

Sanctions Against Iran: Changing, Not Gone

On July 14, 2015, the P5+1 powers (the United States, United Kingdom, China, France, Russia, and Germany) and Iran reached an agreement, the “Joint Comprehensive Plan of Action” (JCPOA), easing sanctions on Iran in return for restrictions on Iran’s nuclear program.¹ The United Nations Security Council (“UNSC”) endorsed the JCPOA on July 20, 2015.² While some of the details remain unclear, and US authorities have promised that additional guidance is forthcoming,³ this memorandum focuses on providing a general overview of the sanctions aspects of the agreement.⁴ It does not analyze the nuclear provisions of the agreement.

In summary:

- The JCPOA provides no sanctions relief prior to the date on which the International Atomic Energy Agency (IAEA) certifies that Iran has completed a number of steps to constrain its nuclear activities (the “Implementation Day”). The effective date of sanctions relief is months away, and it is unlikely to occur before the end of the year.
- While the US Congress now has roughly a two-month period to review the JCPOA, blocking the agreement would require a supermajority in each house of Congress.
- When the Implementation Day occurs, the most significant EU and UN sanctions against Iran will be suspended (though some will remain).
- Also upon the Implementation Day, many US secondary sanctions against Iran (targeting companies dealing with Iran outside US jurisdiction) will be suspended, most notably those targeting the Iranian energy sector and financial sector.
- However, US direct sanctions will remain in force, meaning that dealings with Iran within US jurisdiction, importantly including any US dollar clearing operations

¹ The JCPOA and its annexes may be found at http://eeas.europa.eu/statements-eeas/2015/150714_01_en.htm.

² On July 20, 2015 the UN Security Council unanimously adopted resolution 2231 (2015), endorsing the JCPOA; see <http://www.un.org/press/en/2015/sc11974.doc.htm>.

³ See US DEPARTMENT OF THE TREASURY, *Statement on the Joint Comprehensive Plan of Action Regarding the Islamic Republic of Iran’s Nuclear Program* (July 14, 2015) (“Treasury JCPOA Statement”), available at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx>.

⁴ This memorandum updates and replaces our memorandum on the same topic of July 15.

involving Iranian interests, will remain prohibited. US interests will generally not be able to do business in Iran.

- Moreover, a much more limited but still significant framework of US secondary sanctions targeting dealings involving specific Iranian actors and activities will remain in place.
 - It will remain important for non-US actors to check the US sanctions lists and analyze secondary sanctions issues relating to any sanctioned Iranian person or entity.
- Should there be a dispute over whether the JCPOA has been breached, there is a political dispute resolution mechanism. However, if agreement is not reached, individual countries remain free to re-impose sanctions. The precise “snap-back” mechanism at national level remains unclear; any re-imposition of sanctions may or may not be co-extensive with current sanctions.
 - Those contemplating new business activity in Iran in reliance on the changed sanctions regime should carefully consider their contractual position should sanctions be re-imposed.

In some ways, the JCPOA, assuming it is implemented, returns sanctions to a state resembling the pre-2010, pre-CISADA status quo: the United States will retain extensive direct (but not secondary) sanctions against Iran, Europe and the UN will not, and there will be significant divergence in the legal regimes applicable to firms from different jurisdictions. However, there are a number of important differences.

First and perhaps most importantly, US enforcement action against banks engaging in US dollar clearing transactions relating to US-sanctioned parties is far more aggressive today than it was in the past. That will not change, and there is no indication that banks—including non-US banks—or other institutions will be permitted to engage in dollar transactions relating to Iran.

Second, US secondary sanctions will continue to apply to transactions with a limited but significant number of US-sanctioned Iranian entities, introducing compliance complexities for non-dollar transactions that did not exist before, particularly for entities that also are outside the EU sanctions regime.

Finally, the risk of a dispute over JCPOA implementation leading to a “snap-back” re-imposition of sanctions introduces uncertainty to longer-term transactions with Iran.

Background

The P5+1 agreement follows protracted negotiations after the parties reached a preliminary framework agreement, the Joint Plan of Action ("JPOA"), in April 2015.⁵ During the negotiations, the United States and European Union continued to extend limited sanctions relief first provided in January 2014 in exchange for continued Iranian compliance with an interim agreement to suspend Iran's nuclear program.⁶ This interim relief remains in force pending the implementation of the JCPOA.⁷

Timing of Implementation

As noted, the critical date for sanctions relief under the JCPOA is the "Implementation Day." The JCPOA defines that as the date on which the IAEA issues a report verifying Iran's implementation of a number of nuclear commitments, including decommissioning a large proportion of its centrifuges and placing them under international supervision, disposing of enriched uranium and heavy water stockpiles, and commencing modifications of a reactor under construction. The bulk of the sanctions relief will be implemented simultaneously upon this date, which is to be determined. However, formal preparations for implementation will not begin until "Adoption Day," which is defined as a date 90 days after passage of a UN Security Council Resolution endorsing the JCPOA (*i.e.*, UNSC Resolution 2231 (2015) of July 20, 2015) so that Adoption Day should occur on or around October 18, 2015. Substantial technical work must be completed before the required IAEA certification can be issued. Therefore, a delay of a number of months until Implementation Day appears inevitable, and it is unlikely that implementation will take place before 2016. In the meantime, the previously announced suspensions of sanctions by both the US and the EU will remain in effect.

Simultaneously with the process above, under the Iran Nuclear Agreement Review Act of 2015, the US Congress has 60 calendar days to approve, disapprove, or take no action on the relief from statutorily imposed sanctions included in the agreement.⁸ Until this period has run, the President cannot "waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran" during the period of review, unless Congress passes a joint resolution stating that in substance Congress favors the agreement. However, at the end of the period, the President may grant the sanctions relief contemplated by

⁵ See Cleary Gottlieb Alert Memorandum, *Iran Sanctions: Where Are We and What's Next?*, dated April 6, 2015, available at <https://clients.clearygottlieb.com/rs/alertmemos/2015-25.pdf>.

⁶ See US DEPARTMENT OF THE TREASURY, *Guidance on the Continuation of Certain Temporary Sanctions Relief Implementing the Joint Plan of Action, As Extended* (July 7, 2015), available at http://www.treasury.gov/resource-center/sanctions/Programs/Documents/guidance_ext_20150707.pdf; for additional detail on the limited relief provided in February 2014, please see our February 3, 2014 memorandum available at <http://www.cgsh.com/us-provides-limited-relief-from-secondary-sanctions-against-iran/>.

⁷ See Treasury JCPOA Statement; Council Press release 587/15 (<http://www.consilium.europa.eu/en/press/press-releases/2015/07/14-eu-iran-sanctions-extended/>).

⁸ Iran Nuclear Agreement Review Act of 2015 (Pub. L. No. 114-17) (2015), available at <https://www.congress.gov/114/plaws/publ17/PLAW-114publ17.pdf>.

the JCPOA, unless both houses of Congress pass a resolution of disapproval. That joint resolution is subject to presidential veto, meaning in effect that a two-thirds majority of each house of Congress is required in order to block implementation of the JCPOA. While such a supermajority against the agreement is not impossible to obtain, the procedural balance is much more favorable than if the affirmative support of Congress were required.

Finally, eight years after Adoption Day (“Transition Day”, which occurs at the latest on October 18, 2023), or earlier if the IAEA certifies that all nuclear material in Iran is in peaceful use, additional sanctions and designations will fall away, to be replaced by controls consistent with those applicable to other states that are signatories to the Non-Proliferation Treaty. Furthermore, the statutory authority for the suspended US secondary sanctions against Iran (which remains in place but unused during the interim period) is to be repealed. Ten years after Adoption Day (*i.e.*, October 18, 2025), the remaining UN sanctions authority (which will also be held in suspension in the meantime) will lapse.

Sanctions Relief

A. UN Sanctions

Existing United Nations sanctions against Iran will be terminated on the Implementation Day, subject to re-imposition should Iran breach the agreement. However, they will be replaced with targeted restrictions, including non-proliferation restrictions, to be specified in the UNSC resolution. Annex B to UNSC Resolution 2231 (2015) details that these will include an extension on the ban on import and export of conventional weapons for five years, of ballistic missiles for eight years, and of nuclear proliferation-related items for ten years (all subject to (i) individual, case-by-case UNSC approval, or (ii) termination if the IAEA certifies earlier that Iran’s nuclear program is entirely peaceful). In addition, some, but not all, of the individuals and entities subject to asset freezes and travel bans will be de-listed.

B. EU Sanctions

The European Union maintains sanctions related to both human rights⁹ and nuclear¹⁰ concerns. The latter sanctions will be phased out (subject to re-imposition if the agreement is violated) in two steps. First, the bulk of the EU’s nuclear-related sanctions will be suspended on Implementation Day, including those affecting the following sectors and activities:

- i. Transfers of funds between EU persons and entities, including financial institutions, and Iranian persons and entities, including financial institutions;

⁹ Council Decision 2011/235/CFSP, OJ 2011 L 100/51, as amended; Council Regulation (EU) No 359/2011, OJ 2011 L 100/1, as amended.

¹⁰ Council Decision 2010/413/CFSP, OJ 2010 L 195/39, as amended; Council Regulation (EU) No 267/2012, OJ 2012 L 88/1, as amended.

- ii. Banking activities, including the establishment of new correspondent banking relationships and the opening of new branches and subsidiaries of Iranian banks in the territories of EU Member States;
- iii. Provision of insurance and reinsurance;
- iv. Supply of specialized financial messaging services, including SWIFT, to the Central Bank of Iran and specified (but not all) Iranian financial institutions;
- v. Financial support for trade with Iran (export credit, guarantees or insurance);
- vi. Commitments for grants, financial assistance and concessional loans to the Government of Iran;
- vii. Transactions in public or public-guaranteed bonds;
- viii. Import and transport of Iranian oil, petroleum products, gas and petrochemical products;
- ix. Export of key equipment or technology for the oil, gas and petrochemical sectors;
- x. Investment in the oil, gas and petrochemical sectors;
- xi. Export of key naval equipment and technology;
- xii. Design and construction of cargo vessels and oil tankers;
- xiii. Provision of flagging and classification services;
- xiv. Access to EU airports of Iranian cargo flights;
- xv. Export of gold, precious metals and diamonds; and
- xvi. Delivery of Iranian banknotes and coinage.

In addition, a number of designations of specified persons, entities and bodies for asset freezes and visa bans will be terminated.¹¹

However, some proliferation-related sanctions and designations will remain in place until the subsequent Transition Day. Entities such as Ansar Bank, Bank Saderat, the Aerospace Industries Organization, Iran Aircraft Industries, Iran Aircraft Manufacturing Company, the Iranian Revolutionary Guard Corps, and others will remain subject to asset freezes, effectively preventing EU persons from trading with the affected persons or entities. Moreover, to the extent that entities remain listed, specialized financial messaging services (e.g. through SWIFT) remain prohibited until the Transition Day. Certain restrictions on the export of metals, software,

¹¹ JCPOA, Annex II, Attachment 1.

and military items, as well as shipping restrictions, will also remain in effect with respect to nuclear and ballistic missile related activities, and the updated UN restrictions will be adopted. The underlying authorities are to be terminated on Termination Day.

The human rights-related sanctions imposed by the European Union,¹² including asset freezes directed at specified persons engaged in human rights abuses and restrictions on the supply of items that might be used in internal repression, remain unaffected.

C. US Sanctions

US sanctions will be more complicated. Most, but not all, US secondary sanctions will be terminated. Secondary sanctions threatened non-US companies with the possibility of themselves being placed on US sanctions lists were they to engage in targeted transactions relating to Iran, even if those transactions took place entirely outside US jurisdiction. The most extensive secondary sanctions related to transactions in the following sectors and activities, largely paralleling EU sanctions relief, will be suspended (subject to certain exceptions for military-related activity) on Implementation Day:

- i. Financial and banking transactions with specified Iranian banks and financial institutions, including the Central Bank of Iran but notably excluding Ansar Bank and Bank Saderat;
- ii. Transactions in Iranian Rial;
- iii. Provision of U.S. banknotes to the Government of Iran;
- iv. Disposition of proceeds from the purchase of Iranian oil products;
- v. Purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt, including governmental bonds;
- vi. Provision of financial messaging services to the Central Bank of Iran and specified Iranian financial institutions (again excluding Ansar Bank and Bank Saderat);
- vii. Underwriting services, insurance, or reinsurance;
- viii. Purchases of Iranian crude oil.
- ix. Investment, including participation in joint ventures, goods, services, information, technology and technical expertise and support for Iran's oil, gas and petrochemical sectors;
- x. Purchase, acquisition, sale, transportation or marketing of petroleum, petrochemical products and natural gas from Iran;

¹² See above, footnote 9.

- xi. Export, sale or provision of refined petroleum products and petrochemical products to Iran;
- xii. Transactions with Iran's energy sector;
- xiii. Transactions with Iran's shipping and shipbuilding sectors and port operators;
- xiv. Trade in gold and other precious metals;
- xv. Trade with Iran in graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes; and
- xvi. Sale, supply or transfer of goods and services used in connection with Iran's automotive sector.

Additionally, an extensive list of Iranian persons and entities will be removed from the US sanctions designation lists.¹⁴ As in the EU, a second group of persons and entities designated for proliferation-related reasons will be removed from the lists on the Transition Day.¹⁵

However, important parts of the secondary sanctions infrastructure will remain. Most significantly, financial institutions¹⁶ and other actors¹⁷ may be sanctioned if they engage in significant transactions with Iranian persons or entities that remain designated on US sanctions lists. While the list of Iranian entities to be removed from those lists includes many major Iranian financial institutions, energy companies, and shipping and transport companies, as with the EU entities such as Bank Saderat and the Iranian Revolutionary Guard Corps remain designated, and dealings with them remain subject to secondary sanctions.¹⁸ Other secondary sanctions programs aimed at parties that conceal the interest of a sanctioned Iranian person in a transaction,¹⁹ parties engaged in activities supporting human rights abuses, surveillance, and

¹⁴ JCPOA, Annex II, Attachment 3.

¹⁵ JCPOA, Annex II, Attachment 4.

¹⁶ 31 C.F.R. §§ 561.201, 561.202, 561.203; see also §104(c)-(d) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195) ("CISADA"), *available at* <http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>, as amended by the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158) ("ITRA"), *available at* http://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf; §1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), *available at* http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf, as amended by ITRA.

¹⁷ See CISADA § 104(c)(2); ITRA §§ 220(c), 302; §§ 1244–1247 of the Iran Freedom and Counter-Proliferation Act of 2012 (PL 112-239) ("IFCA"), *available at* http://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_239.pdf; Executive Order No. 13553 § 1(a)(ii)(B); Executive Order No. 13606 § 1(a)(ii)(B)-(C); Executive Order No. 13608 §1(a)(ii); Executive Order No. 13628 §§ 2-4.

¹⁸ JCPOA, Annex II, fn. 14; IFCA §§ 1244(c)(2)-(3), 1247(a)-(b).

¹⁹ Executive Order No. 13608 §1(a).

ensorship,²⁰ support of Iranian terrorist activity²¹ and parties engaged in proliferation-related activities²² also remain in place. Finally, it is not entirely clear to what extent the provision of insurance or the sale of metals and industrial software (each limited to “activities consistent with this JCPOA”) may remain subject to secondary sanctions if the Iranian party remains on the shortened US sanctions list or is involved in military activity (based on the revisions to EU sanctions, it appears that at least activity potentially related to ballistic missiles or WMD proliferation remains targeted); also, the knowing provision of shipping and insurance services relating to the proliferation of WMD or terrorism remains sanctionable. It is possible that further clarity will come with the guidance to be issued, but non-US companies engaging in business in Iran will still have to carefully monitor their counterparties to assess secondary sanctions risk.

Both US and non-US companies also must continue to avoid all unlicensed transactions with Iran within US jurisdiction. The JCPOA is explicit in stating that it does not authorize US persons to engage in transactions that are the subject of sanctions relief and that the relief provided to financial institutions only extends to activities outside US jurisdiction.²³ More generally, the rules of the Office of Foreign Assets Control (OFAC) prohibiting US persons and persons acting directly or indirectly within the United States from transacting with Iran remain in place. For US persons, the JCPOA changes very little; for non-US persons, despite the JCPOA they still must exercise care to avoid involving US elements (notably including US dollar clearing transactions) in any dealings with Iran. Although historically there was an exception permitting non-US persons to engage in “U-turn” dollar transactions involving Iran that began and ended outside the United States, there is no indication in the JCPOA that this exception will be reinstated, and in the absence of explicit relief, we would expect the continuation of aggressive US enforcement action against US and foreign persons engaged in US dollar transactions in which Iranian parties have an interest.

The JCPOA does provide some limited opportunity for transactions within US jurisdiction, in the form of liberalized license policies (OFAC licenses are still required). The US has indicated that it will license the sale of aircraft and related parts and services for commercial passenger aviation (which could be commercially significant), license the importation into the US of Iranian-origin carpets and foodstuffs, and license non-US entities owned or controlled by US persons to engage in activities consistent with the JCPOA. The intended extent of the last provision is unclear at this point, but it appears to relax the relatively recent extension of US sanctions rules to foreign subsidiaries of US companies.²⁴ However, it is not obvious to what extent any such licenses will insulate the US parent entity from liability should it facilitate an Iranian transaction by its subsidiary, and the practical impact may be limited unless the controlled entity truly operates independently from any US person; we would not expect

²⁰ See ITRA § 402; Executive Order No. 13606; Executive Order No. 13628 §§ 2, 3.

²¹ See CISADA § 104(c)(2).

²² See ITRA § 203(a).

²³ JCPOA, Annex II, fn. 6, 15.

²⁴ See ITRA § 218(b); 31 C.F.R. § 560.215.

wholesale licensing of Iran-related activity by US persons so long as it is funneled through an overseas subsidiary.

Re-Imposition of Sanctions

The JCPOA provides for any participant to refer disputes regarding compliance with the JCPOA to a Joint Commission of representatives of the parties, which would then have 15 days to review the dispute (unless extended by mutual consent).²⁵ If these consultations fail, the dispute is referred to the foreign ministers of the parties and/or a non-binding arbitration mechanism for a further 15-day period (again, unless extended).

If the dispute is not resolved by consensus and the complaining party deems the non-performance significant, the complaining party may declare that it will no longer honor the agreement and/or refer the dispute to the UNSC. Unless the UNSC takes an affirmative decision to the contrary (which would be subject to veto by any of the P5), all existing UN sanctions would be automatically re-imposed—in other words, any permanent member of the Security Council can unilaterally force the re-imposition of sanctions. The re-imposition of UNSC sanctions would not be retroactive and would not affect contracts entered into during the period of suspension. These provisions remain in place until Termination Day (ten years from the adoption of the UNSC resolution); however, according to press reports, there is a political agreement among the P5 that this period (and thus the potential “snap-back” should Iran violate its commitments) will be extended by an additional five years upon the expiration of the original resolution.

The mechanisms for EU and US sanctions in the event of a dispute are much less clear. The dispute resolution mechanism appears designed to maximize coordination and consensus between the EU and the US, as has been the case generally with respect to Iranian sanctions in recent years. However, ultimately the decision to denounce the agreement could be taken unilaterally, and even if there is a consensus that there has been a material breach of the agreement, there could be disagreement over the appropriate response. While the most obvious response would be to re-impose some or all of the current sanctions, and the JCPOA contemplates that existing US and certain EU legal authorities would remain in place to do so until the Transition Day, there is no provision for the re-imposition of national sanctions other than the termination of the obligation not to do so. The EU and US could impose additional or different sanctions, and they may or may not be the same.

Thus, while one would expect efforts to coordinate any “snap-back” or re-imposition of sanctions, there is no guarantee that the EU and US decisions would move in lockstep or of what the scope of any revived sanctions would be. We also note that the language stating that sanctions would not be applied to contracts entered into prior to the re-imposition of sanctions is limited to UNSC sanctions, and with respect to interim relief during negotiations under the JPOA, the US explicitly stated that it would not exempt contracts entered into during the period of relief from any re-imposition of sanctions. While we do not believe that secondary sanctions would be imposed with respect to actions taken while the JCPOA suspension of sanctions is in

²⁵ JCPOA, ¶¶ 36-37.

effect, it is possible that performance of contracts entered into in reliance on the JCPOA could be affected by any re-imposition of sanctions (i.e., continued performance of contracts entered into while the JCPOA was in effect could become sanctionable), and parties dealing with Iran will have to take that risk into account.²⁶

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If you have any questions, please feel free to contact [Paul Marquardt](#), [Till Müller-Ibold](#), or any of your regular contacts at the Firm. You may also contact any of our other partners and counsel listed under [Banking and Financial Institutions](#) located in the “Practices” section of our website at <http://www.clearygottlieb.com>.

²⁶ We note that US secondary sanctions may not trigger typical illegality clauses, as technically the targeted behavior is not a violation of US law; rather, the US threatens to impose sanctions on those who engage in it (no judicial process is involved).

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