

Berliner, Corcoran & Rowe, LLP

1101 17th Street, N.W., Suite 1100

Washington DC 20036-4798

(202) 293-5555

Fax (202) 293-9035

State of U.S. Sanctions on Iran in the aftermath of the P5+1 Agreement Permissible Scope of Commercial Activities by U.S. Persons¹

[*Babak Hoghooghi*](#)

[*Benjamin H. Flowe, Jr.*](#)

[*Dan Fisher-Owens*](#)

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On July 14th, the United States, Russia, China, France, the United Kingdom, Germany (collectively known as the “P5+1”) and Iran reached a historic agreement (the “Joint Comprehensive Plan of Action” or the “JCPOA”) whereby the P5+1 agreed to remove certain US, EU, and UN economic sanctions on Iran in exchange for Iran agreeing to significantly scale back its nuclear program. Notwithstanding the welcome anticipation of the “removal” of U.S. sanctions on Iran by some in the United States and the great trepidation about such “removal” by others, the JCPOA in fact only provides for rather limited easing of U.S. sanctions on Iran, principally those directed at non-U.S. Persons, and no sooner than probably sometime in mid to late 2016.

For purposes of this paper and as provided under applicable U.S. regulations, “U.S. Persons” are defined to include U.S. citizens, permanent residents, persons physically in the U.S., entities organized under U.S. law, non-U.S. branches of U.S. entities (i.e., not separate legal entities), non-U.S. entities that are owned or controlled by U.S. Persons² (i.e., subsidiaries organized under other countries’ laws), and non-U.S. Person officers, directors, employees, or other agents of U.S. Persons, including any such persons who are of Iranian heritage or nationality (i.e., an Iranian employed by a U.S. company).

This paper is intended to serve as a practical guide on the state of U.S. sanctions on Iran in the aftermath of the JCPOA, specifically outlining (1) the provisions of the JCPOA providing for the easing of U.S. sanctions on Iran, as well as the steps and timelines for implementing the same, (2) the activities that U.S. Persons continue to be prohibited from undertaking under U.S. law in connection with commercial transactions in or related to Iran, and (3) the limited scope of currently permissible activities by U.S. Persons in or relating to Iran, including activities to explore and assess potential future business opportunities there if and to the extent U.S. sanctions are scaled back, pursuant to the JCPOA or otherwise.

I. Summary

Relief from U.S. sanctions on Iran pursuant to the JCPOA will not go into effect until the following

¹ This paper contains general legal guidance on the matters discussed herein, but should not be construed as legal opinions on the application of this guidance to any specific facts or circumstances. Opinions provided herein are solely those of the authors.

² An entity is deemed owned or controlled by U.S. Persons if such U.S. Persons (i) hold a 50% or greater equity interest by vote or value in such entity, (ii) hold a majority of seats on its board of directors, or (iii) otherwise control its actions, policies or personnel decisions.

two conditions have been met: (1) the U.S. Congress does not disapprove the Agreement within a 60 day review period ending on September 17th, or is unable to override President Obama's promised veto of such resolution of disapproval by the required two-thirds majority in both the House and the Senate (this process is expected to conclude by the end of September), and (2) the IAEA has verified Iran's satisfactory performance of certain obligations under the JCPOA to significantly scale back its nuclear activities (the date of such verification is defined under the JCPOA as the "Implementation Day"). As such, even if the foregoing two conditions are satisfied, U.S. sanctions relief under the JCPOA will not go into effect, and hence the current state of U.S. sanctions on Iran will remain unchanged, until Implementation Day, which is currently estimated to occur sometime in mid to late 2016.

If and when Implementation Day occurs, the easing of international and U.S. sanctions on Iran under the JCPOA will be limited to the following sectors: (1) financial and banking, (2) oil, gas and petrochemical, (3) shipping, shipbuilding, and port operations, (4) automotive, (5) trade in gold and other precious metals, (6) trade in graphite, raw or semi-finished metals, coal and software for integrating industrial processes, and (7) insurance for the foregoing activities otherwise permitted under the JCPOA.

Moreover, under the JCPOA, the U.S. has committed to terminate only those secondary and extraterritorial U.S. sanctions that are directed towards non-U.S. Persons, and to also license and authorize (1) U.S. Persons to export commercial aircraft, spare parts and related services to Iran, (2) U.S. Persons to import food and carpets to the U.S., and (3) non-U.S. entities that are owned or controlled by U.S. Persons to engage in activities that are consistent with the JCPOA (i.e., relating to the above mentioned sectors). In contrast, the EU and other P5+1 countries are expected to significantly relax their sanctions, providing their businesses a significant competitive advantage in the Iranian market.

The extent to which such authorizations by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") will be in the form of general or specific licenses as well as the process and timing of the issuance of any such licenses is not entirely clear and remains to be seen when new U.S. regulations and other guidance is issued in advance of Implementation Day. It also remains unclear whether and to what extent licenses issued to foreign entities owned or controlled by U.S. Persons may authorize involvement or facilitation of the activities of the foreign entity by U.S. Persons, be they parent companies or affiliates or individuals who may be involved as board members, officers, managers, employees, or advisors of the non-U.S. subsidiary and/or the parent company. If as reported to date U.S. Persons are ultimately prohibited from facilitating commercial activities of foreign entities owned or controlled by them, non-U.S. subsidiaries of U.S. companies with significant U.S. Person participation may effectively be prevented from taking full advantage of commercial opportunities presented by the easing of sanctions on Iran.

Until such time when U.S. sanctions against Iran may be eased pursuant to the JCPOA and to prepare for resultant potential business opportunities in or relating to Iran, U.S. Persons may (i) undertake internal studies, evaluations and analyses of the Iranian market and its prospects, as well as potential future business partners there, (ii) internally strategize and otherwise prepare to capitalize on such business opportunities if and when doing so becomes permissible under U.S. law, (iii) travel to Iran to explore such opportunities, (iv) take steps to protect intellectual property rights in Iran, (v) attend conferences and exchange and/or pay for existing information and informational materials with people or entities (other than

SDNs³) in Iran or elsewhere without acquiring or providing any services from or to persons or entities in Iran or ordinarily resident in Iran, and (vi) discuss such future business opportunities with people or entities (other than SDNs) in Iran or elsewhere without agreeing to engage in any of the prohibited activities in the future if and when U.S. sanctions on Iran are eased or removed.

In addition, U.S. Persons may continue to legally export food, medicine, basic medical supplies, and services, software and hardware incident to personal communications (i.e., smart phones, laptops, and tablets) to Iran under existing OFAC general licenses, and otherwise engage in any activities authorized by OFAC pursuant to a specific license.

In the meantime, subject to the foregoing limited exceptions, U.S. Persons will continue to be prohibited from engaging in most commercial activities in or relating to Iran, including (i) dealings with the Government of Iran or SDNs, (ii) exporting goods or services to Iran, (iii) importing Iranian-origin goods or services to the U.S., (iv) other dealings in Iranian-origin goods or services, (v) new investments in Iran, (vi) facilitating any of the foregoing transactions undertaken by non-U.S. Persons, or (vii) entering into any executory or other contracts concerning any of the foregoing transactions to be undertaken in the future.

The lines between permissible and prohibited activities in these and other cases are fine ones that depend on the application of rules and regulations to precise facts and practices that at times may defy common sense. Our firm often employs International Trade Transaction Questionnaires to assist clients in gathering relevant facts to enable us to render advice efficiently and accurately concerning specific fact patterns.

II. Limited Easing of U.S. Sanctions under the JCPOA & Timeline for Implementation

A. Conditions to & Timeline for Implementation of JCPOA

Pursuant to the Nuclear Agreement Review Act of 2015, the U.S. Congress will have 60 days from July 19th to review and approve or disapprove the JCPOA. If, as expected, Congress adopts a joint resolution of disapproval of the JCPOA but is unable to override President Obama's promised veto of such resolution by the required two-thirds vote, the implementation of the Agreement will move forward as provided therein.

Even then, however, relief from US, EU or UN sanctions on Iran pursuant to the JCPOA will not go into effect until such time (Implementation Day) when Iran has performed a number of obligations under the JCPOA to significantly scale back its nuclear activities, and the International Atomic Energy Agency (IAEA) has verified the satisfactory completion of such undertakings. It is unpredictable and unclear exactly when Implementation Day will occur, but senior U.S. regulatory officials have informally indicated that their current best estimate is nine to twelve months after Adoption Day (defined under the JCPOA as 90 days after the United Nations Security Council has adopted a resolution endorsing the JCPOA, which it did on July 20th). As such, none of the U.S. or other sanctions relief under the JCPOA will go into effect, and hence the current U.S. sanctions regime will remain unchanged, until probably sometime in mid to late 2016.

³ Specially Designated Nationals or SDNs are entities and individuals with whom U.S. Persons may not have any dealings. The SDN List is accessible through www.treasury.gov/sdn. The JCPOA provides for the removal of some 400 individuals and entities from the SDN list, although many key Iranian entities will remain on the list.

B. Limited Easing of U.S. Sanctions

If and when Implementation Day occurs, the easing of international and U.S. sanctions on Iran pursuant to the JCPOA will, broadly speaking, only encompass the following sectors and activities:

(1) Financial and Banking: transactions with and provision of financial services to a number of Iranian financial and government institutions including the Central Bank of Iran (CBI) and the National Iranian Oil Company (NIOC); trading in Iranian Rials and provision of U.S. banknotes to the Government of Iran; bilateral trade on and transfer of Iranian revenues held abroad; purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt, including government bonds; financial messaging services (i.e. SWIFT) to the Central Bank of Iran and certain other Iranian financial institutions; and associated services for the foregoing categories;

(2) Energy and Petrochemical Sectors: Iran's crude oil sales; investments in and support for Iran's oil, gas and petrochemical sectors; purchase, acquisition, sale, transportation, or marketing of petroleum, petrochemical products and natural gas from Iran; export and sale of refined petroleum and petrochemical products to Iran; transactions with Iran's energy sector; and associated services for the foregoing categories;

(3) Shipping, Shipbuilding and Port Sectors: transactions with Iran's shipping and shipbuilding sectors and port operators, and associated services for the foregoing categories;

(4) Automotive Sector: sale, supply or transfer of goods and services used in connection with Iran's automotive sector, and associated services for the foregoing categories;

(5) Gold and other Precious Metals: Iran's trade in gold and other precious metals, and associated services for the foregoing categories;

(6) Software and Metals: trade with Iran in graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes in connection with activities consistent with the JCPOA, and associated services for the foregoing categories; and

(7) Insurance: provision of underwriting services, insurance or re-insurance in connection with the foregoing activities consistent with the JCPOA.

Moreover, under the JCPOA, the United States has committed to cease to apply and terminate only those U.S. sanctions that are directed towards non-U.S. Persons⁴, but to also license and authorize the following limited activities by U.S. Persons:

(a) export, re-export, sale, lease or transfer to Iran of commercial passenger aircraft, spare parts and components, and the provision of associated services, including warranty, maintenance, and repair and safety-related inspections, to Iran (*Export of Commercial Aircraft, Spare Parts & related*

⁴ Although beyond the scope of this paper, the myriad number and scope of the many U.S. sanctions on Iran were expanded over the years to impose significant restrictions on an extraterritorial basis on non-U.S. companies and their commercial dealings with Iran regardless of traditional bases of jurisdiction.

Services)⁵;

(b) engagement of non-U.S. entities owned or controlled by U.S. Persons in the activities that are consistent with the JCPOA relating to the foregoing identified sectors (*Activities of Foreign Subsidiaries of U.S. Persons*); and

(c) import into the U.S. of Iranian-origin carpets and food (*Importing Food and Carpets*).

C. Scope & Meaning of Favorable Licensing Policy; U.S. Person Facilitation Permissible?

Whether the foregoing three categories of permissible activities by U.S. Persons or foreign entities owned or controlled by them will be subject to general or specific licenses⁶ is not entirely clear based on the language of the JCPOA. However, U.S. regulatory officials have indicated that the sale of commercial aircraft will be permissible pursuant to specific licenses to be issued on a case by case basis, whereas the other two categories of permissible activities will be subject to general licenses to be issued by OFAC. The process and timing for the issuance of any such specific licenses also remain to be determined, and will likely be addressed in the forthcoming U.S. regulations to implement the JCPOA, as well as other guidance (i.e., *Frequently Asked Questions*) to be issued by OFAC. According to OFAC officials, such regulations and guidance will be issued in advance of Implementation Day, but no specific time frames for such issuance have been indicated.

To the extent such activities will be subject to the issuance of specific licenses, the adoption of a favorable licensing policy does not mean that OFAC will relinquish its authority to issue or deny a particular request, but that it will likely issue a requested specific license provided that the proposed activities do not involve any persons on the SDN list, are consistent with other U.S. laws and regulations relating to exports controls or otherwise, and are in its judgment otherwise consistent with the terms and goals of the JCPOA, (i.e., the activities and sectors described above).

Another important issue relating to the implementation of the JCPOA that remains unclear at this time is whether and to what extent licenses issued to foreign entities owned or controlled by U.S. Persons may extend to authorize involvement or facilitation (see footnote 10 for a discussion of what constitutes facilitation) by U.S. Persons, be they parent companies or affiliates or individuals who may be involved as board members, officers, managers, employees, or advisors of the non-U.S. subsidiary and/or the parent company. U.S. sanctions policy vis-à-vis Iran before the implementation over the past five years or so of more all-encompassing secondary sanctions was to exempt non-U.S. subsidiaries of U.S. companies from sanctions prohibitions but to prohibit U.S.-Person facilitation of their activities, and there are indications that OFAC may revert to the same policy in implementing the JCPOA. Doing so will have the practical effect of preventing non-U.S. subsidiaries of U.S. companies with significant U.S. Person participation from taking advantage of commercial opportunities presented by the easing of sanctions on Iran, which

⁵ Under the Joint Plan of Action initially agreed upon by the P5+1 countries and Iran on November 24, 2013 on an interim basis and subsequently extended until the conclusion of the JCPOA, limited U.S. sanctions relief was granted to U.S. Persons in the form of a favorable licensing policy relating to the supply and installation, as well as safety related inspection and repairs, in Iran to enhance the safe operation of Iranian commercial passenger aircraft, including transactions with Iran Air but not any other airlines designated as SDNs. This favorable licensing policy will continue to remain in effect until Implementation Day.

⁶ See Part IV below for a description of the difference between these two categories of licenses.

other such subsidiaries not to mention their non-U.S. competitors could. We suspect this policy may evolve over time.

D. Continued Vigorous Enforcement & Possible Snap-Back of Sanctions

The JCPOA provides for the “snap back” and reinstatement of international and U.S. sanctions on Iran if it significantly breaches its obligations under the Agreement. Given the terms of the JCPOA and certain seemingly inconsistent statements by U.S. officials, it remains to be seen whether intervening contracts will be grandfathered. In any event, it will be important to negotiate clear force majeure provisions and other protections in the event of a snap back of sanctions and despite the recent tendency of OFAC to license reasonably short wind down periods and activities.

Moreover, until such time and to the extent U.S. sanctions on Iran remain in place, be it before or after the implementation of the JCPOA, U.S. Persons should exercise diligence and caution and proceed on the basis of compliance with then applicable U.S. laws and regulations, as summarized below, which the U.S. Government has since the conclusion of the JCPOA repeatedly indicated will continue to be vigorously enforced.

III. Prohibited Activities & Penalties under Current U.S. Sanctions on Iran

Notwithstanding the conclusion of the JCPOA, the scope of U.S. economic sanctions on Iran remain rather broad. In fact, with limited exceptions outlined in the last part of this paper, U.S. Persons continue to be prohibited from engaging in most commercial activities in or relating to Iran, and civil and criminal penalties for violating these prohibitions remain significant.

A. Prohibited Activities under U.S. Law

Under current U.S. law, in the absence of a specific license or authorization from OFAC, U.S. Persons, wherever located⁷, are prohibited from engaging, directly or indirectly, in the following activities or transactions:

1. Transactions in which the “Government of Iran”⁸ or any other Specially Designated Nationals (SDNs), wherever located, has an interest (*No Dealing with the Government of Iran or an SDN*);
2. Exports or re-exports, sale or supply, directly or indirectly, of goods, software, or technology to Iran, regardless of whether such items are U.S.-origin (*No Export of Goods to Iran*);
3. Exports or re-exports, sale or supply, directly or indirectly, of services⁹ to Iran, which services are deemed exported to Iran when the benefit is received in Iran or by a person ordinarily resident in Iran (*No Export of Services to Iran*);

⁷ In the case of U.S. Persons who are natural persons, the prohibitions outlined in this paper apply equally regardless of where such persons live or are located, be that in the U.S., Iran or elsewhere.

⁸ The Government of Iran is defined under applicable regulations to include agencies or instrumentalities thereof, as well as persons directly or indirectly owned or controlled by or acting on behalf of any of the foregoing.

4. Imports into the U.S. of goods or services of Iranian origin, meaning services performed in Iran or outside Iran by an Iranian entity or someone ordinarily resident in Iran (*No Importation of Iranian Origin-Goods or Services to the U.S.*);

5. Transactions or dealings, including purchasing, selling, transporting, swapping, financing, brokering, facilitating, approving or guaranteeing, in or related to Iranian-origin goods or services or technology (*No Dealings in Iranian-Origin Goods or Services*);

6. New investments (i.e., commitment of funds or other assets, loans or other extensions of credit) in Iran (*No New Investments in Iran*);

7. Approving or facilitating¹⁰ any of the foregoing transactions undertaken by non-U.S. Persons (*No Facilitation of Prohibited Transactions by Non-U.S. Persons*); and

8. Agreeing to enter into any of the foregoing transactions in the future, even if such agreement is conditioned on the future easing or removal of U.S. sanctions or obtaining a specific license for the transaction in question (*No Executory Contracts*).

Moreover, reexports of U.S.-origin goods, software, or technology or services by non-U.S.-Persons to Iran are also prohibited, with certain important exceptions.

B. Penalties for Violating U.S. Sanctions

Penalties for violating the foregoing prohibitions can include (i) fines of up to the greater of \$250,000 or twice the value of a transaction, (ii) jail time of up to 20 years and criminal fines in excess of \$1,000,000 per violation, for criminal violations, and (iii) being listed as a party on the SDN list or various other lists maintained by the U.S. government (i.e., Denied Persons List, etc.) with whom U.S. Persons are prohibited from dealing or, as a practical matter, U.S. and non-U.S. Persons will likely not deal in light of the actual or perceived legal, practical or reputational risks of doing so.

IV. Permissible U.S. Person Activities under Current U.S. Sanctions Regime

Under the current regime of U.S. sanctions on Iran, three limited categories of commercial activities are permissible: (i) activities relating to communications, exchange of information and informational materials, and travel, (ii) activities for which blanket authorization is provided by OFAC on humanitarian or other policy grounds pursuant to general licenses, and (iii) activities of particular

⁹ “Services” is not a defined term under applicable regulations, but OFAC tends to interpret the scope of its prohibitions very expansively, and application of a standard dictionary definition of “services” would potentially cover any action by which a benefit is conferred, no matter how slight.

¹⁰ “Facilitation” is not a precisely defined term under applicable regulations, but OFAC guidance suggests an expansive application of the term encompassing any type of support or assistance for a prohibited activity (for example, even a U.S. company changing its corporate policies to permit its foreign subsidiaries to enter into contracts that previously required approval of the U.S. parent). Ultimately, most experts adopt a broad brush “active-passive” rule of thumb, whereby active participation that furthers a transaction is prohibited but passive knowledge and reporting is not.

individuals or entities for which authorization is sought and obtained from OFAC on a case by case basis pursuant to specific licenses.

A. Generally Permissible Activities

If and to the extent interested in proactively planning for the future easing of U.S. sanctions, be it as a result of the JCPOA or otherwise, and preparing for the resultant commercial opportunities that Iran may present, U.S. Persons and their employees, agents and representatives may engage in the following limited activities:

1. ***Exchanging Information and Informational Materials.*** Importing from Iran or exporting to Iran information or informational materials¹¹ (*but beware of exporting export controlled information to Iran*), whether commercial or otherwise (including marketing and related informational materials already in existence, such as price lists and basic product literature that does not include any export-controlled technical data or preliminary design or other work performed and specifically intended for a particular recipient or a currently prohibited transaction in or relating to Iran), regardless of format or medium of transmission, and paying for the same, but not including (x) information or informational materials not fully created and already in existence on the date of the transaction (paying for the creation of such information or informational materials that does not already exist would constitute the purchase of a service), or (y) the provision of marketing and business advice or consulting services¹²;

2. ***Attending Conferences.*** Attending conferences relating to the Iran market and future business opportunities in that country as a means of networking and exchanging information and informational materials (*but beware of engaging in any prohibited transactions with other persons attending or entities represented at the conference, such as the brokering, approving, facilitating or agreeing to the export of goods or services to Iran, or investing in Iran*);

3. ***Conducting Studies.*** Undertaking generic studies of the Iran market by, for example, collecting existing business or other information and assessing the size and potential of the market and relevant industrial sectors, business or commercial prospects, existing or potential competition, and the business and legal landscape in Iran (*but beware of paying an Iranian entity or an individual in Iran or ordinarily resident in Iran to create such information, which would constitute a prohibited importation of services from Iran*);

¹¹ The term “informational materials” includes publications, videos, posters, photographs, and CD ROMs.

¹² As mentioned before, the concept of prohibited “services” under U.S. sanctions laws is especially broad and amorphous, and thus it can at times be very difficult in practice to distinguish between the furnishing of information or informational materials, which is generally permissible, and the prohibited provision of services. To gain a better understanding of this distinction, consider that based on past OFAC guidance: (i) buying existing seismic data on an oil field is permissible, but providing services to Iranians to interpret such data or paying Iranians to create or interpret the same is not, (ii) attending a conference is permissible but sponsoring a conference in Iran is not permissible because it would involve the export of financial services to Iran, (iii) providing access to a website for an Iranian person is permissible, provided that the information and activities taking place on the website are already in existence when received by the Iranian person, and the U.S. Person does not take any action to edit or alter the information for purposes of the Iranian person, and (iv) transmitting information to persons in Iran about the status of their bank account is permissible informational materials activity, but providing banking services to that person is not.

4. **Strategic Planning.** Generically planning and refining commercial priorities and risk management strategies with respect to potential business opportunities in Iran or with particular Iranian entities (*but beware of paying an Iranian entity or an individual in Iran or ordinarily resident in Iran to undertake such activities, which would constitute a prohibited importation of services from Iran*);
5. **Protection of Intellectual Property.** Taking steps to protect intellectual property rights such as patents, trademarks, and copyrights in Iran or otherwise;
6. **Legacy Agreements.** Identifying and evaluating possible legacy agreements (involving joint venture, agency, distributorship or other arrangements) with Iranian entities or individuals, or otherwise relating to the Iran market (*but beware of renegotiating or renewing any such agreements for purposes of future commercial activities in or relating to Iran*);
7. **Vetting Potential Iranian Business Partners.** Screening or vetting future potential Iranian business partners, especially to confirm that they are not Specially Designated Nationals or on other U.S. sanctions lists (*but beware of paying an Iranian entity or an individual in Iran or ordinarily resident in Iran to perform such services, which would constitute a prohibited importation of services from Iran*);
8. **Discussing Business Opportunities.** Discussing possible future business opportunities and activities in or relating to Iran with potential partners, be they Iranian, located in Iran or elsewhere, provided that such discussions are not memorialized, or at most memorialized in non-binding Letters of Intent, Memoranda of Understanding, or term sheets that are explicitly and clearly non-enforceable by and against any party. Such discussions cannot amount to or result in either a binding agreement or even an executory contract to engage in any of the prohibited activities in the future, even if such an agreement is explicitly contingent upon obtaining a specific license or the easing of sanctions at a future date authorizing the activities provided thereunder¹³;
9. **Personal Communications.** Engaging in personal communications using phone or email or text message or otherwise, be they from Iran or otherwise, in connection with the foregoing activities or otherwise (*but beware that any and all such communications, whether oral or in writing, do not in fact constitute, and cannot be construed as constituting, a meeting of the minds and hence an agreement between the parties to such communications concerning future commercial activities in or relating to Iran or any of the foregoing prohibited activities*); and
10. **Travel to Iran.** Traveling to Iran in connection with the foregoing activities or otherwise, engaging in transactions that are ordinarily incident to such travel, including maintenance such as the

¹³ Generally speaking, under U.S. law a binding contract can be oral or written and need not necessarily be in any particular form so long as the writing or other evidence establishes that as a matter of fact two or more parties had a meeting of the minds and intended to bind themselves to certain terms and conditions specifically understood and agreed upon. Accordingly, in the course of any discussions and dealings with potential business partners or counterparts, be they Iranian or otherwise, relating to opportunities in or relating to Iran, it would be prudent for U.S. Persons and their employees, agents and representatives to be generally cautious and to refrain from (i) drafting, furnishing or accepting any written documents, (ii) engaging in any communications, written or otherwise, or (iii) undertaking any other activities, that in each such case may possibly be construed as evidencing or establishing a meeting of the minds and an intention to be bound by an agreement to engage in any prohibited transactions or activities in the future.

payment of living expenses and acquisition of goods or services (i.e., lodging, food and local travel) for personal use, arranging or facilitating such travel, and bringing company laptops and mobile telecommunications devices on such trips (*but beware of taking with you any export controlled items, and beware that any incidental transactions in Iran are paid for in cash and do not involve the use of U.S. bank credit cards, ATMs or online services, or other such transactions that would constitute the export of services to or from Iran*).

B. Permissible Activities Pursuant to OFAC General Licenses

In addition, U.S. Persons are authorized to engage in the following broad categories of commercial activities relating to Iran pursuant to General Licenses previously issued by OFAC:

1. ***Export of Food, Medicine and Basic Medical Supplies¹⁴***. Subject to certain conditions, exclusions and limitations, exports or re-exports, sale or supply, directly or indirectly, of food, medicine and basic medical supplies to Iran, and the conduct of related transactions such as shipping and insurance for such exports.

2. ***Export of Services, Software and Hardware Incident to Personal Communications***. Subject to certain exclusions and limitations, exports or re-exports, directly or indirectly, of (a) certain services and software incident to the exchange of personal communications over the internet, such as instant messaging, chat and email, social networking and blogging, and (b) certain software and hardware incident to personal communications, including mobile and smart phones, laptops, tablets and personal computing devices, as well as related services.

C. Activities Authorized by a Specific License

Finally, U.S. Persons may seek specific authorization from OFAC to engage in any activities in or relating to Iran that are otherwise prohibited under applicable U.S. sanctions laws. OFAC has broad discretion with respect to licensing determinations, which are generally guided by US foreign policy objectives and national security considerations. Specific Licenses are issued on a case by case basis and are not of general applicability, meaning that they only authorize the applicant in question to engage in certain clearly defined activities for a finite term of usually one or two years.

V. **Concluding Thoughts**

Even if the easing of U.S. sanctions under the JCPOA goes into effect sometime in mid to late 2016, the scope of permissible commercial activities by U.S. Persons relating to Iran will remain rather limited under U.S. sanctions laws. In addition to being permitted to export food, medicine, basic medical supplies and personal communications devices to Iran, as is currently the case, U.S. Persons will also be permitted, perhaps subject to a requirement to obtain authorization under a favorable licensing policy regime, to export commercial aircraft and spare parts to Iran and to import food and carpets from Iran. Moreover, non-U.S. entities that are owned or controlled by U.S. Persons will also be permitted to engage in commercial activities relating to certain specified economic sectors in Iran, including energy and petrochemical, shipping, and automotive sectors, although as a practical matter this exception will also be

¹⁴ Certain exports of medical devices as well as certain agricultural commodities, medicine, and medical supplies are exempted from the general authorization, but subject to a one year specific license requirement.

of limited utility if OFAC's regulations end up prohibiting any facilitation by U.S. Persons of such activities of their foreign subsidiaries.

The limited easing of sanctions on Iran under U.S. law will be in stark contrast to the near wholesale removal of current restrictions under applicable UN resolutions and EU regulations on European and other international companies. As such, among the consequences of the JCPOA may ultimately be the leaving of U.S. companies in a decidedly disadvantageous competitive position in relation to their foreign counterparts in trying to capitalize on the significant commercial opportunities presented in Iran as a result of the conclusion of the JCPOA.

It goes without saying that the U.S. government can in the future ease U.S. sanctions on Iran beyond the scope of what is provided under the JCPOA and/or be more lenient in issuing specific licenses authorizing a wider range of proposed commercial activities by U.S. Persons in or relating to Iran. The conclusion of the JCPOA may portend well for such a possibility and its likelihood may increase in the ensuing years if Iran fully complies with its obligations under the JCPOA and does not otherwise engage in activities that are detrimental to U.S. national security interests or foreign policy objectives. However, predicting such an outcome or the extent and timing of further easing of U.S. sanctions on Iran is not possible at this time, especially given the all-encompassing scope and complexity of such sanctions and that the easing or removal of many if not most U.S. sanctions will require legislative action in addition to executive action. Indeed, the President and Secretary of State Kerry have clearly stated that further relaxation of sanctions will require demonstrated progress by Iran on issues of democracy, human rights, and support for terrorism. It also remains to be seen how the next U.S. Administration will approach the implementation of the JCPOA and the possibility of any further improvement of relations with Iran, as it appears that the implementation phase of the Agreement may creep towards the next U.S. presidential election in October 2016.

Finally, a few words of caution. It is difficult to be succinct on the issues addressed in this paper because there are a whole host of complex and overlapping U.S. legislative, executive, and regulatory sanctions built up against Iran over some 35 years. Moreover, only nuclear sanctions are being relaxed pursuant to the JCPOA, not broad antiterrorism, human rights, anti-money laundering, or a host of other U.S. sanctions that will remain applicable to Iran. Finally, regulations implementing U.S. sanctions laws are constantly evolving and are subject to an intricate interplay with other U.S. export control regulations. As such, this paper is not intended to be and should not be viewed as an exhaustive and detailed treatise on U.S. economic sanctions laws and regulations relating to Iran, and is certainly not a substitute for legal advice from competent U.S. export control counsel concerning such laws and their evolving application to specific fact patterns. We employ International Trade Transaction Questionnaires to help clients gather relevant facts so we can most efficiently render a legal determination as to whether certain actions are prohibited or not prohibited under U.S. law. Under the post JCPOA sanctions regime, such determinations will get more, not less, complex.

Readers who may be interested in a more comprehensive and detailed description and analysis of U.S. sanctions laws on Iran as well as other U.S. economic sanctions and export control laws and regulations are encouraged to obtain a copy of our firm's [U.S. Export and Reexport Compliance Guide \(free condensed Nov. 2013\)](#), as supplemented by our periodic detailed *Export Licensing Compliance Memos* issued on a fee sharing basis. If interested in doing so or if you have any questions or require additional information concerning the current state of and future prospects for U.S. sanctions on Iran, please contact Babak Hoghooghi at bhoghooghi@bcr-dc.com.