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United States Implements Temporary Changes to Iran Sanctions under Interim Agreement

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On January 20, 2014, the U.S. Treasury and State Departments took steps to implement temporary and limited changes to U.S. sanctions policy for Iran as agreed under the interim nuclear deal reached by Iran and the P5 + 1 countries. Most U.S. sanctions on Iran remain in place and will continue to be enforced. Between January 20 and July 20, 2014, non-U.S. individuals and companies (unless U.S. owned or controlled) will not face U.S. sanctions enforcement if they engage in specified transactions relating to the (a) export of Iranian petrochemical products, (b) provision of goods and services for Iran's auto industry, (c) sale of gold and precious metals to or from Iran and (d) provision of insurance and transport services associated with sales of Iranian oil to six specified countries. The U.S. government also has adopted a favorable licensing policy in specified cases for the provision of goods and services to Iran's civil aviation industry by U.S. persons, U.S. owned/controlled foreign entities and non-U.S. persons for transfer of U.S. goods or technology. The U.S. also is taking steps to facilitate certain humanitarian and medical trade with Iran, payment of UN dues and support for Iranians studying abroad.

The P5 + 1 (U.S., UK, France, China, Russia and Germany) reached an interim agreement (the "Joint Plan of Action") with Iran on November 24, 2013 aimed at limiting Iran's uranium enrichment and potential for nuclear weapons development. On January 20, 2014, the International Atomic Energy Agency verified that Iran had met its initial obligations under the Joint Plan of Action, leading to implementation of U.S. and European Union ("EU") sanctions commitments. These sanctions changes are temporary and will be maintained only during negotiations and while Iran continues to meet its reciprocal obligations. The interim agreement is scheduled to last for six months until July 20, 2014, with the possibility of renewal, and the parties are expected to negotiate toward a potential final agreement during that time period.

The U.S. government implemented the changes via issuance of a written guidance document from the Treasury and State Departments (the "Guidance"), together with a separate statement of licensing policy for Iran's civil aviation industry from the Office of Foreign Assets Control ("OFAC"). No executive order or OFAC general licenses were issued, and the changes are being made primarily in the form of forbearance by U.S. government in not imposing sanctions on non-U.S. persons. The Obama administration invoked its waiver authority under several relevant statutes to allow these changes, with no action required from Congress.

Companies should bear in mind three key limitations in assessing the U.S. changes: (A) The Guidance applies only to transactions and activities that are initiated on or after January 20, 2014 and completed by July 20, 2014 (the "JPOA Period"), including receipt of payments. (B) Except as indicated the changes do not apply to transactions with Specially Designated Nationals and blocked parties ("SDNs") or to sanctions imposed under the U.S. counter-terrorism and counter-proliferation regimes. (C) Except for the aviation sector licensing policy, the Guidance generally will apply only to non-U.S. companies that are not owned or controlled by U.S. persons ("Qualifying Foreign Companies") and, further, U.S. persons may be required to make SEC disclosures of the activities of their foreign affiliates relating to Iran (whether or not they own/control the affiliates) pursuant to Section 219 of the Iran Threat Reduction & Syria Human Rights Act of 2012 ("TRA").[1]

The Guidance addresses six temporary changes to U.S. sanctions policy:

1. Petrochemical Products. The U.S. Government will not impose sanctions on Qualifying Foreign Companies that export Iranian petrochemical products and associated services during the JPOA Period. This allowance applies with respect to fourteen companies identified in an annex to the Guidance. OFAC has clarified what constitutes a petrochemical product in a set of Frequently Asked Questions ("FAQs") issued with the Guidance at question 4 and as further specified in State Department guidance published on November 13, 2012 (77 Fed. Reg. 67726). Non-U.S. financial institutions will not face U.S. sanctions for conducting or facilitating transactions permitted by the Guidance, provided the transactions do not involve companies or banks that are SDNs (with allowance made for SDNs in the annex of petrochemical companies and for Iranian depository institutions controlled only pursuant to Executive Order 13599, which blocked all Iranian financial institutions). Similar provision is made by the Guidance for activity by non-U.S. financial institutions for each change described below.

2. Civil Aviation. OFAC will favorably consider specific license requests on a case-by-case basis for transactions involving goods and services in support of safe operation of Iranian commercial aircraft by U.S. persons, their subsidiaries and any persons wherever located wishing to export or reexport U.S.-controlled goods and technology. Activities which may be licensed include "services related to the inspection of commercial aircraft and parts in Iran or a third country; services related to the repair or servicing of commercial aircraft in Iran or a third country; and goods or technology, including spare parts, to Iran or a third country." This licensing policy applies to Iran Air but not to other SDNs in the civil aviation industry. Processing specific license applications can take from several weeks to several months, and thus companies will in practice have a window of less than six months to utilize this provision. Activities can only commence after a specific license is issued and must be completed by July 20, 2014. U.S. sanctions applicable to Qualified Foreign Persons themselves for the activities described above are temporarily suspended during the JPOA Period.

3. Iran's Auto Industry. Qualifying Foreign Companies will not face sanctions for the sale, supply or transfer to Iran of significant goods or services used in connection with the automotive sector during the JPOA period.

[1] Pursuant to Section 218 of the TRA, non-U.S. companies which are owned or controlled by U.S. persons are subject to the Iranian Transactions and Sanctions Regulations and may not knowingly engage directly or indirectly in transactions with the Iranian government or persons subject to its jurisdiction. See 31 C.F.R. § 560.215.

The “automotive sector of Iran” means the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original equipment manufacturing and after-market parts for such vehicles.

4. Gold and Other Precious Metals. Qualifying Foreign Companies and non-U.S. financial institutions will not face sanctions under certain circumstances for the sale of gold and other precious metals to or from Iran during the JPOA period. “Precious metals” are defined in the FAQs at question 6, footnote 7. In addition to the normal restrictions on financial institutions, funds for the purchase of gold and precious metals may not come from “Restricted Funds” which are defined to include “(i) any existing and future revenues from the sale of Iranian petroleum or petroleum products, wherever they may be held, and (ii) any Central Bank of Iran (CBI) funds, with certain exceptions for non-petroleum CBI funds held at a foreign country’s central bank.”

5. Export of Iranian Crude Oil. Under the Joint Plan of Action, China, India, Japan, South Korea, Taiwan and Turkey may continue to import their current average level of crude oil imports from Iran. For such imports, Qualifying Foreign Companies will not face sanctions for providing associated transportation and insurance services and neither will foreign financial institutions for the conduct or facilitation of related transactions. The provisions above apply to the National Iranian Oil Company and National Iranian Tanker Company.

6. Humanitarian Trade and Other Support. The P5+1 countries are establishing mechanisms (not specified in the Guidance) to enable transactions using Iran’s oil revenues held abroad to facilitate humanitarian trade involving food and agricultural products, medicine, medical devices and medical expenses incurred abroad. These funds also may be used to pay Iran’s UN obligations and direct tuition payments to universities and colleges for Iranian students studying abroad.

Non-U.S. financial institutions asked to provide or facilitate services under the Joint Plan of Action should proceed cautiously and note the requirements under the Guidance, particularly in relation to authorized SDNs and Iranian depository institutions. For other aspects of the Joint Plan of Action, including the repatriation of $4.2 billion being organized by P5+1 and the humanitarian trade mechanisms, banks will be directly notified by the U.S. Government in writing to arrange and authorize participation.

The EU on January 20, 2014 also temporarily adjusted its sanctions policies for Iran to implement the Joint Plan of Action. The changes generally parallel those made by the United States. The EU increased its threshold for financial transfers to and from Iran requiring authorization ten-fold to €400,000 for most transactions and to €1,000,000 for food, medical equipment, agricultural and humanitarian transactions.

If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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