

Sanctions Relief Under the P5+1 Agreement With Iran: Implications for US, EU and International Business

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On July 14, 2015, the P5+1 (the United States, the United Kingdom, France, China, Russia and Germany) along with the European Union reached a historic agreement with Iran, called the Joint Comprehensive Plan of Action (the Agreement), with respect to Iran's nuclear program. In exchange for technical steps taken by Iran, the Agreement provides Iran with phased relief from United Nations, U.S. and EU nuclear-related sanctions.

Many of the U.N., U.S. and EU measures, including most financial and trade sanctions, that have been put in place over the past five years are to be lifted under the Agreement. However, not all U.S. or EU sanctions on Iran will be removed. Sanctions imposed on non-nuclear grounds, such as terrorism or human rights, generally are not affected. Although the Agreement does terminate U.N. sanctions on Iran, it does not address autonomous sanctions imposed on Iran by countries other than the U.S. and EU member states. Such countries, including Australia, Canada, Japan, Norway and Switzerland, can be expected to implement complementary sanctions relief under their respective domestic authorities.

The vast majority of U.S. sanctions relief provided under the Agreement affects only "secondary sanctions," a set of measures that target non-U.S. financial institutions and other non-U.S. entities and individuals engaged in certain activities involving Iran. The U.S. embargo on Iran remains very much in place, with only limited openings created by the Agreement for U.S. persons. The Agreement does contemplate modifications to restrictions applicable to non-U.S. subsidiaries of U.S. companies, but the scope of what will be allowed, and the terms under which it will be allowed, remains subject to clarifying guidance from the U.S. government. Unlike the U.S. relief, the EU lifting of nuclear-related sanctions will allow EU individuals and entities to participate in relevant activities once the relief becomes effective, although EU companies will need to be mindful of remaining EU and U.S. sanctions.

A myriad of risks will continue to be present for financial institutions, energy companies and others in the U.S., Europe, Asia and elsewhere seeking to enter the Iranian market once sanctions are lifted. Dealings with Iranian persons who remain on the Office of Foreign Assets Control's (OFAC) List of Specially Designated Nationals and Blocked Persons (SDN List) will continue to carry sanctions consequences for U.S. persons and non-U.S. persons, and transactions with those that remain listed in the respective Annexes to the EU Regulations will remain prohibited for EU persons. There also is the inherent risk that the P5+1 and Iran will face challenges in implementing the Agreement, which could slow sanctions relief, or that the deal could collapse with sanctions re-imposed. In addition to the risk of re-imposition of U.S. and EU sanctions, any member of the P5+1 will have the ability to snap back U.N. sanctions in response to matters it deems to constitute significant nonperformance of the Agreement by Iran. To ensure compliance, it will be important to closely monitor the specific contours of the relief and to be cautious to observe the progress of the relief as it is phased in.

Phasing of Sanctions Relief

1. When does sanctions relief begin?

Sanctions relief will begin on "Implementation Day," when the International Atomic Energy Agency (IAEA) verifies that Iran has taken specific technical nuclear-related steps set out in the Agreement. The exact timing for much of the sanctions relief remains uncertain, as it is dependent not on a specific date on the calendar but upon the speed with which Iran completes the required nuclear-related steps and the IAEA provides verification.

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The Agreement envisions a period of at least several months prior to the commencement of sanctions relief on Implementation Day. In April 2015, U.S. Secretary of State John Kerry estimated it would likely take “six months to a year or so” for Iran to complete the technical steps required before the start of relief.

2. Has anything changed today? What is the status of sanctions on Iran prior to Implementation Day?

Nothing has changed yet. All U.N., U.S. and EU sanctions that were in place the day before the announcement of the Agreement remain in place, and no new sanctions relief is contemplated by the Agreement prior to Implementation Day.

In conjunction with the Agreement, the P5+1 and Iran decided to further extend the sanctions relief provided for in the Joint Plan of Action (JPOA), agreed on November 24, 2013. OFAC has issued guidance clarifying that the only Iran-related sanctions relief currently in effect remains the limited relief provided under the JPOA. OFAC also authorized the extension of all specific licenses that were issued pursuant to OFAC’s “Second Amended Statement of Licensing Policy on Activities Related to the Safety of Iran’s Civil Aviation Industry” until Implementation Day.

3. What steps will occur on Implementation Day?

The overwhelming majority of U.N., U.S. and EU sanctions relief provided under the Agreement will become effective on Implementation Day, with the exception of a limited set of nuclear proliferation-related measures and certain sanctions on arms.

On Implementation Day, in accordance U.N. Security Council Resolution 2231, adopted July 20, 2015, which endorses the Agreement, seven U.N. Security Council resolutions and the sanctions provisions included therein, will be terminated, subject to re-imposition in the event of significant nonperformance by Iran of its commitments under the Agreement. The U.S. will carry out its relief by terminating select executive orders issued by the president, waiving specific statutory provisions and issuing certain licenses. The EU and its member states will adopt an EU regulation that takes effect on Implementation Day. This EU regulation will modify Council Regulation EU 267/2012, terminating most of the provisions implementing nuclear-related economic and financial EU sanctions on Iran. The EU member states are then to individually terminate or amend relevant national implementing legislation.

4. What specific U.S. sanctions relief will occur on Implementation Day? What sectors are affected?

The focus of U.S. sanctions relief under the Agreement is on certain categories of secondary sanctions applicable to non-U.S. individuals and entities. With a few limited modifications, the U.S. embargo on Iran will remain.

On Implementation Day, the U.S. government will permit, via license, the following categories of U.S.-Iranian trade: the sale of commercial passenger aircraft and related parts and services to Iran, and the importation into the United States of Iranian-origin carpets and foodstuffs.

The U.S. secondary sanctions to be lifted on Implementation Day make sanctionable the activities outlined below. Once the relief goes into effect, “associated services” related to the conduct of these transactions also will be permitted. It is important to note, however, that certain aspects of the relief — for example, with respect to the provision of insurance and reinsurance — only apply to the extent the underlying activities are consistent with relief set out in the Agreement. This means that, among other things, the relief does not apply to transactions with Iranian persons who remain on the SDN List and with whom dealings by non-U.S. individuals and entities can create exposure to U.S. secondary sanctions.

Banking, Financial and Insurance

- transactions with specific individuals and entities, including the Central Bank of Iran (CBI), most Iranian financial institutions and certain other important Iranian commercial actors;
- transactions in the Iranian rial;
- the provision of U.S. banknotes to the government of Iran;
- bilateral trade limitations on Iranian revenues held abroad;
- the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt;
- the provision of financial messaging services to the CBI and many Iranian financial institutions;
- underwriting services, insurance, and reinsurance;

Energy

- efforts to reduce Iran’s crude oil sales;
- investment, including participation in joint ventures, goods, services, information, technology and technical expertise, and support for Iran’s oil, gas and petrochemical sectors;
- the purchase, acquisition, sale, transportation or marketing of petroleum, petroleum products and natural gas from Iran;
- the export, sale or provision of refined petroleum products and petrochemical products to Iran;
- transactions with Iran’s energy sectors;

Shipping, Shipbuilding and Ports

- transactions with Iran’s shipping and shipbuilding sectors and port operators;

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Automotive

- the sale, supply or transfer of goods and services used in connection with Iran's automotive sector;

Precious and Other Metals

- trade with Iran in gold and other precious metals;
- trade with Iran in graphite, raw or semifinished metals, such as aluminum and steel, coal and software for integrating industrial processes;

Software

- trade with Iran in software for integrating industrial processes; and

Delistings

- the removal of specified individuals and entities from the SDN List and certain other lists maintained by OFAC.

5. What specific EU sanctions relief will occur on Implementation Day? What sectors are affected?

The EU sanctions to be lifted on Implementation Day prohibit the activities below. As with U.S. sanctions relief, once the EU sanctions relief becomes effective, "associated services" related to the conduct of the relevant transactions outlined also will be permitted. Also similar to the U.S. relief, certain aspects of the relief only apply to the extent the underlying activities are consistent with relief set out in the Agreement. For example, relief would not apply to transactions with Iranian persons who remain listed under the EU sanctions regime.

Banking, Financial and Insurance

- transfers of funds between EU persons, including EU financial institutions, and Iranian persons, including Iranian financial institutions, without the requirement for authorization or notification;
- the establishment of new correspondent banking relationships with Iranian banks;
- the opening of new branches and subsidiaries of Iranian banks in EU member states;
- the opening of EU financial and credit institution representative offices, subsidiaries, joint ventures or bank accounts in Iran;
- the provision of insurance or reinsurance;
- the provision of financial support, including export credits, guarantees or insurance, for trade with Iran;
- commitments for grants, financial assistance and concessional loans to the government of Iran;

- the sale or purchase of public or public-guaranteed bonds to and from Iran;

Energy

- the import, purchase, swap or transport of Iranian crude oil and petroleum products, natural gas or petrochemicals;
- the sale, supply, transfer or export to Iran of equipment or technology used in the oil, gas and petrochemical industries;
- the granting of a financial loan or credit to any Iranian person engaged in this sector;
- the acquisition or extension of a participation and the creation of joint ventures in this sector;

Shipping, Shipbuilding and Transport

- the sale, supply, transfer or export of naval equipment and technology for ship building, maintenance or refit;
- the design and construction of cargo vessels and oil tankers;
- the provision of flagging and classification services;
- access for Iranian cargo flights to the airports under the jurisdiction of EU member states;
- the provision of bunkering or ship supply services, or other servicing of vessels;
- the provision of fuel, engineering and maintenance services to Iranian cargo aircraft not carrying prohibited items;

Precious and Other Metals

- the sale, supply, purchase, export, transfer or transport of gold and precious metals as well as diamonds, and provision of related brokering, financing and security services;
- the sale, supply, transfer or export of graphite and raw or semifinished metals;

Banknotes and Coinage

- the delivery of newly printed, minted or unissued Iranian denominated banknotes and coinage;

Software

- the sale, supply, transfer or export of software for integrating industrial processes.

Delistings

- the release of all funds and economic resources which belong to, and making available funds or economic resources to, delisted persons, entities and bodies; and
- the possibility of entry into or transit through the territories of EU member states of delisted individuals.

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6. What sanctions relief will be provided at the second phase of sanctions relief?

If Iran fulfills its obligations under the Agreement, another phase of relief will be provided on “Transition Day.” Transition Day occurs eight years after “Adoption Day” (up to 90 days after the July 20, 2015, endorsement of the Agreement by the U.N. Security Council), or upon confirmation by the IAEA and the U.N. Security Council that Iran has reached “the Broader Conclusion that all nuclear material in Iran remains in peaceful activities,” whichever happens first. Adoption Day is the date on which the parties to the Agreement begin taking certain preparatory steps for Implementation Day.

From the perspective of U.S. sanctions, only a modest amount of additional sanctions relief will be provided on Transition Day: Additional individuals and entities are to be removed from the SDN List and other OFAC lists, and certain nuclear-proliferation related measures are to be terminated. Those proliferation-related measures include:

- sanctions under the Iran, North Korea and Syria Nonproliferation Act on the acquisition of nuclear-related commodities and services for nuclear activities contemplated in the Agreement;
- sanctions on joint ventures relating to the mining, production or transportation of uranium; and
- the exclusion of Iranian citizens from higher education coursework related to careers in nuclear science, nuclear engineering or the energy sector.

Transition Day also serves as the point at which the U.S. Congress will be asked to formally terminate or modify the statutory sanctions that had been waived during the first phase of relief.

Similar to U.S. sanctions relief, limited additional EU sanctions relief will be provided on Transition Day. At this stage, the EU’s sanctions on the provision of specialized financial messaging services, certain precious and other metals, banknotes and coinage, software and proliferation-related and ballistic missile restrictions will be lifted. Additional EU-listed individuals and entities are to be removed from the asset freeze and, in the case of individuals, from the visa ban list.

In accordance with U.N. Security Council Resolution 2231, certain remaining U.N. restrictions, including with respect to ballistic missiles and specific asset freezes, will be lifted on Transition Day. Conventional arms restrictions imposed by Resolution 2231 are scheduled to be lifted five years after Adoption Day or upon the Broader Conclusion determination, whichever is earlier.

7. Are there any further phases affecting sanctions relief?

Ten years after Adoption Day, provided that previous U.N. sanctions have not been snapped back, the remaining restrictive measures imposed by U.N. Security Council Resolution 2231, adopted to endorse the Agreement, will be terminated. At that point, there would be no more U.N. Security Council resolutions addressing the Iran nuclear issue, and the U.N. Security Council “would no longer be seized of” the matter.

There are no further U.S. sanctions-related steps at this stage, and the European Union will terminate all remaining provisions of Council Regulation (EU) No 267/2012 and Council Decision 2010/413/CFSP.

What the Joint Comprehensive Plan of Action Means for U.S. Companies

1. How does the Agreement affect U.S. businesses?

The decades-old U.S. embargo on Iran remains very much intact, and the situation for U.S. companies vis-à-vis Iran largely will be the same after Implementation Day as it was before the Agreement was reached. The Agreement creates limited openings for U.S. business in the following areas: commercial passenger aircraft and Iranian foodstuffs. To give effect to these elements of relief, the U.S. government will issue licenses, although the activities may not involve any person on the SDN List.

2. What are the implications for the U.S. aircraft industry?

Under the Agreement, the U.S. has agreed to allow for the sale to Iran of commercial passenger aircraft and related parts and services by licensing three categories of activities: (1) the export, re-export, sale, lease or transfer to Iran of commercial passenger aircraft for exclusively civil aviation use, (2) the export, re-export, sale, lease or transfer to Iran of spare parts and components for commercial passenger aircraft, and (3) the provision of associated services, including warranty, maintenance, and repair services and safety-related inspections for the foregoing.

OFAC will have the option of authorizing these activities via general (broad-based) or specific (case-by-case) license. In the context of the interim JPOA, the U.S. agreed to license the supply and installation in Iran of spare parts for safety of flight for Iranian civilian aircraft, as well as safety-related inspections and repairs in Iran. In implementing that piece of the JPOA, OFAC adopted a favorable licensing policy and issued specific licenses, opting to authorize transactions on a case-by-case basis.

Any U.S. companies that explore opportunities for sales of aircraft or spare parts to Iran when the relief takes effect will need to take steps to ensure that licensed aircraft, goods and services are not provided to persons on the SDN List, and that

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they are intended for civil aviation use. Even in the commercial airline arena, there is the potential for complications as certain Iranian airlines will remain on the SDN List. For example, while Iran's national carrier, Iran Air, is scheduled to be removed from the SDN List on Implementation Day, another designated commercial passenger airline, Mahan Air, is not. OFAC can be expected to actively monitor this activity.

3. What are the implications for U.S. importers?

When sanctions relief takes effect, subject to OFAC licensing, U.S. persons will be permitted to import into the United States Iranian-origin carpets and foodstuffs, including pistachios and caviar. Imports of Iranian-origin carpets and foodstuffs were permitted by general license until September 29, 2010, when, as part of the implementation of the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA) of 2010, OFAC revoked the general license. OFAC has not yet stated whether it will authorize these imports via general or specific license.

4. What are the implications for U.S. financial institutions?

Little changes for U.S. financial institutions as a result of the Agreement. Two aspects that will remain the same, however, are important to note.

First, although many government of Iran individuals and entities and Iranian financial institutions are scheduled to be removed from the SDN List as part of the deal, U.S. persons and non-U.S. entities owned or controlled by a U.S. person continue to be prohibited from transactions with these parties. Unless there are future modifications to the sanctions, U.S. financial institutions still must block transactions involving government of Iran individuals and entities and Iranian financial institutions.

Second, unless further action is taken by the U.S. Department of the Treasury, Iran remains designated as a "jurisdiction of primary money laundering concern" under Section 311 of the USA Patriot Act. While the Financial Crimes Enforcement Network (FinCEN) never issued a final rule with respect to the Iran 311 action, the Finding and Notice of Proposed Rulemaking remain in place. The special measure selected by the FinCEN director as the appropriate measure to apply to Iran authorizes a prohibition against the opening or maintaining of correspondent accounts by any domestic U.S. financial institution or agency for or on behalf of a non-U.S. banking institution, if the correspondent account involves the targeted jurisdiction. As a result, enhanced due diligence procedures by U.S. financial institutions in connection with the Iran Section 311 action continue to be important.

5. How does the Agreement affect non-U.S. entities owned or controlled by U.S. persons?

One of the principal questions left open by the Agreement is whether foreign subsidiaries of U.S. companies will be treated like U.S. companies or like other non-U.S. companies. Generally for U.S. sanctions programs, with the exception of Iran and Cuba sanctions, sanctions apply to dealings involving U.S. persons or that have a U.S. territorial nexus. "U.S. person" ordinarily includes a U.S. citizen or permanent resident (wherever located), an entity organized under the laws of the United States or any jurisdiction within the United States (including the non-U.S. branches of such an entity), and any person in the United States.

In the case of U.S. sanctions on Iran, however, as a result of a provision of the Iran Threat Reduction and Syria Human Rights Act of 2012, foreign-owned or -controlled entities of U.S. persons are prohibited from engaging in any activity that would be prohibited if it were engaged in by a U.S. person or in the United States. Consequently, foreign-incorporated subsidiaries of U.S. companies are bound by the same restrictions as their U.S. parents.

The Agreement gives some indication that this is about to change, but the extent of that change is unclear, as the issue largely is left for future clarification by the U.S. government. The Agreement provides that the U.S. government will license foreign-owned or -controlled entities of U.S. persons "to engage in activities with Iran that are consistent with this [Agreement]." The Agreement, though, does not signal which activities by U.S. subsidiaries abroad will be viewed as "consistent" with the Agreement. It has the potential to be almost the full range of U.S. sanctions relief offered under the Agreement or a substantially narrower set. Whichever activities are ultimately authorized by OFAC will be licensed either via general or specific license, and it is possible that OFAC could set certain conditions, such as reporting or other requirements.

What the Joint Comprehensive Action Means for EU and other Non-U.S. Businesses:

1. What is the effect of the lifting of EU nuclear-related sanctions? Will any EU sanctions remain in place?

As the EU sanctions on Iran only apply to the activities of EU persons and do not have an analog to U.S. secondary sanctions, EU individuals and entities will be able to participate in the affected business activities once the relief becomes effective. As outlined above, this will impact a broad range of sectors, including banking, financial and insurance; energy; and shipping and transport.

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Several EU-sanctioned individuals and entities will remain listed, and certain technology, metals and software will remain sanctioned past Implementation Day. Moreover, EU sanctions tied to Iranian human rights violations are not affected by the nuclear deal, and that sanctions regime will remain in place, as will certain U.S. secondary sanctions. U.S. restrictions on the involvement of U.S. person employees of EU companies in business involving Iran also will remain. It therefore will be crucial for EU companies to closely monitor the scope of restrictions that remain in place.

2. What are the implications of the Agreement for non-U.S. financial institutions?

Just as non-U.S. financial institutions were a focal point of multilateral efforts to increase pressure on Iran with respect to its nuclear program, so will they likely play a central role in efforts by companies across industries to re-enter the Iranian market. As outlined above, if Iran fulfills its obligations under the Agreement and sanctions relief is granted, EU financial institutions will, among other things, be permitted to establish correspondent banking relationships with Iranian banks and open representative offices or establish subsidiaries or joint ventures in Iran. Financial institutions in countries that imposed similar restrictions likely will see those restrictions eased as well. All non-U.S. financial institutions will be affected by the relief provided under the Agreement with respect to U.S. secondary sanctions.

3. Do non-U.S. financial institutions still need to be concerned with U.S. secondary sanctions in processing Iranian transactions?

As of Implementation Day, U.S. secondary sanctions will be suspended for dealings with a lengthy list of individuals and entities currently included on OFAC's SDN List. The list is identified in an attachment to the Agreement and includes the Central Bank of Iran, most designated Iranian financial institutions, the National Iranian Oil Company, the Naftiran Intertrade Company, the National Iranian Tanker Company and the Islamic Republic of Iran Shipping Lines. As discussed above, more names will be removed from sanctions lists on Transition Day, meaning that secondary sanctions on transactions with those individuals and entities will cease to apply at that time. Financial messaging service providers, such as SWIFT, will be allowed to readmit delisted Iranian financial institutions to their networks.

Significantly, much of the U.S. secondary sanctions architecture, including statutes such as CISADA and the Iran Freedom and Counter-Proliferation Act (IFCA) of 2012, remains in place. As a result, foreign financial institutions that engage in significant transactions with Iranian individuals and entities that remain on the SDN List continue to risk the loss of their U.S. correspondent and payable-through account access. While many significant commercial enterprises in Iran are scheduled to be removed from the SDN

List as a result of the sanctions relief, certain Iranian banks — such as Bank Saderat — and other entities remain listed and are not scheduled for removal by OFAC as part of the Agreement.

There are some important differences in the EU and U.S. delistings due to be phased in under the Agreement. For example, Iran's Islamic Revolutionary Guard Corps is due to be removed from the EU sanctions list on Transition Day but will remain on the SDN List. While the EU, U.S. and other national sanctions lists have never been identical, many of the differences were muted in recent years by the broad-based pressure campaign against Iran. As European and other companies begin to re-enter the Iranian market, navigating some of those differences will now likely present greater challenges than before for financial institutions.

4. Will non-U.S. financial institutions be able to clear U.S. dollars through the United States?

Since the Agreement does not meaningfully change the sanctions landscape for U.S. persons, most transactions involving Iran remain prohibited for U.S. financial institutions. As a result, unless OFAC takes additional steps, transactions involving Iran processed by or through U.S. financial institutions, such as dollar-clearing, would continue to present a risk of sanctions violation for non-U.S. financial institutions, and possible civil or criminal penalties.

5. Will non-U.S. financial institutions still be required to restrict the uses of Central Bank of Iran funds and Iranian oil revenues?

On Implementation Day, use restrictions imposed by the U.S. on Iranian oil revenues and Central Bank of Iran funds held overseas are due to be lifted. Non-U.S. financial institutions holding or processing such revenues will no longer be required to ensure that the funds are used only for bilateral or humanitarian trade. As recently as January 2015, the U.S. Department of the Treasury estimated that Iran's restricted foreign currency reserves amounted to approximately \$100 billion.¹

As part of the bilateral trade restrictions, non-U.S. financial institutions were required to ensure that payments for oil purchases were made to, and held at, an account at a bank in the purchasing country. If this relief becomes effective, non-U.S. financial institutions will be permitted to process oil transactions by refiners or other purchases in third countries.

¹ Press Release, U.S. Department of the Treasury, "Testimony of Under Secretary Cohen Before the Senate Foreign Relations Committee on Iran" (Jan. 21, 2015), <http://www.treasury.gov/press-center/press-releases/Pages/ii9746.aspx>.

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6. What are the implications for non-U.S. energy companies?

Under the Agreement, on Implementation Day the EU prohibition on purchases of Iranian oil, gas and petrochemical products are due to be lifted. Broad U.S. sanctions on Iran's energy sector (defined in earlier OFAC guidance to include activities involving the exploration, extraction, production, refinement or liquefaction of petroleum, natural gas or petroleum products in Iran)² and U.S. efforts to reduce Iran's crude oil exports as well as secondary sanctions tied to purchases of Iranian petroleum, petroleum products, natural gas or petrochemicals will be suspended. According to the U.S. Department of the Treasury, in 2012, Iran exported approximately 2.5 million barrels of oil per day to 20 countries. By the start of 2015, Iran's oil exports had dropped to roughly 1.1 million barrels per day, exported to six countries.

In addition to easing sanctions on Iran's energy exports, the Agreement provides for relief from EU sanctions and U.S. secondary sanctions on investment in Iran's oil, gas and petrochemical sectors as well as the provision of equipment, services, technology and other support to those sectors. The sanctions relief also lifts restrictions on the export, sale or provision of refined petroleum products and petrochemical products to Iran. While it remains to be seen whether non-U.S. entities owned or controlled by U.S. persons will be authorized to engage in transactions involving Iran's energy sector, nothing in the Agreement contemplates the authorization of U.S.-origin goods or U.S.-origin technology for use in developing Iran's oil, gas or petrochemical sectors. Companies seeking to invest in or provide goods or services to Iran's energy sector should ensure they remain compliant with U.S. export control restrictions.

As with other areas of sanctions relief, the suspension of U.S. secondary sanctions applied to Iran's energy sector does not apply to transactions involving individuals and entities on the SDN List. While several key players in Iran's energy sector, such as NIOC, NICO, and National Petrochemical Company, are scheduled to be delisted on Implementation Day, certain entities operating in Iran's energy sector are due to remain on the SDN List.

7. What are the implications for non-U.S. shipping companies?

Like the energy sector, U.S. secondary sanctions on transactions with Iran's shipping sector are due to be suspended on Implementation Day. OFAC guidance previously defined the shipping sector of Iran to include "activities involving the transportation

² OFAC FAQ 293: "What will the 'energy, shipping, and shipbuilding sectors of Iran' mean for the purposes of IFCA?" (June 3, 2013), http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx.

of goods by seagoing vessels, including oil tankers and cargo vessels, flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by the Government of Iran."³ The two major Iranian shipping companies, Islamic Republic of Iran Shipping Lines and National Iranian Tanker Company, are scheduled to be removed from the SDN List, which will significantly impact Iran's ability to connect its importers and exporters to foreign markets, and for non-U.S. persons to transact with the two shipping companies, including by insuring or providing classification and flagging services.

In addition, the Agreement provides for the relief on Implementation Day of U.S. secondary sanctions on dealings with Iranian port operators. The sanctions on port operators imposed under IFCA had a substantial chilling effect on the willingness of global shipping companies to deliver cargo to Iranian ports. Two significant port operators have been designated by the U.S. and the EU: South Shipping Line Iran and Tidewater Middle East Co. South Shipping Line Iran is scheduled to be removed from the U.S. and EU lists on Implementation Day. Tidewater is to be removed from the EU List on Transition Day, in roughly eight years, yet is not due to be taken off the SDN List.

According to the U.S. Treasury Department, Tidewater, an IRGC-owned port operating company, with operations at seven Iranian ports, has been responsible for approximately 90 percent of all Iranian container traffic.⁴ Treasury identified Tidewater as the operator of the main container terminal at Bandar Abbas, a principal entry and exit point for Iranian imports and exports. In describing the port relief, the Agreement specifically includes "the port operator(s) of Bandar Abbas" in the scope of that relief without naming Tidewater, but a footnote clarifies that the U.S. commitment to not apply secondary sanctions to transactions involving the Bandar Abbas port operator is based on that operator no longer being controlled by a person on the SDN List. The U.S. has not publicly stated that Tidewater no longer operates the main container terminal at Bandar Abbas, and appears to be leaving that determination to the shipping companies that deliver cargo to that port.

³ OFAC FAQ 293: "What will the 'energy, shipping, and shipbuilding sectors of Iran' mean for the purposes of IFCA?" (June 3, 2013), http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx.

⁴ Press Release, U.S. Department of the Treasury, "Testimony of Under Secretary for Terrorism and Financial Intelligence David S. Cohen Before the Senate Committee on Banking, Housing and Urban Affairs" (Dec. 12, 2013), <http://www.treasury.gov/press-center/press-releases/Pages/jl2243.aspx>.

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