

IRAN SANCTIONS EASED, BUT RESTRICTIONS REMAIN

Smarter Way to Cross Blog Archives
February 26, 2016

Canadian companies with U.S. operations must keep alert to developments in U.S. sanctions laws. Such sanctions apply to any entity organized under the laws of a U.S. jurisdiction (regardless of foreign ownership of such entity) and any person physically present in the U.S. Certain sanctions can even have extraterritorial reach – potentially impacting non-U.S. individuals and entities doing business with prohibited parties. In a recent development, the United States lifted certain sanctions applicable largely to non-U.S. persons against the Islamic Republic of Iran, but **retained the general prohibition on export by U.S. persons to Iran.**

Specifically, on January 16, 2016 (commonly known as “Implementation Day”) the United States lifted certain limited sanctions against Iran pursuant to the terms of a Joint Comprehensive Plan of Action (the “JCPOA”) agreed to by the P5+1 (the United States, China, Russia, the United Kingdom, France, and Germany), the European Union and Iran. On Implementation Day, the U.S. Secretary of State verified that the International Atomic Energy Agency confirmed Iran’s compliance with certain nuclear-related measures in the JCPOA, leading the United States to lift particular sanctions relating largely to non-U.S. persons. Specifically, the United States undertook the following measures:

1. Lifting of sanctions against non-U.S. persons relating to finance and banking, underwriting and insurance, energy, shipping and shipbuilding, automotive goods and services, gold and other metals, coal, and software and services in support of the foregoing (however the general prohibitions against U.S. persons engaging in these activities in, or in connection with, Iran remain in place);
2. The removal of over 400 individuals and entities from the U.S. Department of the Treasury’s Office of Foreign Asset Control (“OFAC”) Specially Designated Nationals and Block Persons List (the “SDN List”), Foreign Sanctions Evaders List, and the Non-SDN Iran Sanctions Act List;
3. The issuance of a policy statement whereby OFAC will grant, on a case-by-case basis, specific licenses related to the export, re-export, sale, lease, or transfer to Iran of commercial passenger aircraft and related parts and services; and
4. Revisions to certain existing regulations to permit the import of Iranian-origin carpets and certain foodstuffs.

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The Government of Canada has also recently announced a repeal of certain of its most restrictive economic sanctions against Iran. However, following this repeal, the Canadian sanctions that remain will be far more permissive in scope than those that remain in the U.S. Canadian companies must bear in mind that the measures announced by the U.S. above are merely new exceptions to the overall general prohibition on the export, re-export, sale, or supply (directly or indirectly) from the United States or by a U.S. person (wherever located) of goods, services, or technology to Iran. Contrary to popular belief, the general prohibition remains in place, and U.S. persons cannot, directly or indirectly, export to Iran absent a specific regulatory exception or authorization from OFAC. Additionally, over 200 Iranian and Iranian related individuals and entities remain on the SDN List, thereby prohibiting U.S. persons and non-U.S. persons from dealing with such parties. Sanctions also continue to prohibit dealings with certain individuals and entities in Iran found to be supporting terrorism, the proliferation of weapons of mass destruction, or human rights abuses.

In considering future opportunities with Iran, Canadian companies with U.S. operations must be cognizant of both the Canadian and U.S. sanctions that remain in place and continually adjust its risk mitigation strategy going forward. Best practice is to ensure that any activities involving Iran will not involve any U.S. persons, require U.S. persons to approve of or otherwise facilitate transactions involving Iran, or involve U.S. dollar payments. It may want to ensure that any subsidiaries, offices or employees in the United States are kept separate from any activities related to Iran. In addition to monetary penalties, violations of U.S. sanctions laws may trigger defaults under loan agreements with U.S. banks, or possibly criminal liability.

Canadian companies should also bear in mind that the JCPOA permits nuclear-related sanctions to “snap back” into place if Iran violates its commitments. Consequently, such companies must remain alert to the possible re-imposing of these recently lifted sanctions.