

One Minute Memo®



Despite the Fanfare, Iranian Sanctions Remain Largely in Place

By Joseph J. Dyer and Stanley S. Jutkowitz

To read many of the media reports, the United States has withdrawn sanctions on Iran and Iran is now open for business. Contrary to such reports, the United States sanctions on Iran remain substantially unchanged.

As part of the Joint Comprehensive Plan of Action between the United States, Iran and various other countries, the United States agreed to withdraw certain of its sanctions concerning Iran upon the International Atomic Energy Agency's ("IAEA") verification that Iran had implemented various measures related to its nuclear program. On January 16, 2016, Secretary of State Kerry confirmed that the IAEA had verified Iran's compliance. On that same day, the United States Office of Foreign Assets Control ("OFAC") issued General License H effectively withdrawing certain of the United States sanctions concerning Iran.

General License H authorizes entities "owned or controlled by a United States person and established and maintained overseas ... to engage in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of Iran..." In other words, foreign subsidiaries of United States companies are now authorized to trade with Iran. OFAC caveats this authorization, however, prohibiting foreign entities owned or controlled by United States persons from dealings with certain persons (*i.e.* Specially Designated Nationals, Blocked Persons, persons listed on OFAC's List of Foreign Sanctions Evaders and military, para-military, intelligence or law enforcement agents of the Government of Iran) and from dealings in certain areas (*i.e.* related to certain technology, the proliferation of weapons of mass destruction and nuclear activities).

While foreign subsidiaries of US persons are now authorized to trade with Iran, OFAC regulations continue to prohibit United States persons, themselves, from doing so. "[T]he exportation, reexportation, sale or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology or services to Iran or the Government of Iran is prohibited." Similarly, OFAC continues to prohibit United States persons from exporting goods, technology or services to a third party if the United States person knows that "[s]uch goods, technology or services are intended specifically for supply ... predominantly to Iran," or that "[s]uch goods, technology or services are intended specifically for use in the production of ... goods, technology or services to be directly or indirectly supplied ... predominantly to Iran..."

General License H does, however, authorize United States persons to engage in “activities related to the establishment or alteration of operating policies and procedures of a United States entity or a U.S. owned or controlled foreign entity, to the extent necessary to allow a U.S. owned or controlled foreign entity to engage in transactions [with Iran].” General License H also allows United States persons to “make available to those foreign entities that the U.S. person owns or controls ... automated and globally integrated computer, accounting, email, telecommunications, or other business support systems ... necessary to store, collect, transmit, generate or otherwise process documents or information” related to their foreign subsidiaries’ activities vis-à-vis Iran. In other words, a U.S. company is free to revise its written operating policies as well as make available certain of its technologies, to allow its foreign subsidiaries to trade with Iran. U.S. companies should, however, proceed with caution.

In a related move, OFAC also revised its regulations to allow United States persons to import from Iran certain foodstuffs, carpets and textile floor coverings.

In short, foreign entities owned or controlled by United States persons are now generally authorized to trade with Iran, and United States persons can now import certain foodstuffs and carpets from Iran. And United States persons can import certain foodstuffs, carpets and floor coverings. With those exceptions, the United States sanctions remain in place. OFAC continues largely to prohibit United States persons from dealing, directly or indirectly, with Iran.

While not a change in its sanction regulations, OFAC, on January 16, 2016, also announced that it would favorably consider applications for validated licenses from United States persons and foreign persons to export commercial passenger aircraft exclusively for civil aviation use and spare parts and associated services to Iran.

Three notes of caution stemming from OFAC’s recent actions.

1. Do not be misled by media reports suggesting a widespread relaxation of United States sanctions against Iran. The sanctions remain in place with limited exceptions.
2. Foreign entities owned or controlled by United States persons are now free to trade with Iran. OFAC continues, however, to prohibit foreign persons from re-exporting United States origin goods, technology or services to Iran unless they meet certain *de minimus* rules.
3. While OFAC now allows United States persons to engage in “activities related to the establishment or alteration of operating policies and procedures” to allow their foreign subsidiaries to deal with Iran, it is not entirely clear what activities are allowed. OFAC offers as guidance that United States persons “may be involved in the initial determination to [have their foreign owned subsidiaries] engage in activities with Iran.” OFAC states, however, that United States persons are not authorized to be “involve[ed] in ... on-going Iran-related operations or decision making” or in “Iran-related day-to-day operations.” (See Frequently Asked Questions, OFAC website.) Between these statements, there is a significant room for ambiguity.

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