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CLIENT ALERT

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U.S. Eases Iran Sanctions

by

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On January 16, 2016 (“Implementation Day”), upon confirmation that Iran had implemented the nuclear-related measures, the United States lifted certain nuclear-related secondary sanctions on Iran. Secondary sanctions are those that apply to non-U.S. individuals and companies, even those that otherwise have no involvement with the U.S. Those secondary sanctions restricted specific conduct involving Iran, such as support for Iran’s shipping, shipbuilding, mining, financial, automotive and energy sectors. Most activities of non-U.S. persons relating to those sectors of Iran’s economy are now authorized, as will be explained in more detail below. Certain secondary sanctions, however, remain in place as even non-U.S. persons continue to be prohibited from dealing with Iran’s Islamic Revolutionary Guard Corps (IRGC), its designated agents and affiliates, and the entities/persons which are still included in the Specially Designated Nationals (SDN) List after Implementation Day.

While most of the secondary sanctions have been lifted, the primary sanctions relating to U.S. persons, foreign subsidiaries of U.S. persons and companies and U.S.-origin goods and technology remain in place with a few limited exceptions. This means that, subject to these exceptions, U.S. persons continue to be prohibited from engaging in any transactions or dealings with Iran or its government, including exporting U.S. goods to or transshipping through Iran. However, the primary sanctions that pertained to the foreign subsidiaries of U.S. persons were lifted, so that these foreign entities may now trade with Iran under the General License H (“GL H”) issued by OFAC. And, U.S. persons may also conduct certain limited activities in order to facilitate their foreign subsidiaries to trade with Iran under GL H.

Although the United States is committed to ensuring the Iran Nuclear Deal’s success, it naturally cannot guarantee that the lifted sanctions will not “snap back.” We will continue monitoring the situation and inform our clients immediately in case the sanctions are re-introduced.

This memorandum provides a brief summary of the transactions authorized on Implementation Day.

I. NON-U.S. PERSONS

1. Iran's Energy and Petrochemical Sectors

Non-U.S. persons are now authorized to invest in and support Iran's oil, gas and petrochemical sectors. Specifically, non-U.S. persons may purchase and transport oil, gas and petrochemical products from Iran, as well as export, sell or provide refined petroleum and petrochemical products to Iran. Provision of associated services by non-U.S. persons is also permitted. Notably, non-U.S. persons may now transact with the National Iranian Oil Company (NIOC), the National Iranian Tanker Company (NITC) and Naftiran Intertrade Company (NICO), as it was determined that these companies are no longer agents or affiliates of IRGC.

2. Iran's Shipping and Shipbuilding Sectors and Port Operations

Non-U.S. persons may now sell, supply or transfer to or from Iran significant goods or services used in connection with Iran's shipping and shipbuilding sectors (including port services such as bunkering, inspection, classification and financing). Non-U.S. persons may also enter into transactions with entities that are part of the shipping or shipbuilding sectors of Iran (including Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line and NITC). Transactions with Iranian port operators are also permitted, as long as the port operators are not controlled by a person on the SDN List. So, a non-U.S. person may now transship cargo through Iran and enter into associated transactions with port operators without facing risks of being sanctioned by the U.S. The use of Iran's port of Bandar Abbas is now also authorized because it was determined that its operator is no longer being controlled by Tidewater – a company that remains on the SDN List.

In addition, Non-U.S. persons are now allowed to own and operate a vessel used to transport crude oil, petroleum products, petrochemical products or natural gas to or from Iran, as well as to sell, lease or provide vessels to Iran.

3. Gold and Other Precious Metals

Non-U.S. persons are authorized to sell, supply, export, or transfer, directly or indirectly, to or from Iran, gold and other precious metals. Conducting or facilitating a financial transaction or provision of associated services, including any security, insurance and transportation, is also authorized.

4. Software and Metals

Non-U.S. persons are now allowed to trade with Iran in graphite, raw or semi-finished metals, and provide associated services. This permission is only applicable to non-U.S. origin goods, as the transactions in goods that are subject to U.S. export controls are still prohibited.

5. Automotive Sector

Non-U.S. persons may now sell, supply or transfer goods or services used in connection with Iran's automotive sector as well as provide associated services for these activities. Note that this authorization relates only to transactions in goods that are not subject to U.S. export controls.

6. SDN List

The United States removed over 400 individuals and entities from OFAC's SDN list, the Foreign Sanctions Evaders List (FSE List), and/or the Non-SDN Iran Sanctions Act List. However, both U.S. and non-U.S. persons still may not conduct transactions with individuals and entities who remain or may later be placed on these SDN Lists.

II. U.S. PERSONS AND U.S.– OWNED OR – CONTROLLED FOREIGN ENTITIES

The primary sanctions relating to the U.S. persons and their foreign subsidiaries have been lifted for the following three categories of activity that would otherwise be prohibited under the Iranian Transactions and Sanctions Regulations (ITSR):

1. Commercial Passenger Aviation

Both U.S. persons and, where U.S. parts are involved, non-U.S. persons may now request specific authorization from OFAC to engage in export, re-export, sale, lease or transfer to Iran of commercial passenger aircraft and spare parts and components for such aircraft for exclusively civil aviation end use. The provision of associated services, including warranty, maintenance, repair services and safety related inspections, is also authorized. This permission would not pertain to military aircraft, cargo planes, drones or other types of equipment that can be used for general aviation.

2. General License Authorizing Non-U.S. Entities Owned/Controlled by U.S. persons to Engage in Activities with Iran (GL H)

Foreign Entities Owned or Controlled by a U.S. person

The GL H authorizes the transactions of foreign entities owned or controlled by a U.S. person with Iran, as long as U.S. persons are not directly involved. An entity is "owned or controlled" by a U.S. person if the U.S. person: (1) holds a 50 percent or greater equity interest by vote or value in the entity; (2) holds the majority of seats on the board of directors of the entity; or (3) otherwise controls the actions, policies or personnel decisions of the entity.

While the GL H license authorizes a number of activities by non-U.S. companies that were previously prohibited, its scope is still considerably limited to the extent that the activities may involve U.S.-origin goods or U.S. financial systems. For example, the non-U.S. company may not generally use U.S. financial institutions in these endeavors. It would accordingly be prudent for a U.S.-controlled foreign entity to exercise utmost caution in determining whether a contemplated activity is permitted.

GL H specifically does NOT authorize U.S.-owned or – controlled foreign entities to engage in any transactions involving the direct or indirect exportation or re-exportation of goods, technology or services from the U.S. or any transfer of funds to, from, or through the U.S. financial system. In addition to the continued prohibition of exportation and reexportation of U.S.-origin goods, authorizations under GL H specifically exclude *any* activity prohibited by or requiring a license under the U.S. Export Administration Regulations. This means that absent a license, items on the Commerce Control List not only may not be exported to Iran, but also may not be transshipped through Iran or otherwise dealt in with an Iranian entity.

Further, U.S. persons will continue to be liable for civil penalties if any foreign entity that it owns or controls engages in activity outside of the scope of GL H.

U.S. persons

As noted, GL H provides for a limited sanctions relief for U.S. persons. This relief primarily relates to two types of activities: (a) establishment or alteration of operating policies; and (b) providing access to IT Systems.

a. Establishment or Alteration of Operating Policies

GL H authorizes U.S. persons to engage in “activities related to the establishment or alteration of operating policies and procedures of a United States entity or a U.S.-owned or – controlled foreign entity” to the extent necessary to allow a U.S.-owned or –controlled foreign entity to engage in transactions with Iran that are authorized by GL H.

This authorization is intended to cover the involvement of U.S. board members, senior management and employees of either a U.S. parent company or a U.S.-owned or –controlled foreign entity, where that involvement is needed to alter or establish operating policies and procedures for the purpose of enabling a U.S.-owned or –controlled entity to proceed with transactions authorized under GL H. Previously, those activities were prohibited as unlawful “facilitation”. Additionally, the authorization covers U.S. persons who may be hired as outside legal counsel or consultants to draft, alter, advise or consult on such operating policies.

However, GL H does *not* authorize U.S. person involvement in ongoing actual operations or decision-making of its owned or controlled foreign entity engaging in activities with Iran. In other words, U.S. persons still may not be involved in the Iran-related day-to-day operations of its subsidiaries, including by soliciting, approving, financing, facilitating or guaranteeing any Iran-related transaction.

b. Authorized Business Support Systems

GL H authorizes U.S. parent companies to allow their foreign subsidiaries to access the U.S. parent’s automated and globally integrated computer, accounting, email, telecommunications, or other business support system necessary to process and store documents or information related to transactions authorized by GL H (“Authorized Business Support Systems” or “Systems”). This authority also pertains to systems that are operated for the U.S. parent company on a contract basis by third-party service providers.

The term “automated” for the purpose of the GL H refers to Authorized Business Support Systems that operate passively and without human intervention to facilitate the flow of data between the U.S. parent company and its foreign affiliate. For example, as explained in OFAC’s FAQ, a system that utilizes a U.S.-based server – without any human intervention in the U.S.– to generate a purchase order initiated by a Dubai-based, non-U.S. person employee of a U.S. foreign affiliate would be considered “automated” for the purposes of GL H. However, if the system required the intervention of an individual located in the U.S. to complete a request initiated by a Dubai-based, non-U.S. employee of a foreign affiliate (*e.g.*, if a U.S. person performs data entry or internal processing for the creation of a customer record), that system would not be considered automated for the purposes of GL H, and thus would not be authorized. On the other hand, routine or emergency maintenance by U.S. persons of these systems are authorized because they are considered to be within the scope of GL H as incident and necessary to give effect to transactions authorized by the GL H.

3. Imports of Iranian-Origin Carpets and Foodstuffs

The importation into the U.S. of Iranian-origin carpets and foodstuffs, including pistachios and caviar, is now authorized. Carpets and foodstuffs imported pursuant to the general license will still be subject to all other laws and regulations applicable to goods imported into the U.S., including generally applicable laws and regulations administered by other U.S. departments and agencies, such as the Department of Agriculture Department of Commerce, the Food and Drug Administration, and the Department of Homeland Security.