

Litigation | January 21, 2016

Sanctions Round-Up: Fourth Quarter 2015 and “Implementation Day”

The International Atomic Energy Agency certifies that Iran had complied with all nuclear-related requirements of the Joint Comprehensive Plan of Action leading to the end of United States sanctions against the country (“Implementation Day”). OFAC continues to issue amendments to the Cuban Assets Control Regulations. Additionally, OFAC issues a new sanctions regime targeting “Malicious Cyber-Enabled Activities.”

Included in this Quarter’s Sanctions Round-Up:

- “Implementation Day” under the Joint Comprehensive Plan of Action (“JCPOA”) leads to the lifting of Iranian sanction in several key sectors;
- OFAC publishes a second round of amendments to the Cuban Assets Control Regulations (“CACR”);
- The Council of the European Union continues sanctions against Russia for its activities in Eastern Ukraine;
- US Authorities continue to enforce sanctions through settlements;
- OFAC issues regulations on Malicious Cyber-Enabled Activities; and
- Other notable developments.

Iran Nuclear Deal

On September 17, the Iranian nuclear deal negotiated by the P5+1 officially became effective in the US after Congress failed to block the agreement within its 60-day deadline. Parties to the Iran nuclear deal announced that they aim for full implementation by early 2016.

“Adoption Day” under JCPOA

October 18, 2015 marked “Adoption Day” under the JCPOA—the day on which the JCPOA became effective. In connection with Adoption Day, President Obama issued a memorandum directing the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Energy to take all appropriate measures “to ensure the prompt and effective implementation of the US commitments set forth in JCPOA upon Iran’s fulfillment of its requisite obligations.”

Acting under the direction of the President, on October 18, 2015, the Secretary of State issued several contingent waivers of the Iran Freedom and Counter-Proliferation Act of 2012 (“IFCA”). With very few exceptions, these contingent waivers applied only to non-US persons and entities and, in all cases, excluded any transactions involving persons on OFAC’s list of Specially Designated Nationals and Blocked Persons (the SDN list). The contingent waivers included:

- I. Section 1244(c)(1) of IFCA blocking the property of entities in energy, shipping, and shipbuilding sectors for:
 1. Transactions by non-US persons; and
 2. Transactions by US persons for the sale of commercial passenger aircraft and spare parts and components for such aircraft, and associated services to Iran as described in Section 5.1.1 of Annex II to the JCPOA, provided that OFAC has issued any required licenses;
- II. Section 1244(d) of IFCA containing additional sanctions with respect to the energy, shipping, and shipbuilding sectors of Iran for transactions by non-US persons;
- III. Section 1244(h)(2) of IFCA regarding sanctions to natural gas for transactions by foreign financial institutions;
- IV. Sections 1245(a)(1)(A) of IFCA sanctioning the sale, supply, or transfer of precious metals for transactions by non-US persons;
- V. Sections 1245(a)(1)(B) of IFCA sanctioning the sale, supply, or transfer of graphite, raw, or semi-finished metals for transactions by non-US persons;
- VI. Section 1245(a)(1)(C) of IFCA, for transactions by non-US persons for the sale, supply, or transfer directly or indirectly to or from Iran of, graphite, raw, or semi-finished metals, and for associated services, with respect to materials that are:
 1. to be used in connection with the energy, shipping, or shipbuilding sector of Iran, or resold, retransferred, or otherwise supplied to an end user in one or more such sectors;
 2. sold, supplied, or transferred to any individual or entity blocked solely pursuant to E.O. 13599, or resold, retransferred, or otherwise supplied to such an individual or entity; and
 3. determined pursuant to Section 1245(e)(3) to be used as described in that section, or resold, retransferred, or otherwise supplied for use in the nuclear program of Iran;excluding transactions involving: (i) the sale, supply, or transfer of materials described in section 1245(d) that have not been approved by the procurement channel established pursuant to paragraph 16 of United Nations Security Council Resolution 2231 and Section 6 of Annex IV of the JCPOA, in cases in which the procurement channel applies; or (ii) the sale, supply, or transfer of materials described in section 1245(d) if the material is sold, supplied, or transferred, or resold, retransferred, or otherwise supplied directly or indirectly, for use in connection with the military or ballistic missile program of Iran;
- VII. Section 1245(c) of IFCA blocking correspondent or pay-through accounts for transactions by non-US persons that are within the scope of the waivers under Section 1245(a)(1) of IFCA as described in paragraphs 4-6 above;
- VIII. Section 1246(a)(1)(A) of IFCA for the provision of underwriting services or insurance or reinsurance by non-US persons in connection with activities involving Iran that are described in Sections 17.1-17.2 and 17.5 of Annex V of the JCPOA;
- IX. Section 1246(a)(1)(B)(i) of IFCA for the provision of underwriting services or insurance or reinsurance by non-US persons;

- X. Section 1246(a)(1)(B)(ii) of IFCA for the provision of underwriting services or insurance or reinsurance by non-US persons for transactions that are within the scope of the waivers under section 1245(a)(1)(B) and (C) of IFCA as described in paragraphs 5-6 above;
- XI. Section 1246(a)(1)(C) of IFCA for the provision of underwriting services or insurance or reinsurance by non-US persons to or for any individual or entity blocked solely pursuant to E.O. 13599;
- XII. Section 1246(a) of IFCA for the provision of underwriting services or insurance or reinsurance by US persons for the sale of commercial passenger aircraft and related parts and services to Iran as described in Section 5.1.1 of Annex II of the JCPOA, provided that OFAC has issued any required licenses;
- XIII. Section 1247(a) of IFCA blocking correspondent or pay-through accounts for transactions to the extent required for transactions by foreign financial institutions;
- XIV. 1245(d)(5) of the National Defense Authorization Act for FY 2012 (“NDAA”), as amended, for transactions by foreign financial institutions with the Central Bank of Iran;
- XV. Pursuant to sections 212(d)(1) and 213(b)(1) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (“TRA”) and section 4(c)(1)(A) of the Iran Sanctions Act of 1996 for individuals and entities that engage in or propose to engage in the activities described in (a)-(c) below:
 - 1. Section 212(a) of the TRA sanctioning underwriting, insurance, or reinsurance for the National Iranian Oil Company or the National Iranian Tanker Company for transactions by non-US nationals in cases where the transactions are for activities described in Sections 4.2.1, 4.3, and 4.4 of Annex II of the JCPOA.
 - 2. Section 213(a) of the TRA sanctioning the purchase of, subscription to, facilitation of, or the issuance of Iranian sovereign debt for transactions by non-US nationals in cases where the transactions are for activities described in Section 4.1.5 and 4.1.7 of Annex II of the JCPOA.
 - 3. Section 5(a) of ISA sanctioning the development of petroleum resource of Iran for transactions by non-US nationals in cases where the transactions are for activities described in Sections 4.2.1, 4.3.1, 4.3.2, 4.3.4, and 4.3.6 of Annex II of the JCPOA.

“Implementation Day” under JCPOA

On January 16th, the International Atomic Energy Agency (“IAEA”) issued a report stating that the government of Iran had successfully completed all the nuclear-related steps included in the JCPOA including sending the bulk of its enriched uranium outside of the country and disabling its Arak nuclear reactor. This certification marked the day on which the contingent waivers, established by the Secretary of State on October 18th, come into full effect and sanctions related to several key sectors of the Iranian economy were lifted (“Implementation Day”). Following the announcement a UN resolution codifying the deal immediately went into effect, the White House began lifting executive orders regarding Iranian sanctions, and the Secretary of State signed waivers of certain nuclear restrictions.

In addition to the removal of over 400 individuals and entities from the SDN list, the United States also lifted secondary sanctions in the following sectors:

- Financial and banking-related;

- Underwriting, insurance, and re-insurance;
- Energy and petrochemical;
- Shipping and shipbuilding;
- Gold and precious metals;
- Graphite, aluminum, steel, coal, and semi-finished metals;
- Automotive, and;
- Associated services for each of the categories listed above.

The certification by the IAEA has also led to the release of more than \$100 billion in Iranian assets previously frozen, mostly in banks in China, Japan, and South Korea.

Effective Implementation Day, all specific licenses that: (1) were issued in accordance with OFAC's *Second Amended Statement of Licensing Policy on Activities Related to the Safety of Iran's civil Aviation Industry*, and (2) expire on or before July 14, 2015, remain in effect until May 31, 2016. Additionally, non-nuclear sanctions related to terrorism, Iranian human rights abuses, the proliferation of weapons of mass destruction, support for persons involved in human rights abuses in Syria, and support for persons threatening the peace in Yemen remain in place.

Significantly, in most cases the sanctions relief provided on Implementation Day did not lift the primary sanctions prohibiting US persons from engaging in business with Iran. Thus, even for business by non-US persons that no longer carries the risk of secondary sanctions (albeit still subject to the risk of a "snap back" of sanctions), such business must still be conducted without the involvement of US persons, including US financial institutions. However, perhaps significantly, General License H departs from previous practice in some significant ways by not only specifically authorizing foreign subsidiaries of US persons to conduct business with Iran (with some limitations) but (i) authorizing the US parent to draft and implement specific policies permitting such business while isolating the parent and US persons employed by the offshore subsidiaries from such business and (ii) to continue to provide automated support functions, such as email and accounting systems, to such offshore subsidiaries even if such systems are accessed in the course of business with Iran.

For more detailed information on Implementation Day, please see our client note [here](#).

Following Implementation Day, the next milestone under the JCPOA is "Transition Day." Transition Day will occur 8 years following Adoption Day or upon a report from the Director General of the IAEA stating that the IAEA has reached the conclusion that all nuclear material in Iran is reserved for peaceful activities, whichever is earlier. Transition Day will mark the day on which the United States government will seek to terminate nuclear-related sanctions and will remove additional individuals from the SDN list.

If you would like more information about the JCPOA or affected UN, EU, and US sanctions, please visit our [website](#).

TIMETABLE FOR UNWINDING SANCTIONS

8 years after Adoption Day or upon report from IAEA that nuclear program is peaceful (“Transition Day”)

- EU terminates additional nuclear-related sanctions and ballistics-related sanctions
- US seeks legislation to terminate nuclear-related sanctions, including financial and energy sanctions, and removes individuals from the SDN and Foreign Sanctions Evaders lists

10 years from Adoption Day (“Termination Day”)

- UN Security Council’s endorsement of JCPOA expires
- EU terminates remaining provisions of nuclear sanctions

Cuban Related Sanctions for Q2 of 2015

On September 18, OFAC published a second round of amendments to the Cuban Assets Control Regulations (“CACR”) to implement additional changes consistent with President Obama’s policy shift announced last year. Although the formal embargo remains in place, these revisions are intended to further ease sanctions related to travel, telecommunications and internet services, business operations in Cuba, and remittances. The changes took effect on September 21. Below is a general summary of some of the key changes:

Remittances: The new amendments remove the dollar-amount limitations on remittances to persons in Cuba, other than to restricted Cuban government officials. OFAC further issued a general license authorizing the return of remittances that were previously blocked for exceeding the amount limitation. The dollar-amount limit US travelers bring into Cuba was also removed. Further, OFAC authorized all transactions incident to the administration and distribution of the assets of a blocked estate of a decedent.

Banking: US persons authorized to travel to Cuba may open and maintain bank accounts to access funds while located in Cuba for authorized transactions. Cuban nationals present in the US may now open individual US bank accounts for domestic use, and US banks may also open individual accounts for Cuban nationals located in a third country. Cuban banks are still prohibited from opening US correspondent accounts.

Offices: US persons doing business in certain categories are now authorized to open and maintain offices, retail outlets, and warehouses in Cuba to engage in authorized transactions there. These categories include mail or parcel transmission services; providers of telecommunications or internet-based services; entities organizing or conducting certain educational activities; religious organizations; and providers of carrier and certain travel services. These US persons may also employ Cuban nationals.

Telecommunications and Internet Services: In January, OFAC issued a general license to enter “transactions that establish mechanisms to provide commercial telecommunications services in Cuba.” The new amendments make clear that OFAC is generally authorizing US persons to enter into licensing agreements related to, and to market, such services in Cuba. The new amendments further expanded the types of communications-related products authorized for export.

Furthermore, US persons may establish and maintain a business presence in Cuba, including through subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban individual or entity to provide authorized telecommunications and internet services. The regulations expressly allow US

persons to engage in transactions with Cuban state-owned agencies such as Empresa de Telecomunicaciones de Cuba S.A. (“ETECSA”) for the purpose of providing telecommunications and internet services.

Expanded Financing Options: Authorized exports to Cuba are generally restricted to “cash in advance” financing. The new amendments changed this regulatory interpretation from “cash before shipment” to “cash before transfer of title and control.” The change is intended to allow expanded financing options for authorized exports.

In connection to these changes, OFAC provided updated answers to frequently asked questions (“FAQ”) about the new rules regarding Cuba on its [website](#).

Cuba’s diplomatic relationship with the US continued to improve in the third quarter, as its new ambassador to the US, Jose Cabanas, officially began his tenure in Washington on September 17. Several US firms announced plans to engage with Cuba after the Obama Administration further loosened sanctions against the country.

Telecommunications provider Verizon Communications Inc. said it would begin offering roaming wireless service in Cuba, and Sprint Corp. said it would likewise enter Cuba soon.

On December 21, OFAC updated its Frequently Asked Questions with regard to the provision of Cuba-related insurance. OFAC stated that insurers subject to US jurisdiction are permitted to provide travel insurance to persons engaged in authorized travel to Cuba and that persons engaged in authorized travel to Cuba may obtain travel insurance from a third-country vendor.

OFAC clarified that, with the exception of certain global health, life, or travel insurance policies or specific authorization from OFAC, US insurers and their subsidiaries are not permitted to issue policies, provide reinsurance coverage, or pay insurance claims related to non-US persons providing goods or services that facilitate travel by third-party nationals from a third country to Cuba.

Russian-Related Sanctions for Q4 of 2015

On October 25, new sanctions initiated by the Ukrainian government came into effect banning all direct flights between Russia and Ukraine, a move that could cost each country roughly \$110 million a year. The sanctions are intended to punish Russia for annexing territory in Crimea and supporting rebels in Eastern Ukraine. Moscow called Kiev’s ban “madness” and then announced it would mirror the move.

On December 21, the Council of the European Union prolonged the EU sectoral sanctions against Russia which restrict business in Russia’s capital markets, finance, energy, and defense sectors, until July 31, 2016. The sectoral sanctions against Russia were initially introduced on July 31, 2014 in response to Russia’s actions in Eastern Ukraine. EU leaders linked the duration of the sanctions program to the complete implementation of the Minsk Agreements, which were not fully implemented by Russia as of December 31, 2015. Sanctions have been prolonged contingent on the Council’s assessment of the implementation of the Minsk Agreement.

Syrian-Related Sanctions for Q4 of 2015

On October 2, OFAC designated as a specially designated nationals (SDNs) one individual from Syria, **Aseel Muthana**, under its Anti-terrorism sanctions program. This move comes after the 21-year-old Muthana was added to the UN Sanctions list in September. On the Consolidated United Nations Security Council Sanctions List, Muthana is described as a “foreign terrorist fighter with [the] Islamic State in Iraq and the Levant”.

On November 25, OFAC designated four individuals and six entities pursuant to Executive Order 13582 for providing support to the Government of Syria. The four individuals, **George Haswani**, **Kirsan Nikolayevich Ilyumzhinov**, **Mudalal Khuri** and **Nicos Nicolaou**, along with the entities, **Ezegoo Investments Ltd.**, **Hesco Engineering & Construction Co.**, **Hudsotrade Limited**, **Kremsont Commercial Inc.**, **Primax Business Consultants Limited**, **Russian Financial Alliance Bank**, are alleged to have supported the Government of Syria. One of these individuals, Syrian businessman **George Haswani**, is believed to serve as a middleman for oil sales between the Islamic State and the government of Syria. The European Union sanctioned Haswani in March. Russian Deputy Foreign Minister Sergei Ryabkov spoke out against the new sanctions, which include a wealthy Russian businessman and former president of the Russian Republic of Kalmykia, stating that the United States should stop playing “geo-political games.”

Myanmar-Related Sanctions for Q4 of 2015

On December 7, OFAC issued a six-month general license authorizing certain transactions otherwise prohibited by the Burmese Sanctions Regulations (“BSR”). The general license permits certain trade-related transactions to be conducted by individuals, companies, and financial institutions that are incident to the export of goods, technology, or non-financial services to or from Burma. The general license does not authorize any transactions to, from, or on behalf of any Specially Designated Nationals (“SDN”) or any other person whose property or interests in property are blocked by other US sanctions. Financial institutions are also permitted to unblock and return transactions blocked on or after April 1, 2015 that would have qualified under the December 7 general license. Prohibitions contained in the BSR including the ban on new investment regarding the Ministry of Defense, state and non-state armed groups, or SDNs remain in full effect.

US Authorities Continue to Enforce Sanctions Through Settlements

On October 20, **Crédit Agricole Corporate and Investment Bank** (“CA-CIB”) agreed to pay \$787,000,000 in a settlement with the Manhattan District Attorney, the US Treasury Department, the Federal Reserve, New York’s Department of Financial Services, and the US Attorney’s office over allegations that it used cover payments and implemented procedures to omit references to US-sanctioned parties in US dollar Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) payment messages sent to the United States. Specifically, CA-CIB allegedly processed thousands of SWIFT payment messages, using a variety of non-transparent methods, in violation of the Cuban Assets Control Regulations, the Burmese Sanctions Regulations, the Sudanese Sanctions Regulations, and the Iranian Transactions and Sanctions Regulations from 2003 to 2008. These violations took place at CA-CIB subsidiaries located in Switzerland, Paris, London, Hong Kong, Singapore, Dubai, and Bahrain. OFAC’s settlement with CA-CIB is simultaneous with settlements with the US Department of Justice, the New York County District Attorney’s Office, the Board of Governors of the Federal Reserve System, and the New York State Department of Financial Services.

On October 21, OFAC issued a Finding of Violation against **BMO Harris Bank NA** (“BMO Harris”), as the successor to Marshall and Ilsley Bank (“M&I Bank”) in connection with M&I Bank’s processing of funds transfers totaling \$67,357. Prior to its merger with Harris Bank, M&I Bank originated six funds transfers in violations of the Iranian Transactions and Sanctions Regulations. M&I Bank issued these funds transfers on behalf of a company specializing in carpets (“the Company”) for the purpose of paying the outstanding balance to an Iranian entity

located in Iran for the purchase of Iranian-origin carpets. The general license permitting the importation of Iranian-origin carpets was revoked effective September 29, 2010, however, M&I Bank did not remove the Company from the False Hit List or make any attempt to identify possible violations. M&I Bank continued to issue funds transfers on behalf of the Company. In issuing a Finding of Violation, as opposed to a monetary penalty, OFAC considered “that no M&I Bank managers or supervisors were aware of the conduct that led to the violations; M&I Bank has not previously received a penalty notice of Finding of Violation from OFAC; M&I Bank took appropriate remedial action in response to the violations; and M&I Bank substantially cooperated with OFAC during the course of the investigation.”

On November 4, **Banco do Brasil**, S.A. agreed to pay \$139,500 in a settlement with OFAC over allegations that it processed seven transactions in violation of the Iranian Transactions and Sanctions Regulations. Specifically, Banco do Brasil allegedly added Isfahan Internacional Importadora Ltda (“Isfahan”) to its “Good Guy Exception List” after its OFAC interdiction software generated numerous alerts due to the term “Isfahan”—a location in Iran—in the company’s name. Isfahan verbally confirmed that it did not import or export products from Iran. However, Banco do Brasil later determined that these funds transfers constituted payments for Iranian-origin goods, and did not stop the fund transfers for manual review because its payment system cleared the alert due to the inclusion of “Isfahan” on the “Good Guy Exception List.”

OFAC Issues Regulations on Malicious Cyber-Enabled Activities

On December 31, OFAC issued regulations to implement Executive Order 13694 of April 1, 2015 entitled “Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities.” The Cyber-Related Sanctions Regulations, 31 C.F.R. Part 578, impose broad economic sanctions on individuals and entities that are determined to be responsible for “malicious cyber-enabled activities” which constitute a significant threat to national security, foreign policy, or the economic health of the United States. The Cyber-Related Sanctions apply to a broad range of activities, including direct and indirect attempts to make cyber-enabled attacks. These sanctions and regulations provide the US government with enforcement tools to respond to cyber-attacks both on United States infrastructure and companies.

Executive Order 13694 created a new cyber sanctions regime which authorized the Secretary of Treasury to designate for inclusion on the SDN list two categories of individuals or entities. The first category includes those who engage in “cyber-enabled activities” outside of the United States and have the purpose or effect of:

- I. “harming or otherwise significantly compromising the provision of services by, a computer or network of computers that support” a critical infrastructure sector;
- II. “significantly compromising” services provided by a critical infrastructure sector;
- III. significantly disrupting the availability of a computer or computer network; or
- IV. misappropriating “funds or economic resources, trade secrets, personal identifiers, or financial information for commercial or competitive advantage or private financial gain.”

The second category of individuals or entities which may be designated as a SDN include those who have knowingly received or used “trade secrets misappropriated through cyber-enabled means” for “commercial or

competitive advantage or private financial gain,” assuming the behavior rises to the level of threatening US national security, foreign policy, or economic health.

OFAC stated that it intends to supplement these regulations by means which “may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.” Additional guidance remains crucial as neither the executive order nor the corresponding regulation defines certain key terms, including what may constitute “cyber-enabled” crimes. Without further guidance, individuals and entities such as hosting services and software providers may unintentionally be subject to sanctions.

The OFAC Cyber-Related Sanctions Regulations can be found [here](#).

Other Notable Developments

On November 12, President Obama signed Executive Order 13710 titled “Termination of Emergency with Respect to the Actions and Policies of Former Liberian President Charles Taylor.” This executive order terminated and revoked the national emergency declared in Executive Order 13348. Executive Order 13710 cited the democratic presidential elections held in Liberia in 2005 and 2011 as well as the 2012 conviction of, and 50-year prison sentence for, former President Charles Taylor as the driving forces behind the termination of the national emergency. The termination of the national emergency lifts eleven years of sanctions against certain individuals in Liberia.

On November 23, President Barack Obama signed an Executive Order titled “Blocking Property of Certain Persons Contributing to the Situation in Burundi.” Having found that the situation in Burundi constitutes an unusual and extraordinary threat to US national security, the President levied heavy sanctions and travel restrictions against certain individuals in the country. These restrictions target the government of Burundi as well as the armed militant groups which contribute to the turmoil in the country.

If you would like more information about US sanctions, please feel free to contact one of our partners or counsel.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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