

ALERTS

International Trade Law Alert - Sanctions On Iran Lifted - But Not For Most U.S. Companies

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In spite of the attention-grabbing headlines, the “Implementation Day” lifting of sanctions against Iran on Jan. 16 does little to reduce the prohibitions that prevent most U.S. companies from transacting business with Iran. In general, restrictions on U.S. transactions will remain status quo, while non-U.S. companies will be the primary beneficiaries of the lifting of sanctions.

Iranian Nuclear Negotiations:

As part of the Joint Comprehensive Plan of Action (JCPOA) on Iran's nuclear program, the U.S. agreed to waive the application of certain extra-territorial sanctions applicable to non-U.S. companies engaged in certain types of activities with Iran, including investment in and support of the petroleum, petrochemical, raw or semi-finished metal, precious metal, shipping, insurance and automotive industries in Iran. These extra-territorial sanctions, also referred to as secondary sanctions, were a source of friction between the U.S. and its allies for some time; several high-profile non-U.S. companies had received severe penalties as a result of those sanctions.

On Jan. 16, the International Atomic Energy Agency (IAEA) confirmed that Iran had fulfilled its obligations under the JCPOA by dismantling Iranian nuclear enrichment programs. Also effective Jan. 16, non-U.S. companies engaged in business with Iran will no longer be subject to U.S. extra-territorial sanctions so long as those transactions do not run afoul of other U.S. restrictions. Moreover, the European Union (EU) has lifted most of its sanctions that had prohibited certain Iranian transactions by EU companies.

What U.S. Companies Need to Know:

For U.S. businesses, sanctions against Iran remain in full force and effect: with few exceptions (e.g., food, medicine, medical supplies, and certain internet equipment and services), the provision of goods, services, funds or technology to Iran by U.S. persons continues to be illegal. Nevertheless, U.S. companies should be aware of the following changes:

1. **Civil Aircraft Industry:** The U.S. will issue licenses, on a case-by-case basis, for U.S. companies to export, reexport, sell, lease, or transfer commercial passenger aircraft and related parts and services to Iran.
2. **Importers of Carpets and Foods:** Imports of Iranian carpets and foods (such as pistachios and caviar) are now permitted under a “General License.”
3. **Foreign subsidiaries of U.S. companies:** For the first time since

RELATED PEOPLE



Linda M. Weinberg

Partner
Washington, D.C.

P 202-408-6902
F 202-289-1330
linda.weinberg@btlaw.com



Karen A. McGee
Of Counsel (Retired)
Washington, D.C.

P 202-408-6932
F 202-289-1330
karen.mcgee@btlaw.com



Tabitha K. Meier
Partner
Indianapolis

P 317-231-7326
F 317-231-7433
tabitha.meier@btlaw.com



Christine J. Sohar Henter
Partner
Washington, D.C.

P 202-408-6915
F 202-289-1330
christine.soharhenter@btlaw.com

RELATED PRACTICE AREAS

2012, foreign companies owned or controlled by U.S. companies are now authorized under new “General License H” to engage in business with Iran without applying for a specific license. In a departure from past practice, the Office of Foreign Assets Control (OFAC) specifically authorized U.S. parent companies to change operating policies and procedures to permit their non-U.S. subsidiaries to engage in business with Iran. This authorization also permits storage and transmission of emails and other documents related to Iranian business by non-US subsidiaries on the U.S. parent company’s automated and globally integrated data systems. However, it should be noted that General License H creates an area of risk for U.S. parent companies due to the following restrictions:

- **Facilitation:** U.S. persons continue to be prohibited from approving, guaranteeing, financing or otherwise facilitating transactions with Iran. This means that foreign subsidiaries engaged in business with Iran generally must be operating independently of their U.S. parent companies. Having U.S. citizens or permanent residents in decision-making capacities within a foreign subsidiary, for example, may result in prohibited facilitation.
- **U.S.-origin goods, services and technology:** The direct or indirect export, reexport, sale or supply of any U.S.-origin goods, services or technology remains prohibited. This prohibition includes reexports of U.S.-origin items from third countries as well as the provision of foreign-made products incorporating more than 10 percent U.S. content.
- **Funds:** Transfers of funds to, from, or through a U.S. financial institution for transactions involving Iran are prohibited.
- **Military, Intelligence or Law Enforcement Entities:** Foreign subsidiaries of U.S. parent companies are not authorized to engage in business with any Iranian military, paramilitary, intelligence or law enforcement entity, or any official, agent or affiliate of such entities.
- **Proliferation or Terrorism-Related Activities:** Foreign subsidiaries cannot engage in transactions involving such activities.
- **Specially Designated Nationals and Blocked Persons:** Foreign subsidiaries cannot enter into transactions with persons on the List of Specially Designated Nationals and Blocked Persons, and persons on the List of Foreign Sanctions Evaders.
- **SEC Reporting:** U.S. parent companies may be required to report to the Securities and Exchange Commission regarding certain Iranian activities by their foreign subsidiaries.

What Non-U.S. Companies Need to Know:

1. **Reexports of US-origin items are still prohibited.** Non-U.S. entities are still prohibited from directly or indirectly exporting or reexporting U.S.-origin products, services or technology to Iran. This ban extends to foreign-made products containing more than 10 percent U.S.-content by value.
2. **Dealing with certain entities in Iran can trigger penalties against non-U.S. entities.** Although 400 Iranian entities (such as certain Iranian banks and shipping lines) were removed from U.S. Government screening lists, non-U.S. companies can still face U.S. penalties for dealings with Iranian persons who remain on such lists, in particular the Iranian Revolutionary Guard Corp.
3. **U.S. subsidiaries and nationals are still subject to comprehensive sanctions.** A non-U.S. parent company cannot involve its U.S. subsidiaries or affiliates, U.S. citizens or nationals, wherever located, or even non-U.S. nationals located in the U.S. (e.g., on visits or temporary assignment in the U.S.) in any business activities related to Iran.
4. **Transfers of funds to, from, or through U.S. financial institutions for transactions with Iran are still prohibited.**

All interested parties should exercise due diligence and establish procedures to ensure compliance with the remaining U.S. sanctions. In addition, companies should keep in mind that the JCPOA contains “snap-back” provisions that would reinstitute previous sanctions in the event that Iran is found to be in non-compliance with its obligations under the JCPOA.

For more information, contact the Barnes & Thornburg attorney with whom you work, or Linda Weinberg at 202-408-6902 or linda.weinberg@btlaw.com; Karen McGee at 202-408-6932 or karen.mcgee@btlaw.com; Tabitha Meier at 317-231-7326 or Tabitha.Meier@btlaw.com; or Christine Sohar Henter at 202-408-6915 or Christine.Sohar-Henter@btlaw.com.

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