February 2016 **Edition No. 3**

In this February edition, we are delighted to present legal and industry updates from the firm's global network of offices. The selection is based upon our experience of the wide variety of issues faced by our clients in their business operations and investments around the world.

We hope that you enjoy the edition, and would welcome the opportunity to discuss further any matters which impact your business today.

Chris Bailey
Partner, Tokyo
+81 (0)3 4510 5603
cbailey@kslaw.com

In 2015, our International Trade Practice Group received the *Chambers USA Award for Excellence* for the third time, which recognized us as the preeminent International Trade Practice Group for outstanding work, impressive strategic growth, and excellence in client service.

In This Issue:

Implementation Day Arrives: Sanctions on Iran are Lifted

Status update on the effect to US and EU Sanctions

Implementation Day – the day the International Atomic Energy Agency ("IAEA") announced that Iran had fully implemented its nuclear-related commitments under the Joint Comprehensive Plan of Action ("JCPOA") – fell last month on January 16. The JCPOA is an agreement between the EU, the P5+1 countries (China, France, Russia, the United Kingdom, the United States, and Germany) and Iran. Under the JCPOA, the EU and the P5+1 countries agreed to provide Iran with sanctions relief in exchange for Iran's commitment to scale back its nuclear program. On Implementation Day the U.S. and the EU are obligated to cease the application of certain nuclear-related sanctions against Iran. Part A of this article will discuss the effect on the U.S. sanctions, and Part B will discuss the effect on the EU sanctions.

Part A: Effect of Implementation Day on the U.S. Sanctions

The U.S. Office of Foreign Assets Control ("OFAC") has taken various actions and published detailed guidance in order to implement the U.S. commitments under the JCPOA.

On Implementation Day, extraterritorial sanctions that applied to non-U.S. persons were suspended. These extraterritorial sanctions include those on the petrochemical industry, the oil and gas industry, and the automotive sector. However, the primary sanctions prohibiting trade and investment in Iran by U.S. persons and any non-U.S. entity owned or controlled by U.S. persons ("U.S. Controlled Entity") remain in effect, although certain activities by U.S. Controlled Entities may be authorized under license. The U.S. commitments are discussed further below.

Removal of Entities from Sanctions Lists

OFAC has removed a number of individuals and entities from the Specially Designated Nationals and Blocked Persons List ("SDN List"), the Foreign Sanctions Evaders List ("FSE List") and the Non-SDN Iran Sanctions Act List ("NS-ISA List"), effective immediately. A full list of the parties removed is available here. It should be noted that individuals and entities that were removed from the applicable lists but that still meet the definition of the Government of Iran or Iranian financial institution remain blocked.

Ceasing the Application of Certain U.S. Sanctions on Activities by Non-U.S. Persons

OFAC's *Guidance Relating to the Lifting of Certain U.S. Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day* ("OFAC Guidance") specifies the activities by non-U.S. persons that are no longer sanctionable as of Implementation Day. These activities include investment in the petrochemical industry, the oil and gas industry, and the automotive sector, as well as certain financial and banking actions. The OFAC Guidance can be accessed here.

The United States will also cease efforts to reduce Iran's crude oil sales, including limitations on the quantities of Iranian crude sold, the jurisdictions that can purchase Iranian crude oil, and how Iranian oil revenues can be used.

U.S. Sanctions That Will Continue To Apply

The OFAC Guidance makes clear that the U.S. domestic trade embargo and export controls remain in place, as does Iran's status as a state sponsor of terrorism. This means that U.S. persons and U.S. Controlled Entities remain prohibited from engaging in transactions involving Iran unless authorized by OFAC under a specific or general license.

The OFAC Guidance also makes clear that non-U.S. financial institutions can still be subject to correspondent or payable-through account sanctions for knowingly facilitating certain significant financial transaction, for example involving Iranian financial institutions that remain on the SDN List. Secondary sanctions will still apply to non-U.S. persons who engage in specified activities including assisting, supporting or trading with the Iranian Revolutionary Guard Corps ("IRGC").

General License for Non-U.S. Entities Owned or Controlled by a U.S. Person

OFAC has issued General License H (which can be accessed here), effective immediately, which authorizes certain transactions by U.S. Controlled Entities. Generally speaking, General License H allows U.S. Controlled Entities to engage in transactions with the Government of Iran or persons subject to the jurisdiction of the Government of Iran that otherwise would be prohibited. As a result General License H allows U.S. persons to establish or alter operating policies and procedures of a U.S. entity or of a U.S. Controlled Entity to the extent necessary to allow a U.S. Controlled Entity to engage in authorized transactions. There are also specific activities that the General License H does not authorize.

Part B: Effect of Implementation Day on the EU

The impact of the EU sanctions relief will be broader than that of the U.S., as many of the nuclear related sanctions were withdrawn entirely on Implementation Day. It is important to note that individual EU Member States will apply the changes in the EU sanctions regime while also adopting their own licensing and other regimes in respect of Iran.

Withdrawal of Nuclear Related Sanctions

The EU has withdrawn many of the nuclear related sanctions it had in place in response to Iran's halt of its nuclear program pursuant to Iran's commitments under the JCPOA. Decision (CFSP) 2016/37 of 16 January 2016 (which can be accessed here) applies the provisions on the removal of sanctions set out earlier in Decision (CFSP) 2015/1863 of 18 October 2015 (which can be accessed here).

The result of this change is that prohibitions on the following will be removed unless they are related to the supply of items on the EU Common Military List: (i) trading in oil and gas products and the provision of related services, (ii) the provision of engineering and maintenance services to cargo aircraft, (iii) bunkering and supply services to Iranian vessels, and (iv) the supply of certain software. However, significant controls remain in place in relation to material and technical assistance in the nuclear and missile technology industries.

Licenses

Other prohibitions from the nuclear sanctions regime, including dealing with Iran with respect to dual-use items, certain metals, diamonds and graphite will be removed subject to a license requirement.

Licenses will not be available where the supply is related to nuclear related activities inconsistent with the JCPOA, or where the supply is a contribution to Iran's military or ballistic missile program or for the benefit of the IRGC. These licensing requirements will apply only to a minority of transactions but will require screening of parties involved and application of end-use controls.

Sanctions Lists

Many of the persons and entities subject to asset freezes under the EU sanctions have been removed, but some remain in place. Furthermore, existing anti-terrorism and human rights sanctions remain in force. Companies must therefore continue to screen any Iran transactions against the remaining persons and entities on the asset freeze lists.

Conclusion

Under the JCPOA, the U.S. and EU sanctions can be "snapped back" with immediate effect if Iran violates its commitments under the agreement. The U.S. government has considered issuing a license to "unwind" certain contractual activities if the sanctions go back into effect, but such licensing is at the discretion of the U.S. government. This means that parties that enter into contracts with Iran should be mindful of the fact that if Iran violates the JCPOA, the U.S. can reinstitute the extraterritorial sanctions with immediate effect, and there is no certainty that the U.S. government will refrain from sanctioning non-U.S. companies while they unwind their positions in Iran.

The Next Milestone

The next milestone under the JCPOA is Transition Day, which is set for the earlier of 8 years from July 2015, or the date on which the IAEA declares that all nuclear material in Iran is solely for peaceful purposes. After Transition Day, the United States and the EU must seek appropriate legislative action to entirely terminate all remaining nuclear related sanctions. King & Spalding will continue to monitor the progress of the JCPOA and its impact on U.S. and EU sanctions programs. Please contact us if you have any questions or would like additional information.

King & Spalding has also published a more detailed article on these developments which can be accessed here.

About the Authors

Christine Savage is based in King & Spalding's Washington D.C. office, which is the headquarters of the firm's International Trade Group. The Group handles a wide range of international trade and customs matters for U.S. and non-U.S. clients, and is composed of over 40 lawyers and consultants, including former government officials, former WTO officials, trade remedy accounting and data specialists, and foreign legal experts. In 2015 the Group was named *2015's International Trade Team of the Year* by Chambers USA.

Resources & Links

The following is a selection, with links, of recent King & Spalding publications in the Dispute Resolution and Crisis Management space.

Legal Updates

Sovereign Immunity: Supreme Court Clarifies the Scope of the Commercial Activity Exception to Foreign Sovereign Immunity

Foreign Jurisdiction: Second Circuit Panel Declines to Abandon Rule on Corporate Liability Under Alien Tort Statute

US Class Actions: Is there a Silver Lining for Defendants in the Recent Class Action Decision by the Supreme Court?

Energy: LNG: The Top 10 Questions Facing the LNG Industry in 2016

Energy: LNG Third Party Tolling Agreements: Issues to Consider

Climate Change: Renewable / Alternative Energy: The 2015 Paris Agreement on Climate Change

Russian Developments: Infrastructure, Energy and Land: Russia's Renewed Focus on the Development of the Russian Far East

Investigations: State Attorneys General Investigations and Enforcement: What to Expect in 2016

EU Data Protection: The EU Reaches Agreement on New Data Privacy and Security Standards

TPP Data Protection: Privacy Law, Cross-Border Data Flows and the Trans-Pacific Partnership Agreement: What Counsel Need to Know

King & Spalding News

Press Release: Bobby Burchfield Named as Finalist for Benchmark Litigation 2016 General Commercial Lawyer of the Year

Recognition: Environmental Group Of The Year: King & Spalding

London: King & Spalding Adds Employment Team in London

Deal News: King & Spalding Advises Eagle LNG on Two LNG Liquefaction Projects

Asia Pacific: King & Spalding Recruits Construction Specialist Emerson Holmes to its Asia-Pacific Disputes Team

Recognition: Project Finance International Names King & Spalding Project Its Americas Deal of the Year

Recognition: King & Spalding Named Best Project Finance/Asset Management Law Firm by IFN and Named for Deal of the Year

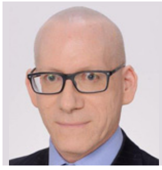
Middle East: King & Spalding Named Best Advisory Firm for Fund Structuring

Global Contacts (with links to curricula vitae)

The Tokyo Team

Chris Bailey
Global Disputes

John McClenahan
Managing Partner



Rupert Lewi
M&A / Projects

Mark Davies
Finance / M&A / Funds

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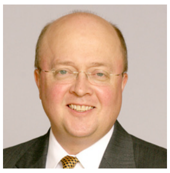
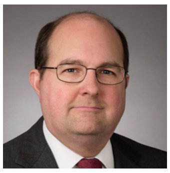
Christine Savage
Washington D.C.

Michael Taylor
Washington D.C.

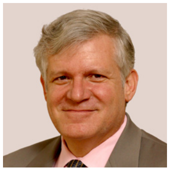


Stephen Jones
Washington D.C.

Jeffrey Telep
Washington D.C.



Stephen Vaughn
Washington D.C.

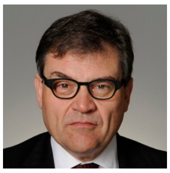


Gilbert Kaplan
Washington D.C.

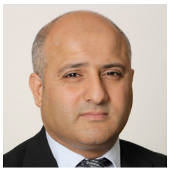
Steve Orava
Geneva

Daniel Crosby
Geneva

Jasper Wauters
Geneva



Iain MacVay
London



Sajid Ahmed
London

Ilia Rachkov
Moscow

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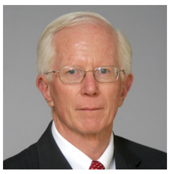
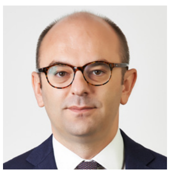
Wick Sollers
Investigations
Washington D.C.

Matt Baughman
Investigations
Atlanta

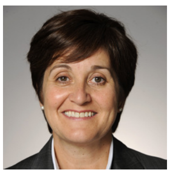


Jim Griffin
Antitrust Litigation
Washington D.C.

Kevin Buster
U.S. Litigation
Atlanta



Emerson Holmes
International Arbitration
Singapore



Jane Player
International Arbitration
London

Ken Fleuriet
International Arbitration
Paris

Jan K. Schaefer
International Arbitration
Frankfurt