use, end user, or classification of the item to be provided.

OFAC's guidance on the statement of licensing policy further provides that if aircraft, goods, or services licensed pursuant to the policy have been used for any purpose other than commercial passenger aviation, or have been re-sold or retransferred to individuals or entities on the SDN List, then OFAC could partially or entirely revoke this favorable licensing policy.

General Licenses for the Importation of Certain Iranian-Origin Food and Carpets

Additionally, OFAC has announced its intention to add two general licenses to the Iranian Transactions and Sanctions Regulations ("ITSR") that would allow the following:

- The importation into the United States of certain Iranian-origin food and carpets.
- U.S. persons to engage in dealings related to such Iranian-origin food and carpets, provided that the dealings do not involve or relate to goods, technology, or services for exportation, reexportation, sale, or supply, directly or indirectly, to Iran, the Government of Iran, an Iranian financial institution, or any other person whose property is blocked pursuant to the ITSR, subject to limited exceptions.
- U.S. banks to issue letters of credit in favor of a beneficiary in Iran to pay for purchases from Iran of such Iranian-origin food and carpets, provided that such letters of credit are

not advised, negotiated, paid, or confirmed by the Government of Iran, an Iranian financial institution, or any other person whose property is blocked pursuant to the ITSR.

These general licenses will not be effective until published in the Federal Register. A [draft of the Federal Register notice](#) has been published by OFAC.

De-Listing of Sanctioned Parties

Finally, OFAC removed from the SDN List, the Foreign Sanctions Evaders List, and the Non-SDN Iran Sanctions Act List² hundreds of Iranian individuals and entities. This is particularly significant with respect to the removal of SDN List designations because, as noted above, the United States may still impose sanctions against persons that materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of, any activity or transaction on behalf of or for the benefit of an Iranian person on the SDN List. Further, the relief from many of the secondary sanctions described above does not extend to transactions involving SDNs.

Notably, however, even if an individual or entity has been removed from the SDN List, the property and interests in property of that individual or entity in the United States or the possession or control of a U.S. person remain blocked if the individual or entity meets OFAC's definition of the "Government of Iran" or an "Iranian financial institution." (Property of entities owned 50% or more, individually or in the aggregate, by one or more such blocked parties also remains blocked even if such owned entities are not themselves on the SDN List.) U.S. persons continue to be prohibited from engaging in virtually any dealings with such individuals or entities. OFAC has published a non-exhaustive list of persons that meet one or both of the foregoing definitions, known as the [E.O. 13599 List](#).

EU Sanctions Relief

On January 16, the EU published Council Decision No. 2016/37, dramatically easing the EU sanctions against Iran.

The EU had previously enacted legislation to ease its nuclear-related sanctions program against Iran (which is set forth in Council Regulation (EU) 2015/1861, Council Implementing Regulation (EU) 2015/1862, and Council Decision (CFSP) 2015-1863) as agreed under the JCPOA. But the EU held the implementation of those measures in abeyance pending confirmation that Iran had met its IAEA commitments. Council Decision No. 2016/37 puts the EU's earlier measures fully into effect.

The remaining substantive elements of the EU nuclear-related sanctions against Iran will continue, as previously, to be codified in European Council Regulation No. 267/2012 (the "Amended Regulation") and associated Member State laws, but in a substantially revised form.

² The Non-SDN Iran Sanctions Act List is maintained by OFAC and identifies non-U.S. entities that are not on the SDN List, but that are subject to certain financial sanctions in connection with having made certain investments in Iran's energy sector or having engaged in certain activities related to Iran's refined petroleum sector.

Lifted EU Sanctions

The following trade restrictions have now been eased and removed from the Amended Regulation (some of these measures had already been suspended pursuant to earlier EU legislation):

- Notification and authorization (license) requirements on transfers of funds between EU persons and entities, including financial institutions, and Iranian persons and entities, including financial institutions.
- Prohibitions on the export to Iran of items controlled under the EU Dual Use Regulation (EC Regulation No. 428/2009), together with associated technical, financial, and brokering support. Licensing requirements for dual-use exports will continue to remain in place under the Dual Use Regulation, but license requests for those items will no longer be subject to a policy of denial.
- Prohibitions against the provision to Iran of “key oil and gas” equipment, naval equipment, precious metals / diamonds, and associated services.
- Prohibitions against dealings in Iranian-origin crude oil, petroleum products, petrochemical products, and natural gas, and the provision of transportation and storage services to Iranian parties in relation to oil and petrochemical products.
- Financing and investment restrictions focusing on the Iranian energy and nuclear sectors.
- Restrictions on engagements between EU and Iranian credit and financial institutions, and on activities by Iranian financial institutions within the EU.
- Prohibitions against the provision of insurance or reinsurance to Iranian parties.
- Prohibitions against the provision or receipt of public-guaranteed bonds to or from the Iranian Government or Iranian financial institutions.
- Restrictions on the supply of classification and other vessel-related services for Iranian vessels.
- Restrictions on the supply of Iranian banknotes and coinage.

In addition, asset freezing measures have now been lifted in relation to a significant number (but not all) of previously-designated Iranian parties, including the Central Bank of Iran, many of the other major Iranian banks, IRISL, NIOC, and various Iranian oil and gas producers and service providers.

Remaining EU Sanctions

Despite the significant easing of sanctions, the EU will continue to maintain a range of Iran-related sanctions controls. The Amended Regulation imposes, in particular, prohibitions in relation to the following activities:

- Missile Technology Trade Controls: the Amended Regulation prohibits (1) the sale, supply, transfer, or export to Iranian persons, entities, or bodies or “for use in Iran” of items contained in the Missile Technology Control Regime List, as set forth in Annex III to the Amended Regulation; (2) the provision of technical assistance, brokering services, or financing or financial assistance in relation to Annex III items to Iranian parties or “for use in Iran”; (3) entering into any “arrangement” with an Iranian party that would enable

that party to participate in or increase their participation in commercial activities relating to Annex III items; and (4) the purchase, import, or transport from Iran of Annex III items.

- **Military Trade Controls:** The Amended Regulation and associated Member State military trade controls laws impose similar prohibitions with regard to military goods, software, and technology.
- **Associated Vessel Services:** The Amended Regulation also prohibits certain services in relation to vessels or cargo aircraft owned or controlled by Iranian persons, entities, or bodies where there are “reasonable grounds” to determine that the vessel is carrying goods covered by the EU Common Military List or whose export to Iran is prohibited under the Amended Regulation.
- **Asset Freezing Measures:** As noted, the Amended Regulation also continues to impose asset freezing measures against a range of designated Iranian persons and entities (the regulation currently lists 29 individuals and 94 entities). The Amended Regulation retains the prohibition, reflected in earlier versions of the Regulation, against the supply of “specialised financial messaging services” to those designated parties.

In addition, the Amended Regulation imposes prior licensing requirements in relation to the following activities:

- The sale, supply, transfer or export to any Iranian person, entity, or body, or “for use in Iran,” of certain goods, software, and technology, including: (1) items contained in the Nuclear Suppliers Group list, as set forth in Annex I to the Amended Regulation, (2) items that have the capability to contribute to nuclear-related activities, as set forth in Annex II, (3) Enterprise Resource Planning software, designed specifically for use in nuclear and military industries, as set forth in Annex VIIA, and (4) graphite and raw or semi-finished metals, as set forth in Annex VIIB.
- The provision of brokering support, technical assistance, or financing or financial assistance relating to items listed in Annex I, Annex II, Annex VIIA, VIIB.
- The purchase, import, or transport from Iran of Annex I or Annex II items.
- Entering into arrangements with Iranian persons, entities, or bodies that would enable those parties to participate in or increase their participation in uranium mining activities or the production or use of nuclear materials (as listed in Part 1 to the Nuclear Suppliers Group list), or in commercial activities involving technologies listed in Annex II.

The Amended Regulation sets forth a number of criteria that the Member States must assess in considering license requests for the foregoing activities, including to ensure that any activities are “undertaken strictly in accordance with the JCPOA” and that rights to verify end-use and end-use location are established.

The Amended Regulation retains the definition of “Iranian person, entity, or body” in Regulation 267/2012, to cover the Iranian Government, “any natural person in, or resident in, Iran,” any entity “having its registered office in Iran,” and any entity worldwide that is “owned or controlled, directly or indirectly” by any of the foregoing. Accordingly, as with earlier versions of the Iran sanctions, restrictions could apply in relation to dealings with non-Iranian parties, such as if the counter-party is owned or controlled by an Iranian person or entity (or, for the export controls restrictions noted above, if the controlled items or associated services are intended “for use in Iran”).

Finally, separate and apart from the Amended Regulation, the EU continues to maintain a separate set of sanctions against Iran, codified in EC Regulation No. 359/2011 (as amended), which have not been eased or amended as a result of the JCPOA process. Those sanctions, which have been applied by the EU on the basis of concerns over human rights issues rather than Iran's nuclear program, impose asset freezing measures against a small number of Iranian parties (the list currently includes 87 individuals and one entity), together with trade controls restrictions relating to certain paramilitary and electronic surveillance goods, software, and technology.

Next Steps

The historic easing of the U.S. and EU sanctions against Iran represents a major development in Iran's relationship with the United States, the EU, and the broader international community.

However, continued sanctions relief will depend on Iran's continued compliance with its ongoing nuclear-related commitments under the JCPOA. As explained in greater detail in our July 2015 alert on the JCPOA, the sanctions relief described above could be "snapped back" into place if Iran fails to continue to meet its nuclear-related commitments under the agreement. Although there is no reason to believe at this stage that this will occur, it is important to understand that all of the U.S. sanctions relief described above was implemented through executive action, and therefore could be revoked at the sole discretion of President Obama or his successor.

Notably, OFAC has clarified in its frequently asked questions that if sanctions are "snapped back" into place because Iran fails to continue to comply with its nuclear commitments under the JCPOA, then the U.S. government would not grandfather contracts entered into prior to the "snapback." That is, while persons would not be subject to sanctions for permissible activities undertaken while the sanctions were waived, persons engaged in sanctionable conduct following "snapback" pursuant to contracts entered into when sanctions relief was in place could still be exposed to U.S. sanctions. However, OFAC also has stated that the U.S. government would work with companies to "minimize the impact" of the snapback on their legitimate activities undertaken before the snapback occurred.

We will continue to monitor closely developments related to the implementation and interpretation of the sanctions relief described above, and are well-positioned to assist clients in understanding how these developments may affect their business operations and 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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International Trade Controls

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