

U.S. Economic Sanctions

Iran Update – March 2017

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Iran



Iran – Key Things to Know about Sanctions Programs

- Recent changes in US and EU sanctions programs are not simple
- US companies and US persons are prohibited from engaging in trade with Iran
- Non-US subsidiaries of US companies can sell to Iran under General License H but have a lot of conditions to meet to do so
- US products may not be sold into Iran, directly or indirectly (through distributors or resellers); transshipment is a risk that operating companies must address for all customers in the region (UAE, Iraq, etc.)
- Many parties are still on the SDN lists and sales to a SDN = risk of secondary sanctions & SEC reporting for companies traded on US exchanges
- Beware of “Snapback”!
- Banks – even EU banks – may be reluctant to clear legal Iranian sales

Sanctions Overview - **Iran**



PRIMARY

- Sanctions imposed on U.S. persons and corporations (including subsidiaries), US origin products and those in the US, and non-US products that contain 10% or more US controlled content or are based on certain US technology



SECONDARY

- Sanctions that can be imposed on non-US companies who transact certain forms of business with Iran



SECONDARY

- **FINANCIAL:** Sanctions on foreign financial institutions that support certain business with Iran – sanctions consistent of denying access to US market – no correspondent accounts or payable-through accounts for sanctioned foreign institutions



SEC Regulations – Iran Reporting

- Issuers required to disclose certain transactions by their affiliates with Iran to the SEC (even activities of non-US based affiliates)
- NOT ALL transactions with Iran need to be reported – those made under a general or specific license need not be reported
- But sales to SDNs do not qualify for general license -- figuring out whether the customer is an SDN is itself a painful experience
- Assume sales to a SDN = senior management focus on your business, legal fees, embarrassment, press coverage
- Voluntary disclosures to US government



What Did the Joint Plan of Action Do for U.S. Sanctions on Iran?

- Primary sanctions remain for U.S. Persons and persons physically in the United States
- Removal of secondary sanctions against non-U.S. persons related to several industries
- Only three kinds of US transactions are licensed:
 - Exports of commercial passenger aircraft, spare parts and components and associated services – via Specific License;
 - Imports of Iranian origin carpets and foodstuffs including pistachios and caviar – via General License; and
 - “License non-U.S. entities” that are owned or controlled by a U.S. person to engage in activities with Iran that are consistent with this JCPOA” = **General License H**

OFAC's General License H – for non US located subsidiaries only

- GL H authorizes an entity owned or controlled by a U.S. person and established or maintained outside the United States to engage in most transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would otherwise be prohibited by the Iranian Transactions and Sanctions Regulations (ITSR).
- For most subsidiaries of U.S. companies, this will require a change in U.S. parent company's corporate policies and changes in reporting and approvals





General License H - Still Prohibited:

- ▶ The direct or indirect export/report of goods, technology, or services from the United States without separate authorization from OFAC;
- ▶ Transferring funds to, from, or through the U.S. financial system – **US \$ transactions;**
- ▶ Transacting with SDNs, parties on the Foreign Sanctions Evaders List, or any activity that would be prohibited by non-Iran sanctions administered by OFAC if engaged in by a U.S. person or in the United States;
- ▶ Any activity prohibited by, or requiring a license under the EAR or with a person on the Denied Persons or Entity List (unless authorized by BIS);
- ▶ Transacting with any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate thereof;
- ▶ Any activity that is sanctionable under EOs 12938, 13382, 13224, 13572, 13582, 13611, 13553 13606, and EO 13628 Sections 2 and 3; or
- ▶ Any nuclear activity that is subject to the procurement channel established in [U.N. Security Council Resolution 2231](#), ¶16, and the JCPOA and that has not been approved through the procurement channel process.

Policy at U.S. Parent Can Be Changed to allow non-US Subs to transact business under GL H

- GL H authorizes US parent companies to establish or alter existing policies to enable foreign subsidiaries to do business with Iran that is consistent with GL H
- US Parent company personnel can also train, advise and counsel personnel in the company about the new policies
- But then the US Parent has to back away and US persons may not “facilitate” transactions with Iran





Caution....

- Even if / when non-US subs are permitted to have sales to Iran, such transactions **CANNOT** involve:

U.S.-origin products (except EAR99 in general inventory and **BEWARE!!!**)

Reexports of items containing 10% or more U.S. export-controlled content if undertaken with knowledge or reason to know that it is specifically for Iran or the Government of Iran

U.S. person approving or “facilitating” sales

Extra Caution: The “general inventory” rule is complex and companies should seek guidance before relying on that rule to make sales that are likely to end up in Iran!

“Snap Back” and Possible Changes in General License H



- U.S. reserves the right to “snap back” to the pre-January 15, 2016 sanctions status (General License goes away) where the U.S. government determines the Iranian government is not meeting the Joint Agreement requirements, or for any other aggressive acts or terrorism activities.
- While U.S. has recently announced it would permit 180 day period to wind-down transactions, no assurances that the Trump administration will follow that policy.
 - In the 180 days, only collecting funds for products already shipped, or repayment for debts and obligations and winding down operations.
 - NO new shipments.
- Generally, NO prior warning, and no “grandfathering” would to allow companies to complete transactions that are in flight in usual “snap back” in most programs

What About US Sanctions on Iran for non-US persons?

- Threat of secondary sanctions remains for non-US persons who perform:
 - Any activities if they involve persons or entities remaining on the SDN List or the Islamic Revolutionary Guard Corps;
 - Facilitating the efforts of Iran to acquire or develop weapons of mass destruction, supporting terrorist organizations, and engaging in money laundering or facilitating such efforts by an Iranian financial institution;
 - Transfers of raw and semi-finished metals not approved by the procurement channel established by JCPOA and United Nations Security Council Resolution (UNSCR) 2231, ¶16;
 - Diversion of goods, including agricultural commodities, food, medicine, and medical devices, intended for the people of Iran, or the misappropriation of proceeds from the sale or resale of such goods;

What About US Sanctions on Iran for non-US persons?

- Threat of secondary sanctions remains for non-US persons who:
 - 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 or interests in property are blocked in connection with Iran's proliferation of WMD or their means of delivery, or Iran's support for international terrorism; and
 - Perform any conduct 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.
- **Additionally, no US banks and no US dollar transactions!!!!**



What About US EXPORT CONTROLS for non-US persons?

- NO CHANGE – THEY ARE STILL IN PLACE
- Non-US persons are prohibited from:
 - Exporting, reexporting, selling or supplying, directly or indirectly, from the US of any goods, software, technology, or services if the items are destined for Iran or the Government of Iran at the time they leave the US;
 - Reexporting to Iran US-origin goods, software, or technology, or services that require a license for reexport to Iran if undertaken with knowledge or reason to know that the reexportation is specifically for Iran or the Government of Iran; and
 - Reexporting goods, software or technology containing 10 percent or more US export-controlled content or are otherwise subject to US export controls that require a license for reexport to Iran, if undertaken with knowledge or reason to know that the reexportation is specifically for Iran or the Government of Iran.

BOTTOM LINE

- Non US companies, particularly those with US subsidiaries, have the same issues with US persons as US HQ companies
 - WATCH OUT FOR US PERSON FACILITATION
 - WATCH OUT FOR US PRODUCTS, EVEN INSIDE YOUR NON-US PRODUCTS
 - *DE MINIMIS* does not protect you against US origin spare parts issues, and US origin software update issues
- And recent cases show non-US companies – even those not US owned and controlled – can have substantial risks when it comes to Iran

A Cautionary Tale - Schlumberger - March 2015

Schlumberger Oilfield Holdings Ltd. **pleads guilty and agrees to a pay \$232.7 million criminal penalty for willfully facilitating** illegal transactions and trade with Iran and Sudan in violation of IEEPA

Parent company – Schlumberger Ltd. also agrees to:

- Continue cessation of all operations in Iran & Sudan
- Three years probation
- Submit compliance reports to DOJ
- Respond to requests for information and materials re: compliance
- Hire an independent consultant



Lessons Learned – Schlumberger

Schlumberger



- Drilling & Measurement was a business segment headquartered in Sugar Land, Texas, covering the world
 - Texas had to approve CAPEX expenses for world
 - CAPEX expenses included those in “Northern Gulf” (aka Iran) & “South Egypt” (aka Sudan)
- Assume that if things go bad, documents, emails and conversations will become part of the investigation by the U.S. government
 - *“This order is absolutely essential for the future strategy in the “Northern Gulf.” You have approved other [requests for similar tools]. Please approve this one too.”*
 - *“Please give these additional [requests] your approval. This is important for the operations in “Southern Egypt.” I have purposely not sent additional files as they refer to “Southern Egypt” by name.”*

ZTE and U.S. Iran Sanctions – the latest fines and penalties

ZTE to Pay \$892 Million to U.S., Plead Guilty in Iran Sanctions Probe

Settlement resolves five-year probe that raised trade tension between U.S., China



- ZTE, a major Chinese mobile telephone and mobile communications equipment provider pled guilty in a joint investigation and prosecution by the U.S. Department of Justice, Department of Commerce (BIS) and Department of Treasury (OFAC)
 - \$287 million criminal fines
 - \$143 million forfeiture
 - \$661 million BIS fine (\$300 million suspended provided no further violations in next 7 years)
 - \$101 million OFAC fines
 - Independent corporate monitor
- Shipped U.S. Origin products to Iran through a series of intermediaries, in violation of U.S. export laws
- ZTE structured transactions to hide ZTE’s connections to exports of U.S. goods
- Misrepresentations to forensic accounting firms, outside counsel
- Agreed to Special Compliance Officer for 3 years and 6 annual audits

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Questions?

