



JANUARY 2016

IRAN SANCTIONS RELIEF: WHAT IT MEANS FOR U.S. COMPANIES AND THEIR FOREIGN SUBSIDIARIES

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On January 16, 2016, the United States announced the lifting of a number of sanctions against Iran under the [Joint Comprehensive Plan of Action \(JCPOA\)](#). This long-awaited action took place in exchange for Iran's commitment to limit its nuclear program after the International Atomic Energy Agency verified that Iran carried out its nuclear commitments under the JCPOA.

The sanctions relief primarily affects "secondary sanctions" that targeted non-U.S. entities "owned or controlled" by a U.S. person or entity for certain Iran-related activities undertaken outside the United States. It is important to note that U.S. companies and persons continue to be barred from most transactions involving Iran and many secondary sanctions remain in place.

The sanctions relief will be particularly important for global companies headquartered in the United States, U.S. private equity firms with foreign investments and other U.S. entities with foreign subsidiaries.

In this alert, we will outline:

- What foreign subsidiaries of U.S. companies can now do
- What foreign subsidiaries of U.S. companies are still prohibited from doing

- What U.S. parent companies and their U.S. employees working abroad can now do

What Can Foreign Subsidiaries of U.S. Companies Now Do?

On January 16, 2016, OFAC issued [General License H](#) "Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person."

The sanctions relief offered by General License H allows foreign entities "owned or controlled" by a U.S. person or entity to engage in most transactions with the Government of Iran or any person subject to its jurisdiction that were previously prohibited by [Section 215 of the Iranian Transactions and Sanctions Regulations \(ITSR\)](#), with certain important exceptions outlined below. An entity is deemed to be "owned or controlled" by a U.S. person if the U.S. person: (1) holds a 50 percent or greater equity interest by vote or value in the entity; (2) holds a majority of seats on the board of directors of the entity; or (3) otherwise controls the actions, policies or personnel decisions of the entity. This does NOT include foreign branches of U.S. entities as these are considered "U.S. persons" and, therefore, do not qualify for the sanctions relief.

General License H is a general license. Foreign entities are not, therefore, required to apply for a

specific license to transact new business with the Government of Iran or persons subject to its jurisdiction.

In addition, foreign subsidiaries can now more freely transact business with Iran's financial and banking industry as well as with its energy, petrochemical, shipping, gold, software, and automotive sectors, subject to the restrictions described below.

What are Foreign Subsidiaries of U.S. Companies Still Prohibited from Doing?

Foreign subsidiaries of U.S. companies *cannot* engage in transactions involving:

- Exportation or re-exportation of U.S. origin goods — the direct or indirect exportation, re-exportation, sale or supply of goods, technology or services from the United States or a U.S. person with knowledge or reason to know that these items are intended for Iran or the Government of Iran;
- Re-exportation from a third country of items containing 10 percent or more U.S.-controlled content with knowledge or reason to know that these items are intended for Iran or the Government of Iran and re-exportation from a third country of foreign produced direct products of U.S. technology and software;
- Any activity involving any item (including information) subject to the Export Administration Regulations (EAR) that is prohibited by the EAR or requires a license based on its end-user or end-use, or participation in any transaction involving persons whose export privileges have been denied pursuant to part 764 or 766 of the EAR;
- Any transfer of funds to, from or through the U.S. financial system (foreign subsidiaries

cannot use U.S. banks to process Iran-related transactions, including as correspondent banks for U.S. dollar-denominated transactions);

- Any military, paramilitary, intelligence or law enforcement entity of the Government of Iran, or any official, agent or affiliate thereof;
- Any person, entity, aircraft or vessel on OFAC's list of Specially Designated Nationals (SDN) (or entities owned 50 percent or more individually, or in the aggregate, by one or more SDNs), or Foreign Sanctions Evaders (FSE) List, or who has been denied export privileges by Executive Order or otherwise;
- Any activity related to Iran's proliferation of weapons of mass destruction or ballistic missiles, support for international terrorism, support for the Syrian regime, destabilizing activities in Yemen or commission of human rights abuses against its citizens; and
- Any covered nuclear activity involving Iran outside of the official procurement channel established by the JCPOA.

Additionally, trade with Iran in defense articles and defense services subject to the U.S. International Traffic in Arms Regulations (ITAR) is still prohibited.

Modifications to Prohibited Lists

In addition to issuing General License H, OFAC removed more than 400 individuals and entities with connections to Iran from the Specially Designated Nationals List, the Foreign Sanctions Evaders List and the Non-SDN Iranian Sanctions Act (NS-ISA) List, allowing foreign subsidiaries of U.S. entities to trade with these parties, subject to the prohibitions described above. One of the major parties removed from the prohibited lists is the Central Bank of Iran.

It is important to note that *U.S. persons* are still obligated to block the property and assets of individuals and entities that meet the definition of the Government of Iran¹ or Iranian financial institutions², whether or not OFAC has specifically identified these individuals or entities. Please also note that if a newly delisted individual or entity is added back to one of the prohibited lists in the future, foreign entities could once again be subject to U.S. secondary sanctions.

Fox Rothschild can perform a screening to determine whether the party with whom a client desires to do business is on one of the prohibited lists.

What Can U.S. Parent Companies and U.S. Employees Working Abroad Now Do?

As a general rule, U.S. persons are still prohibited from ALL actions “facilitating” Iran-related activities of foreign entities (including subsidiaries). As such, virtually any involvement in Iran-related business by U.S. parent companies of foreign subsidiaries or their U.S. employees, officers, or directors is prohibited. U.S. persons cannot facilitate, assist, guarantee, or otherwise participate directly or indirectly in any Iran-related business (without OFAC’s authorization).

The exception to this rule is that a U.S. person *is authorized* to be directly involved in:

- Establishing operating policies and procedures under which its non-U.S. subsidiary can achieve the operational separation necessary for it to transact with Iran; and
- Providing its non-U.S. subsidiary with business support, including common email, enterprise resource planning, and other services in connection with the foreign subsidiary’s Iran trade, provided the services are fully “automated” (they must operate passively and

without human intervention, other than maintenance of the systems) and are “globally integrated.”

The Bottom Line

With the two narrow exceptions described above, the prohibitions on U.S. persons with respect to Iran remain in place. This includes prohibitions against all actions facilitating Iran-related activities of foreign subsidiaries. General License H, which lifts certain sanctions against transactions with Iran for foreign subsidiaries of U.S. parent companies, has important restrictions, and U.S. parent companies remain liable for their foreign subsidiaries’ transactions that are not covered by General License H. The U.S. can also reimpose sanctions under the “snap back” provisions of the JCPOA at any time if Iran fails to comply with the JCPOA.

U.S. parent companies need to carefully consider the risks when determining whether to allow their foreign subsidiaries to do business with Iran. Companies that choose to use General License H to engage in transactions involving Iran will need to exercise caution and ensure that U.S. persons do not facilitate transactions that remain prohibited. Such companies must also conduct careful due diligence regarding the identity, ownership and sanctions status of the parties with which they do business and to strictly comply with General License H in order to avoid crossing the fine line of permitted transactions.

This alert does not constitute legal advice, and anyone seeking to do business with Iran or Iranian nationals should consult legal counsel first. Individuals or entities taking advantage of the sanctions relief can still be subject to regulations outside the scope of a general or specific license.

If you have any questions regarding the matters covered in this alert or would like any additional information, please contact any of the lawyers

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listed below. If you would like to stay up-to-date on these and other international trade developments, [please subscribe to our blog.](#)

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¹“Government of Iran” means the Government of Iran, any political subdivision, agency or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran.

²“Iranian financial institution” means a financial institution organized under the laws of Iran or any jurisdiction within Iran (including foreign branches), any financial institution in Iran, any financial institution, wherever located, owned or controlled by the Government of Iran, and any financial institution, wherever located, owned or controlled by any of the foregoing.



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