

# Sanctions Update

Global

BAKER & MCKENZIE

## Client Alert



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## Focus on Iran

### European Union, Switzerland, and the United States Relax Sanctions Targeting Iran on “Implementation Day”; Canadian Sanctions Under Review

Under the [Joint Comprehensive Plan of Action](#) (“JCPOA”), January 16, 2016 was “Implementation Day.” On that date, the European Union, the Swiss Government, and the US Government relaxed certain sanctions against Iran after the International Atomic Energy Agency (“IAEA”) confirmed that Iran had fulfilled its nuclear-related commitments under the JCPOA. Canada’s sanctions targeting Iran have not been affected.

To the casual observer, the measures adopted on Implementation Day may give the impression that Iran is now “open for business.” While the EU and other European states have dramatically reduced their restrictions on trade with Iran, it is important to note that many important US sanctions targeting Iran remain in force. Before engaging in any new activities involving Iran or Iranian parties, companies should carefully consider the limitations and restrictions on Iran-related dealings that remain in place after Implementation Day.

Below we provide additional information about the changes adopted by the EU, the US Government, and the Swiss Government on Implementation Day. We also provide comments on the current status of Canadian sanctions targeting Iran. Finally, we outline the significant compliance risks that continue to arise from doing business with Iran.

### EU Sanctions Relief

On Implementation Day, the EU took steps to significantly relax its restrictions on doing business with Iran. Below we provide a brief summary of the sanctions relief instituted by the EU on Implementation Day. More detailed guidance can be found in the related [Information Note](#) published by the European Union External Action Service (“EEAS”), which sets out the EU nuclear-related economic and financial sanctions that were lifted on Implementation Day, the new EU legislative framework, and the sanctions that remain in place post-Implementation Day.

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## 1. De-Listing of Designated Parties

The EU has de-listed over 400 blacklisted Iranian people and entities that will now be able to do business with the EU. Certain entities and individuals remain listed under EU sanctions, including a number of banks, namely Ansar Bank, Bank Saderat Iran, Bank Saderat PLC, Bank Sepah, Bank Sepah International, and Mehr Bank.

The removal of restrictions on certain persons, entities, and bodies that were currently subject to asset freezes will also result in the releasing of funds currently frozen in accounts around the globe. Speculation as to the amount of funds that will be released ranges from US\$ 29 billion (as quoted by the Central Bank of Iran (“CBI”)) to US\$ 50 billion (as quoted by the US Treasury) to as high as US\$ 100 billion (as speculated by critics of the JCPOA).

## 2. Relaxation of Product Controls

Prior to Implementation Day, supplying dual-use items, nuclear items, and military items, as well as certain oil, gas, and petrochemicals products, was prohibited. Post-Implementation Day, Regulation 2015/1861 provides, *inter alia*, that:

- the supply to Iran of **missiles goods and technologies** listed in Annex III to [Regulation 2015/1861](#), as well as the provision of technical assistance, brokering or financial assistance related to those goods, remains prohibited (including the provision of technical assistance, brokering or financial assistance related to those goods) (Article 1(5)), and Iran also will continue to be subject to an EU **arms embargo**;
- subject to prior authorization, the sale, supply, transfer, or export of the following, which was prohibited under Council Regulation (EU) 267/2012, is now permitted under Regulation 2015/1861 (Article 1(2)):
  - nuclear “Trigger List” items (though it seems unlikely that permission will be granted for these items),
  - certain dual-use and other items identified in Annexes I and II to [Regulation 2015/1861](#), and
  - technical assistance and brokering related to these items;
- the sale, supply, transfer, or export to Iran of key equipment or technology, including equipment in the oil and gas sectors, which was prohibited under Council Regulation (EU) 267/2012, is now permitted under Regulation 2015/1861 (Article 1(7));
- the import or purchase of crude oil, petrochemicals, and gas, originating in Iran or having been exported from Iran, which was prohibited under Council Regulation (EU) 267/2012, is now permitted by Regulation 2015/1861 (Article 1(9));
- the sale, purchase, supply, transfer, import, or export of gold, precious metals, diamonds, banknotes, and coinage to or from the Government of Iran or any person controlled by it, which

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was prohibited under Council Regulation (EU) 267/2012, is now permitted by Regulation 2015/1861 (Articles 1(9) and (11)); and

- the provision of granting financial loans or credit to Iranian persons involved with oil and gas or petrochemicals which was prohibited under Council Regulation (EU) 267/2012, is now permitted by Regulation 2015/1861 (Article 1(11)).

### 3. Removal of Funds Transfer Controls

Additionally, Regulation 2015/1861 removes fund transfer controls on Iran, including prohibitions on the transfer of funds to or from financial institutions in Iran, the opening of representative offices or bank accounts in Iran, the sale or purchase of public bonds from Iran, and the provision of insurance or reinsurance to Iran and its government (Article 1(15)).

The obligation to make a prior notification or to obtain prior authorization before funds transfers over certain amounts to or from Iran has also been removed. However, while the funds transfer reporting requirements have been removed under EU law, EU banks may not yet feel confident in dealing with funds originating from Iran given the possibility of violating the remaining US sanctions against Iran that are discussed in further detail below. Accordingly, companies will need to assess the payment routes before supplying any goods or services and consider including conditionality language in the contracts such that performance would be subject to them being able to identify a bank that will receive payments from Iran.

### Swiss Sanctions Relief

Although not a party to the JCPOA, the Swiss Government announced on October 21, 2015 that Swiss sanctions against Iran would be lifted at the same time as those of the UN and the EU. To make this possible, the Federal Council overhauled the Ordinance on Measures against the Islamic Republic of Iran. This new ordinance came into force on Implementation Day. Most notably, this ordinance repealed the Swiss Government's funds transfer controls.

The remaining restrictions against Iran are based on the corresponding UN and EU measures. They concern trade and services involving arms, delivery systems, and equipment which may be used for internal repression and surveillance. Trade in nuclear goods and nuclear-related dual-use goods are subject to licensing, and financial and travel restrictions remain in place for a limited number of individuals and firms. Further restrictions concern, in particular, technical services for Iranian cargo aircraft and the fulfilment of certain claims.

### US Sanctions Relief

In contrast to the broader sanctions relief described above, the steps taken by the US Government on Implementation Day to relax sanctions targeting Iran are markedly narrow in scope. This is because the US Government primarily relaxed its nuclear-related secondary sanctions (i.e., sanctions that generally target specified conduct involving Iran that occurs entirely outside of US jurisdiction). These measures have only a limited impact on the Iranian Transactions and Sanctions Regulations, 31 C.F.R. Part 560 ("ITSR"),

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and other restrictions affecting parties who are “US persons” (i.e., US citizens or permanent residents (wherever located or employed), entities organized under the laws of the United States (including foreign branches), and persons located in the United States).

Below we provide a brief summary of the sanctions relief the United States adopted on Implementation Day. More detailed information can be found in the related [Guidance](#) issued by the US Treasury and State Departments and in the [JCPOA FAQs](#) published by the Treasury Department’s Office of Foreign Assets Control (“OFAC”).

### 1. Relaxation of Nuclear-Related Secondary Sanctions

On Implementation Day, the US Government relaxed a number of nuclear-related secondary sanctions by waiving certain statutory sanctions authorities, issuing an [Executive Order](#) revoking several previous orders, and removing certain individuals and entities from the [List of Specially Designated Nationals and Blocked Persons \(“SDN List”\)](#), the [Foreign Sanctions Evaders List \(“FSE List”\)](#), and the [Non-SDN Iran Sanctions Act List \(“NS-ISA List”\)](#). As a result of these measures, non-US persons would generally not be subject to secondary sanctions for engaging in transactions or activities involving the following: (i) Iran’s financial and banking sectors; (ii) the provision of certain insurance, reinsurance, and underwriting services; (iii) Iran’s energy and petrochemical sectors; (iv) Iran’s shipping and shipbuilding sectors and port operators; (v) trade with Iran in gold and other precious metals; (vi) trade with Iran in graphite, raw, or semi-finished metals (including aluminum and steel), coal, and certain software (except with respect to Iran’s military or ballistic missile programs); and (vii) Iran’s automotive sector.

Importantly, this relaxation does not remove all restrictions on non-US persons. For instance, it continues to be sanctionable for non-US persons to knowingly provide 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 any Iranian person on the SDN List. In addition, non-US banks will continue to have potential risks under the Iranian Financial Sanctions Regulations, 31 C.F.R. Part 561, for knowingly facilitating a significant financial transaction or providing significant financial services for Iranian SDNs or any other person on the SDN List designated in connection with the Iranian Revolutionary Guard Corps (“IRGC”), Iran’s proliferation of weapons of mass destruction (“WMDs”), or Iran’s support for international terrorism.

### 2. Removal of Parties from the SDN List, FSE List, and NS-ISA List

The US Government also removed the individuals and entities specified in [Attachment 3 to Annex II of the JCPOA](#) from the SDN List, FSE List, and/or NS-ISA List on Implementation Day. The complete list of individuals and entities removed by the US Government can be found [here](#) and [here](#). As a result of these removals, as of Implementation Day, non-US persons are no longer subject to secondary sanctions for engaging in transactions with these individuals and entities, including the CBI and other Iranian financial institutions, provided that the transactions do not involve SDNs or involve other specified conduct (e.g., supporting terrorism, proliferation of WMDs, etc.).

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Despite their removal from these restricted party lists, individuals and entities meeting the ITSR's definitions of the "Government of Iran" or an "Iranian financial institution" remain persons whose property and interests in property are blocked as to US persons pursuant to Executive Order 13599 and the ITSR. Accordingly, US persons continue to be broadly prohibited from engaging in transactions or dealings with such persons unless the transactions are otherwise exempt or authorized by OFAC. As a means of assisting in compliance with this requirement, OFAC published a new [List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599](#) ("EO 13599 List"). The EO 13599 List is not meant to be exhaustive, and some parties de-listed on Implementation Day that appear to meet the definition of the Government of Iran were not transferred to the EO 13599 List. Regardless of whether they have specifically been identified by OFAC as meeting the definitions of the Government of Iran or an Iranian financial institution, all individuals and entities that meet those definitions remain subject to blocking by US persons.

### **3. Activities by Non-US Persons that are Owned or Controlled by a US Person**

OFAC issued [General License H](#), effective on Implementation Day, which authorizes non-US entities owned or controlled by US persons ("owned/controlled non-US entities") to engage in certain transactions involving Iran that would otherwise be prohibited by the ITSR. Importantly, this general license does not completely remove the US sanctions restrictions that apply to owned/controlled non-US entities. For instance, these entities may not engage in transactions involving individuals or entities on the SDN List or the FSE List or any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran or any agents or affiliates thereof. Moreover, owned/controlled non-US entities remain subject to restrictions on the direct or indirect exportation/reexportation of goods, technology, or services from the United States—including the transfer of funds to, from, or through the US financial system (i.e., most US dollar-denominated transfers). Like US and other non-US persons, owned/controlled non-US entities are also subject to the dual use export controls maintained in the Export Administration Regulations, 15 C.F.R. Parts 730-774 ("EAR"), and to other Executive Orders targeting Iran and its activities in the Middle East (e.g., orders relating to Iran's proliferation of weapon of mass destruction and ballistic missiles, support for international terrorism, and human rights abuses).

General License H also authorizes US persons to engage in certain activities necessary to allow owned/controlled non-US entities to engage in transactions involving Iran that are authorized by the general license. This authorization for US persons extends to establishing or altering corporate policies and procedures and making certain "automated" and "globally integrated" business support systems (i.e., any computer, accounting, e-mail, telecommunications, or other business support system, platform, database, application, or server) available to owned/controlled non-US entities. The OFAC Guidance notes that, with the exception of the authorized activities in General License H, the prohibition on "facilitation" by US persons under the ITSR remains in place. Some aspects of the scope of authorized US-person activity related to the initial establishment or alteration of corporate policies and procedures remain unclear. For instance, the extent to which US persons may be involved in making business (as opposed to compliance) determinations related to

owned/controlled non-US entities starting Iran-related business is unknown, as is the point at which the still-applicable “facilitation” prohibition applies to US persons in this context.

#### **4. Other US Authorizations**

*Statement of Licensing Policy for Activities Related to the Export/Reexport to Iran of Commercial Passenger Aircraft and Related Parts and Services*

OFAC also issued a [Statement of Licensing Policy](#) on Implementation Day that expands the scope of a favorable licensing policy through which US persons, and non-US persons where there is a nexus to US jurisdiction (e.g., US aircraft or parts), may request specific authorization from OFAC to engage in transactions for:

- the export, reexport, sale, lease, or transfer to Iran of commercial passenger aircraft for exclusively civil aviation end-use and of spare parts and components for commercial passenger aircraft; and
- the provision of associated services, including warranty, maintenance and repair services, and safety-related inspections, provided that the licensed items are used exclusively for commercial passenger aviation.

Such transactions may not involve SDNs. In addition, exports/reexports to parties listed on the Department of Commerce’s [Denied Persons List](#) and, in some cases, the [Entity List](#), will require separate authorization from the Department of Commerce. One issue that remains to be clarified is whether OFAC will license the export/reexport to Iran of items that are “controlled” (i.e., not “EAR99”) under the EAR.

*General License Authorizing the Importation into the United States of Iranian-Origin Carpets and Foodstuffs*

Finally, OFAC issued a [final rule](#) in the *Federal Register* on January 21, 2016 authorizing (with certain exceptions) the importation into the United States of Iranian-origin carpets and foodstuffs, including pistachios and caviar. This authorization extends to certain transactions or dealings by US persons in or related to such products, including the processing of letters of credit for payments for these items.

#### **Status of Canadian Sanctions Targeting Iran**

The Government of Canada announced on January 26, 2016 that it would begin to lift some sanctions on Iran. For the time being, however, comprehensive economic sanctions remain in place. Canada imposes sanctions under the Special Economic Measures Act and has also enacted into domestic law the UN Security Council Resolutions on Iran under the United Nations Act.

In his comments announcing that sanctions would be lifted, Foreign Affairs Minister Stéphane Dion indicated that the UN has asked countries to lift sanctions put in place in accordance with the UN Security Council Resolutions on Iran and that Canada would lift its sanctions “in accordance with our allies,” who are keeping sanctions in

place to limit Iran's capability to be involved in nuclear military activities. While the Minister's comments suggest that significant changes will be forthcoming with respect to Canada's relations with Iran, until the government takes further action to amend or repeal the sanctions currently in place, companies should continue ensuring compliance with the Canadian sanctions on Iran.

## **Ongoing Compliance Risks of Doing Business with Iran**

Despite the measures undertaken on Implementation Day, companies continue to face risks when entering into transactions involving Iran or Iranian parties. These risks include the following:

### **1. Continuing Restrictions under the ITSR**

#### Risk

As noted above, the vast majority of restrictions on US Persons, including those provided in the ITSR, remain in effect even after Implementation Day. As such, with limited exceptions, US persons remain broadly prohibited from engaging in transactions or dealings, directly or indirectly, with Iran or the Government of Iran. These prohibitions continue to apply to facilitation by US persons of non-US persons engaging in transactions otherwise targeted by the ITSR (except to the extent authorized in General License H). In addition, non-US persons remain prohibited from knowingly engaging in conduct that seeks to evade US restrictions on transactions or dealings with Iran or that causes the export of goods or services from the United States to Iran. The clearing of US-dollar transactions involving Iran through the US financial system, including foreign branches of US financial institutions, also specifically remains prohibited.

#### Compliance Steps

Companies considering doing business with Iran should carefully analyze whether their activities would involve US persons or activities that are subject to US jurisdiction and determine whether such activities are authorized under US sanctions. US-based or -headquartered companies with owned/controlled non-US entities should first determine which initial policies, procedures, and delegations of authority need to be changed for such non-US entities to engage in Iran-related business and implement such changes systematically. In addition, US companies should confirm whether their service providers (e.g., banks, insurance companies, shippers, suppliers) are willing to engage in Iran-related business.

### **2. Lingering US Secondary Sanctions**

#### Risk

Although many provisions of the US secondary sanctions regime were removed on Implementation Day, several remain in force. As such, US persons and non-US persons could potentially be subject to secondary sanctions for, *inter alia*:

- knowingly facilitating a significant financial transaction or providing significant financial services for Iranian SDNs or any other person on the SDN List designated in connection with

the IRGC, Iran's proliferation of WMDs, or Iran's support for international terrorism;

- materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services in support of, Iranian SDNs, including the IRGC or any of its officials, agents, or affiliates; and
- engaging in trade with Iran in graphite, raw or semi-finished metals (including aluminum and steel), coal, and certain software with respect to Iran's military or ballistic missile programs outside the JCPOA/UN procurement channel established for Iran.

### Compliance Steps

Regardless of whether a US person will be involved in a transaction, companies engaging in activities in Iran should carefully consider whether their actions remain subject to secondary sanctions. Non-US companies should also determine whether their service providers (e.g., banks, insurance companies, shippers, suppliers) are willing to engage in Iran-related business.

### **3. Remaining Limitations on Dealings with Restricted Parties**

#### Risk

The United States and, to a lesser extent, the EU and Switzerland continue to impose sanctions on individuals or entities meeting certain criteria or engaging in certain specified conduct. Such sanctioned activities include, among others, support for terrorism, human rights abuses in Iran or Syria, and WMD proliferation (including ballistic missiles). In fact, on January 17, 2016, the US Treasury Department announced that OFAC had imposed new sanctions on [11 entities and individuals](#) involved in procurement on behalf of Iran's ballistic missile program. In the [press release](#) related to the designations, OFAC emphasized that the US Government intends to continue to impose sanctions against Iranian activities outside of the JCPOA, including those related to Iran's support for terrorism, regional destabilization, human rights abuses, and its ballistic missile program.

#### Compliance Steps

When considering business in Iran, it is important to continue to screen counterparties ([including customers, agents, and distributors](#)), as well as their beneficial owners and directors, against all applicable restricted party lists to ensure that they are not designated.

### **4. Continuing Controls on Military and Dual-Use Exports and Reexports to Iran**

#### Risk

The EU, Switzerland, and the United States continue to maintain arms embargos and other export controls restricting the flow of military and dual-use goods to Iran. Notably, US controls such as those provided in the EAR and the ITSR can apply to shipments of goods, technology, and software to Iran from outside of the United States if the items are subject to US jurisdiction (including, in some cases, if they incorporate certain amounts of US origin content).



### Compliance Steps

Companies exporting or reexporting goods to Iran should determine what, if any, governmental authorizations are required to carry out these transactions. If any of the items were manufactured using US origin content or are otherwise subject to US jurisdiction, US controls must be considered even if the items will not be exported from the United States.

## **5. Ongoing Reporting Requirements for US Issuers**

### Risk

The JCPOA's sanctions relief does not directly alter the disclosure requirements applicable to companies publicly traded in the United States that are already required to file annual or quarterly reports under Section 13(a) of the Securities Exchange Act of 1934, as amended, for certain specifically identified dealings or transactions primarily related to Iran. This disclosure requirement applies to the activities of US and non-US issuers and to activities of their US and non-US affiliates. That said, activities by a US issuers' owned/controlled non-US entities are not subject to disclosure if these activities are within the scope of General License H.

Additionally, the JCPOA does not affect the efforts of the SEC's Office of Global Security Risk to conduct periodic inquiries to issuers to ensure they have made adequate disclosures regarding potential dealings or transactions involving Iran and other "state sponsors of terrorism."

### Compliance Steps

Publicly traded companies should continue to file annual and quarterly reports for dealings or transactions related to Iran as required under Section 13(a) of the Securities Exchange Act of 1934.

## **6. Snapback**

### Risk

As provided under the JCPOA's so-called "snapback" provisions, the EU and the United States have reserved the right to reinstate sanctions against Iran in the event that Iran is found to have violated its obligations under the JCPOA. OFAC noted in its FAQs that the US Government has made a commitment against retroactively imposing sanctions targeting legitimate activities undertaken after Implementation Day. However, if sanctions were to be imposed again under the snapback provisions, contracts entered into before the snapback are unlikely to be "grandfathered."

### Compliance Steps

Companies entering into agreements as part of their dealings with Iran should consider options to mitigate the contractual risks that could arise if sanctions were to "snap back" into place, such as clauses providing the right to terminate the agreement in the event that sanctions are reintroduced.

## Future Steps

Following Implementation Day, the next milestone set out under the JCPOA is Transition Day, which will be 8 years from July 2015, or the date on which the IAEA confirms that Iran's nuclear material remains peaceful. On Transition Day, the EU and the US Government will terminate or modify their remaining nuclear-related sanctions against Iran. Provided that the resolutions and sanctions against Iran are not reinstated, the JCPOA will terminate 10 years from July 2015 on what will be known as Termination Day.

\* \* \*

The foregoing is intended only to provide a general summary of recent developments regarding sanctions targeting Iran. If you have any questions or if you require advice on any specific transactions or plans, please contact one of the members of Baker & McKenzie's International Trade Practice Group.

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Follow Baker & McKenzie's Sanctions Update blog by clicking [here](#). This blog monitors Iran-related developments, as well as developments related to other sanctions programs, and provides commentary from our International Trade team as events unfold.

\* \* \*

*Other Baker & McKenzie Client Alerts issued since 2010 regarding sanctions against Iran:*

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[Outline of EU and U.S. Sanctions Relief for Iran under Joint Comprehensive Plan of Action](#)

[Overview and Significance of the Joint Comprehensive Plan of Action](#)

[The E3/EU+3 and Iran Agree to Extend Negotiations; Limited Sanctions Easing Under Joint Plan of Action Also Extended](#)

[U.S. Government, European Union, and Switzerland Implement Limited Sanctions Easing Under Joint Plan of Action](#)

[EU Proposes Legislation to Ease Sanctions on Iran](#)

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[U.S. Congress Enacts Additional Sanctions Targeting Iran](#)

[OFAC Amends Iranian Transactions and Sanctions Regulations to Implement Executive Orders 13622 and 13628 and New Wind-Down General License](#)

[OFAC Issues Iranian Transactions and Sanctions Regulations](#)

[EU Further Strengthens Sanctions Measures on Iran](#)

[Non-U.S. Subsidiaries of U.S. Companies Now Subject to U.S. Sanctions Targeting Iran](#)

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[Administration Announces New Sanctions Against Iran's Energy Sector and Financial System](#)

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