

Back To Business (Almost) As Usual: Changes To Canadian Economic Sanctions Against Iran

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With confirmation that Iran has met the requirements of the Joint Comprehensive Plan of Action (JCPOA), markets in Iran are again opening for business. Last Friday Canada implemented substantial changes to its Iran sanctions. The sanctions regime had previously effectively prohibited commercial dealings between Canada and Iran. With recent changes to the sanctions regime in Canada, the United States and Europe new opportunities in the Iranian markets are opening up for Canadian business and financial institutions. While liberalizing of the Iranian sanctions regime is substantial, some restrictions remain in place. As Canadians seek opportunities in Iranian markets they should be aware of the restrictions that remain. These are summarized in our bulletin.

On July 14, 2015, the P5+1 (the five members of the United Nations Security Council, the United States, France, the United Kingdom, Russia, China, plus Germany) concluded a JCPOA with Iran. That deal involved nuclear non-proliferation commitments by Iran in exchange for a lessening of sanctions against Iran by the P5+1.

On January 16, 2016, the International Atomic Energy Agency (IAEA) confirmed that Iran had fulfilled all of the proscribed commitments required under the JCPOA for Implementation Day to take place. This triggered sanctions relief by the United Nations, United States, and European Union for Iran. Canada soon after declared its intention to also soften its sanctions. On February 5, 2016, Canada announced the formal coming into force of amendments to the Special Economic Measures (Iran) Regulations (the SEMA Regulations), along with updates to regulations made under the *United Nations Act* (the UN Act) in order to conform with the obligatory changes to the United Nations sanctions regime.

The economic sanctions imposed under the SEMA Regulations were much more intrusive on Canadian-Iran trade than those imposed under the UN Act. In effect, Canada's prior economic sanctions imposed under the SEMA Regulations prohibited anyone in Canada, and any Canadians outside of Canada, from entering into, or facilitating, directly or indirectly, the exporting, selling, supplying or shipping of goods to Iran. These prohibitions extended to the provision of almost all services, including

insurance and banking. While there were some discrete exceptions, the prior SEMA Regulations prohibited almost all commercial activity between Canada and Iran.

While there was an obligation on Canada as a member of the United Nations to rescind or amend the regulations it had in place under the UN Act following Implementation Day, there was no obligation on Canada to amend or revoke the comprehensive sanctions which it had additionally imposed on Iran under the SEMA Regulations. With the February 5, 2016 amendments to its SEMA Regulations against Iran, Canada fell in step with its allies.

The revisions to the SEMA Regulations represent a significant overhaul of the previously broad-reaching autonomous sanctions against Iran, with the intention of allowing for a controlled economic re-engagement in transactions with Iran. The amendments have removed the broad prohibitions on imports/exports and financial services between Canada and Iran.

Prohibitions do remain on the export to Iran of any goods listed in Schedule 2 in the SEMA Regulations and the provision to Iran of technical data related to those goods, and prohibit any dealings with the individuals and entities listed in Schedule 1. Schedule 2 goods are generally dual use products that are capable of being used in nuclear, chemical, and biological weaponry.

The Schedule 1 list, which identified specific people or entities that Canadians cannot do any business with, has also been significantly scaled down. The "prohibited entities" have been reduced from 530 to 161 and "prohibited individuals" reduced from 83 to 41. This list was also supplemented in the latest round of amendments to the sanctions with the addition of six new individuals and two new entities involved in Iran's ballistic missile activity. Canadians are effectively prohibited from entering into any transactions, directly or indirectly, with people or entities on this list.

In conjunction with the amendments to the SEMA regulations, Canada also issued a "Notice to Exporters No. 196" on February 5, 2016. It indicated that applications under the *Export and Import Permits Act* for permits to export items on Canada's Export Control List to Iran will be reviewed on a case-by-case basis, and applications for permits to export the most sensitive items on the Export Control List will typically be denied. While this suggests that export permits will be difficult to obtain, it nevertheless opens up the possibility of selling goods or technology listed on Canada's Export Control List to Iran.

Within the context of lifting sanctions, the current Canadian Government must also determine a way to repair diplomatic relations between Canada and Iran. Since September 7, 2012, Canada has designated Iran as a state supporter of terrorism. Pursuant to the *Justice for Victims of Terrorism Act*, and related amendments to the *State Immunity Act*, Canada has revoked Iran's state immunity in relation to any actions brought against Iran in connection with its support of terrorism. Since that time, diplomatic relations between Canada and Iran have been suspended.

Like Canada, the EU has lifted the majority of its previous trade restrictions with Iran subject to a list of prohibited persons and entities. In particular, the following activities are now permitted by the EU:

1. Almost all financial, banking and insurance services between EU persons and non-listed Iranian persons, entities or bodies including many Iranian financial and credit institutions;
2. The sale, supply, transfer or export of naval equipment and technology for shipbuilding, maintenance or refit is now permitted. This includes the provision of vessels designed or used for the transport or storage of oil and petrochemical products and the provision of flagging and classification services to Iranian oil tankers and cargo vessels;
3. The import, purchase and transport of crude oil and petroleum products, gas and other petrochemical products from Iran is now permitted. Moreover, equipment, technology and technical assistance may be provided by persons in the EU to the oil, gas and petrochemical industries within Iran;
4. Investments in Iranian oil, gas and petrochemical industries, including financial loans, or credit to either acquire or enter into joint ventures with Iranian persons engaged in the oil, gas and petrochemical sectors is now permitted; and
5. The sale, supply, purchase, export or transfer of precious metals, bank notes and coinage to and from, or for the Government of Iran, its public bodies, corporations or agencies, or its central bank is permitted.

The majority of the remaining EU measures relate to proliferation and non-proliferation related sanctions, an arm's embargo, sanctions applicable to other military-related or dual use technologies and restrictions against certain entity-specific and individual-specific sanctions.

While the EU sanctions relief has been quite extensive, the US has maintained most of its trade sanctions that prohibit US persons from engaging in almost all commercial transactions with Iran. The most significant change by the US is the lifting of "secondary" or "extra-territorial" sanctions which targeted non-US persons engaged in activity outside of the US. This is by far the most significant change in the US sanctions. The lifting of these secondary sanctions is expected to significantly open up non-US firms' ability to do business with Iran, as well as restoring Iran's access to the international financial system and expand Iran's ability to sell its oil, gas and petrochemical products on the international market.

While the US is lifting the secondary sanctions, the economic restrictions applicable to US persons remain largely the same as pre-implementation day sanctions. The following changes are worth noting:

1. The Department of the Treasury's Office of Foreign Assets Control (OFAC) has announced a favourable licensing policy for certain activities related to civil aviation. In particular, exports and re-exports from the US to Iran of commercial aircraft, as well as aircraft related items and services used exclusively for commercial aviation purposes will be authorized by OFAC on a case-by-case basis. We expect this will result in increased business between US civil aviation companies and Iran;
2. Importation into the US of certain Iranian products, including Iranian carpets and food (in particular pistachios and caviar) is now permitted.

Of note for Canadians, US banks are still not permitted to participate in "U-turn transactions". These are transactions between foreign companies in which US funds are routed through a United States bank to convert them to dollars. Such transactions are

integral to any international commerce conducted in US dollars. In effect, business with Iran will likely not be conducted in US currency.

All of this said, Canadian business is now poised to pursue new economic opportunities with Iran ranging from oil and gas to aerospace to financial services. In doing so, it is prudent to understand and be mindful of the sanctions web that remains in place for Iran, and ensure due diligence is paid to compliance.

By

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