

U.S. Iran Sanctions: Overview and Update

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Overview of Iran Sanctions

- Primary Sanctions
 - Generally apply to U.S. persons and owned or controlled non-U.S. affiliates of U.S. persons
 - No dealings with the Government of Iran; blocking of its property when in the U.S. or possession/control of U.S. persons
 - No export of goods or services to Iran, including exports by any person of controlled U.S.-origin goods and technologies (certain exceptions, e.g., food and medicine)
 - No new investments in Iran
 - No facilitation of Iran-related activities
- Secondary Sanctions
 - Retaliatory measures against non-U.S. persons for engaging in certain Iran-related activities
 - Expansion possible under Trump Administration

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2

Iran Sanctions after the Nuclear Deal

- In mid-January 2016, the International Atomic Energy Agency verified that Iran had met its nuclear-related commitments under the Joint Comprehensive Plan of Action (“JCPOA”).
- U.S. and EU implemented sanctions relief.
- EU sanctions significantly eased, but not eliminated:
 - Military and missile technology trade controls remain.
 - Assets of several hundred Iranian parties remain frozen.
 - Some licensing requirements remain.
- In the United States:
 - Primary U.S. sanctions largely remain in place.
 - Secondary U.S. sanctions significantly eased, but not eliminated (e.g., dealings with SDNs).

JCPOA: Primary Sanctions Relief

Three aspects of primary sanctions were eased:

Non-U.S. subs	New General License H authorizes: <ul style="list-style-type: none">● Non-U.S. entities owned or controlled by U.S. persons to engage in Iran-related dealings, subject to certain conditions; and● Limited facilitation by U.S. persons.
Aviation	Statement of favorable licensing policy for commercial passenger aircraft, spare parts/components, and associated services.
Imports	General licenses to authorize importation into U.S. of certain Iranian-origin food and carpets, and certain related dealings.

Potential for Snapback of U.S. Sanctions Against Iran

- OFAC authorization/waiver of secondary sanctions applies only to activities conducted during the period of sanctions relief.
- If sanctions “snap back” because Iran did not adhere to the JCPOA, or U.S. exits JCPOA, sanctions-relief-era contracts would not be grandfathered.
- OFAC has provided general assurances that the U.S. will seek to minimize the effects of a potential snapback (e.g., by providing a 180-day wind-down period for activities in reliance on JCPOA).

Iran: The Trump Administration

- Following 90-day review of Iran sanctions policy, on Oct. 13, President Trump announced he would stop certifying to Congress that suspension of US sanctions under JCPOA is “appropriate and proportionate” to Iran’s steps to terminate its nuclear program.
- This does not mean the US is withdrawing from JCPOA, nor does it re-impose any sanctions. Rather, it gives Congress 60 days to introduce legislation to re-impose sanctions that could be considered under expedited procedures.
- Although President Trump did not call on Congress to re-impose the pre-JCPOA nuclear-related sanctions, he threatened to terminate U.S. participation in JCPOA if Congress and U.S. allies do not address perceived flaws.
- Prospects for Congressional action are uncertain: Corker-Cotton legislation anticipated.
- President Trump will have to decide by mid-January 2018 whether to continue much of the Iran sanctions relief under the JCPOA.

Appendix

Additional Information

Activities Still Subject to US Direct Sanctions on Iran Include:

Goods

- Dealing in certain controlled US-origin or US-content goods
- Sourcing any goods or content from the United States primarily or predominantly for use in a sanctioned country

Banking

- Transacting in US dollars unless cleared outside of US banking system
- Using US-incorporated banks, including their foreign branches
- Providing US financial guarantee for sanctioned country contract

Approvals

- US person approving a transaction
- US person approving new staffing for sanctioned market

Processing

- Using US data system to process orders or access technical information
- Processing payments through the United States

Support

- US person providing technical support, troubleshooting, or customer service in support of sanctioned country business
- US person arranging insurance or transportation for sanctioned country transaction

Advice

- US person advising how to structure transaction or execute business
- US attorney drafting commercial clause for contract with sanctioned country

Referrals

- US person referring sanctioned country business to non-U.S. entity
- US entity finding alternate supplier for non-U.S. entity with sanctioned country contract

Policies

- US person participating in decisions to change policies or make exceptions to policies to allow sanctioned country business

Examples of Facilitation

Approvals

- U.S. person approving transaction.
- U.S. person approving new staffing for sanctioned market.

Processing

- Using U.S. data system to process orders.
- Processing payments through the United States (“U-turns,” except as authorized for Cuba).

Support

- Providing U.S. financial guarantee for sanctioned-country contract.
- Arranging insurance or transportation for sanctioned-country transaction.

Advice

- U.S. person advising how to structure transaction.
- U.S. attorney drafting commercial clause for contract with sanctioned country.

Referrals

- U.S. person referring sanctioned-country business to non-U.S. entity.
- U.S. entity finding alternate supplier for non-U.S. entity with sanctioned-country contract.

Policy

- U.S. parent changing policy so non-U.S. subsidiary can pursue business that U.S. person can't perform.
- U.S. person allowing policy exception for non-U.S. subsidiary to perform contract that would otherwise be prohibited by the policy.

Implementation Day: Remaining Secondary Sanctions

- Secondary sanctions continue to apply to non-U.S. persons that:
 - Knowingly provide significant support for an activity or transaction for the benefit of an Iranian party on OFAC's SDN List.
 - Sell, supply, or transfer to or from Iran significant goods or services used in connection with the energy, shipping, or shipbuilding sectors if the transactions involve an SDN.
 - Provide material support for the Islamic Revolutionary Guard Corps (“IRGC”) or its designated officials, agents, or affiliates or parties acting on their behalf.
 - Sell, supply, or transfer to or from Iran certain metals and software if the transaction involves an SDN or military or ballistic missile end use.
 - Provide goods or technology likely to be used to commit serious human rights abuses.

Iran: General License H

- General License H authorizes non-U.S. entities owned or controlled by a U.S. person to engage in dealings in or involving Iran.
- Authorization is subject to multiple restrictions:
 - No export or supply of items from the U.S. or by U.S. persons specifically or predominantly for Iran.
 - No reexport of items supplied or sourced from the U.S. (or a U.S. person) specifically or predominantly for Iran.
 - No export/reexport of items that require a U.S. export license for Iran, such as dual-use and defense trade items.
 - No transfer of funds to, from, or through U.S. banks (prohibits most U.S. dollar transfers).
 - No involvement of persons/entities on OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List"), entities 50% or more owned by one or more SDNs, Foreign Sanctions Evaders, or parties on the Entity List maintained by the Commerce Department's Bureau of Industry and Security ("BIS").

Iran: General License H

- Authorization is subject to multiple restrictions (continued):
 - No involvement of any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any officials, agents, or affiliates of the foregoing.
 - No sanctionable activities relating to support for weapons proliferation, terrorism, the commission of human rights abuses or censorship in Iran or Syria, the Government of Syria, or destabilizing activities in Yemen.
 - No nuclear activities inconsistent with the JCPOA's "procurement channel" process.

Iran: General License H

- General License H authorizes U.S. persons to facilitate the permissible Iran-related dealings of *owned or controlled non-U.S. subsidiaries*:
 - Initial determination as to whether subsidiary will engage in Iran-related dealings.
 - Establishment or alteration of operating policies and procedures of a U.S. entity or an owned or controlled non-U.S. subsidiary, to the extent necessary to allow the non-U.S. subsidiary to engage in permissible Iran-related dealings.
 - U.S. parent may make available to their non-U.S. subsidiaries automated and globally integrated business support systems.
- Other than these exceptions, U.S. persons may not facilitate the Iran-related activities of non-U.S. subsidiaries.

In practice, under General License H, non-U.S. subsidiaries must be able to operate independently of U.S. parent companies, U.S. employees, and U.S. banks.

Questions?

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