

Iran After Lifting of Sanctions: Open for Business?

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On July 14, 2015, after more than 20 months of negotiations,¹ the E3/EU+3² and Iran reached an agreement on the Joint Comprehensive Plan of Action (JCPOA). It builds on the foundations established by the Joint Plan of Action, an interim agreement reached in 2013, which suspended some of the sanctions on Iran in exchange for a partial, short-term freeze of its nuclear program. The JCPOA is far more ambitious as it envisions that nuclear-related U.N., EU and U.S. sanctions on Iran will be lifted, provided Iran commits to using its nuclear program exclusively for peaceful purposes in the long term.

On July 20, 2015, the U.N. Security Council passed a resolution endorsing the JCPOA. In line with the terms of the plan, "**Adoption Day**" occurred 90 days later, on Oct. 18, 2015. From this date onward the parties to the deal started making preparations for the implementation of their respective commitments under the agreement. For example, the U.S. Secretary of State issued contingent waivers of certain sanctions.

The next milestone under the plan occurred on **Jan. 16, 2016, also known as "Implementation Day."** On Implementation Day, the International Atomic Energy Agency (IAEA) confirmed that Iran had satisfied its obligations under the JCPOA. Accordingly, **the EU and U.S. lifted its nuclear-related sanctions on the same day. More specifically, the EU and U.S. lifted nuclear-related sanctions targeting Iran's financial, energy, shipping/transport sectors and more.**

However, certain sanctions-related restrictions remain, particularly in relation to "US persons." US persons are U.S. citizens, permanent residents, companies, persons located within the United States, and all non-U.S. entities owned or controlled by a US person. Additionally, although a significant number of Iranian individuals and entities were removed from the EU and U.S. sanctions lists, **U.S. secondary sanctions can still penalize "non-US persons"** (generally referring to non-U.S. entities not owned or controlled by US persons and any other individuals or entities not within the scope of US persons as defined above) for dealing with any Iranian individuals and entities **that remain on the Office of Foreign Assets Control (OFAC)'s list of Specially Designated Nationals and Blocked Persons (the SDN List).**

The following article provides a general summary regarding the most significant changes to the EU and U.S. sanctions programs against Iran and highlights some of the restrictions that remain in place when dealing with Iran.

Relief From EU Sanctions

Council Regulation (EU) No. 267/2012 of 23 March 2012 (the Iran Regulation) imposes restrictions on all EU nationals and entities incorporated or constituted under the laws of a EU member state, as well as any foreign individuals or entities conducting business, wholly or partly, within EU territory (collectively referred to as EU persons), from either entering into transactions with EU-designated Iranian persons³ (persons and entities on which special restrictions, such as asset freezes, have been imposed) or contracts in specific sensitive sectors. The Iran Regulation also imposes further restrictions on certain types of goods which are listed in its annexes.

Under the JCPOA, the EU lifted its nuclear-related sanctions targeting various sectors in Iran on Implementation Day, including Iran's financial, energy, and shipping sectors. With respect to Iran's financial sector, the EU, for example, lifted restrictions on transfers of funds between EU and Iranian persons. The EU also lifted certain restrictions on banking activities, including allowing EU banks to open offices or subsidiaries in Iran and allowing Iranian banks (that are not listed on the relevant sanctions lists) to establish correspondent banking relationships, offices or subsidiaries in the EU. Non-sanctioned Iranian banks are also now allowed access to financial messaging services (e.g., SWIFT). Further, the EU lifted restrictions on providing financial support services (e.g., export credits and insurance) for trade activities with Iran.

The EU also lifted certain restrictions related to Iran's energy sector on Implementation Day. For example, the EU now allows EU persons to purchase or transport crude oil, petroleum products, natural gas, or petrochemical products from Iran. The EU also lifted restrictions on investing in, or providing equipment, technology, and technical assistance to, Iran's oil, gas and petrochemical sectors.

In the shipping and transport sectors, EU persons can now provide Iranian persons with equipment and technology for shipbuilding and maintenance; design and construction services for cargo vessels and oil tankers; and vessels for the transportation or storage of oil and petrochemical products. Various services for Iranian vessels or cargo aircraft are also permitted as long as such vessels or aircraft are not carrying prohibited items. Additionally, Iranian cargo flights now have access to EU airports.

Certain restrictions on Enterprise Resource Planning software, metals, precious metals, banknotes, and coinage have also either been lifted or eased (i.e., not prohibited but requires authorization). Also, as referenced above, the EU removed a substantial number of individuals and entities from EU sanctions lists on Implementation Day.⁴

Relief From U.S. Sanctions

Generally, relief from U.S. sanctions is narrower than the EU's relief under the JCPOA. The United States has had **primary and secondary sanctions** on Iran building up over several years. **Primary sanctions apply to US persons** and also prohibits transactions with Iran which have a direct connection to the U.S. A direct connection to the U.S., for example, can

include transactions involving U.S. dollar payments. Any such transactions involving Iran, whether by U.S. or non-US persons, would be prohibited by U.S. primary sanctions. Further, U.S. primary sanctions prohibit US persons from approving of or otherwise facilitating any transactions involving Iran or **Iranians sanctioned by the United States.**

As discussed in greater detail below, the overwhelming majority of primary sanctions remain in force following Implementation Day. This severely restricts the ability of U.S. businesses to seize commercial opportunities in Iran and is subject to only a few limited exceptions.

There are two key differences between primary and secondary sanctions. First, secondary sanctions apply extraterritorially, i.e., beyond U.S. borders and to non-US persons. Second, they do not prohibit transactions outright, but merely allow the United States to impose penalties in response to transactions that are deemed harmful to its national interest. For example, prior to Implementation Day, the U.S. government restricted the ability of non-U.S. companies to do business in the United States, if they made investments in the Iranian oil, gas or petrochemicals sector.

On Implementation Day, the United States lifted its nuclear-related secondary sanctions targeting various business sectors in or related to Iran. In terms of Iran's financial sector, under the JCPOA, various restrictions have been lifted. For example, non-U.S. financial institutions are now permitted to use the Iranian rial and maintain accounts denominated in rials. Non-US persons also may now provide U.S. bank notes to the Iranian government. Other financial-related activities that were previously restricted, including certain financial messaging services for Iranian financial institutions and services related to financial sector activities that are no longer restricted, are also now permitted for non-US persons.

In terms of the energy sector, non-US persons are now permitted to invest in Iran's oil, gas and petrochemical sectors. Non-US persons can purchase, sell, and transport petroleum, petrochemical products and natural gas from Iran. Non-US persons are also now permitted to provide refined petroleum and petrochemical products to Iran.

The United States has also lifted most secondary sanctions that were targeting certain types of goods and services including precious metals, metals, software, and other goods and services related to the Iranian automotive sector. Non-US persons are also now permitted to provide insurance for transactions that are otherwise allowed under U.S. sanctions.

Additionally, non-US persons can also now transact with certain individuals, entities, Iranian banks and other government-related entities that are no longer targeted by U.S. secondary sanctions, as long as such transactions do not otherwise violate sanctions. On Implementation Day, pursuant to the JCPOA, the United States removed approximately 400 individuals and entities from the SDN list.⁵

Another significant change to U.S. sanctions under the JCPOA was **the OFAC-issued general license (General License H) permitting non-U.S. entities** owned or controlled by a US person to conduct certain activities with Iran. However, this general license does not allow US persons to be involved in, or facilitate, the business with Iran conducted by such non-U.S.

entities. Further, there are several exceptions to General License H; for example, the business with Iran cannot involve individuals or entities that remain on the SDN List and fund transfers cannot involve a U.S. bank.

Additional changes to U.S. sanctions on Iran under the JCPOA include a new licensing policy for commercial passenger aircraft for civilian use, which allows U.S. and non-US persons to request a specific license from the U.S. government to export, sell, or lease such aircraft (and any spare parts or related services). The United States also issued a general license that allows for, under certain conditions, the import of Iranian carpets and certain foodstuffs into the United States.

Sanctions Remaining in Place

Despite these changes to the EU and U.S. sanctions under the JCPOA, many sanctions-related restrictions remain in place after Implementation Day. For the EU, the **EU arms embargo, prohibiting the provision of arms to Iran, remains in effect.** Further, sanctions related to **missile technology, human rights, and support for terrorism are still in place.** There are also restrictions on certain nuclear-related activities and the provision of certain types of metal and software that require prior authorization from the relevant EU member state.

For **US persons**, as discussed above, **primary sanctions on Iran remain in effect, prohibiting US persons from conducting almost any business with Iran, the Iranian government, and sanctioned individuals and entities (including entities 50 percent or more owned, in the aggregate, by sanctioned individuals and entities).** The **use of U.S. dollars for transactions involving Iran are also still prohibited.** Further, U.S. export controls restricting the export of certain U.S. origin goods, or items that contain U.S. content, are still in effect and are applicable to both US and non-US persons.

Sanctions (other than the nuclear-related sanctions programs) are still in place (e.g., sanctions related to Iran's missile program, terrorism, human rights abuses, proliferation of weapons of mass destruction, and others). Also, non-US persons are still prohibited from knowingly evading U.S. sanctions and secondary sanctions can still penalize non-US persons for providing material support or conducting a significant transaction with any Iranian entities or individuals that remain on the SDN List.

Of note, the JCPOA also allows for EU and U.S. sanctions to "snap-back" into place if Iran were to breach the agreement. If this were to occur, individuals and entities would be required to stop any prohibited activities involving Iran.

Iran: Open for Business?

Starting on Implementation Day, the JCPOA provides relief from U.S. and EU sanctions and potentially opens the door for business opportunities related to Iran. As discussed above, this is particularly true for EU persons and other non-US persons that previously sought to avoid penalties under U.S. secondary sanctions. However, despite this sanctions relief, other EU

and U.S. sanctions on Iran remain in place. Further, the current sanctions relief under the JCPOA is conditional, and can be snapped back into place if necessary. Accordingly, while doing business with Iran may be a possibility for some, challenges with respect to sanctions compliance still exist.

Pursuant to the JCPOA, most types of business with Iran are now available to EU persons. However, it is important that EU persons first consider any restrictions under EU sanctions that remain in place and ensure that the activities do not involve any individuals or entities that remain targeted by EU sanctions. EU persons (and other non-US persons) should also be aware that the United States continues to have extraterritorial sanctions in place. U.S. authorities expect EU persons (and other non-US persons) to ensure that they do not provide material support to, and are not conducting significant transactions with, individuals or entities that continue to be subject to U.S. secondary sanctions.

Further, U.S. sanctions require EU persons (and other non-US persons) to ensure that any activities involving Iran will not involve any US persons, require US persons to approve of or otherwise facilitate transactions involving Iran, involve U.S. dollar payments, or knowingly evade U.S. sanctions. For example, an EU company will have to ensure that any of its subsidiaries, offices, or employees in the United States are kept separate from any activities related to Iran.

For US persons, Iran still remains generally closed for business, unless the envisioned activities fit one of the few exceptions discussed above, the most significant of which being General License H that generally permits non-U.S. entities owned or controlled by US persons to conduct certain business with Iran, so long as such business does not have a direct connection with the United States and does not meet any of General License H's other exceptions.

Given the complex nature of both the EU and U.S. sanctions regimes with respect to Iran, it will also be important for all persons and entities to continue maintaining strong compliance policies, continue considering any relevant export control issues, and consider including provisions in agreements related to permissible activities in Iran as contractual protection if sanctions were to ever "snap back" into place.

Endnotes:

- 1. Since the 2013 interim agreement**
- 2. United States, China, Russia, Germany, France, the United Kingdom and the EU High Representative for Foreign Affairs**
- 3. The annexes to the Iran Regulation contain a list of EU-designated Iranian persons, i.e., persons and entities on which special restrictions, such as asset freezes, have been imposed.**
- 4. The complete list of persons removed from EU sanctions lists is available in the Council Implementing Regulation (EU) 2015/1862.**

5. Of note, certain names removed from the SDN List that are considered to be part of the Government of Iran or are Iranian financial institutions have been moved to a separate sanctions list, known as the "E.O. 13599 List." US persons are prohibited from transacting with, and must block the property and interests in property of, any of the entities on this list and any other individuals or entities owned or controlled by the Government of Iran or Iranian financial institutions.