

Iran Nuclear Agreement Negotiation Advances Trigger Limited Easing of US and EU Sanctions

Iran's suspension of sensitive nuclear activities triggers temporary relaxation of certain sanctions, but most restrictions and an aggressive enforcement climate remain in place.

On January 20, 2014, the International Atomic Energy Agency confirmed that Iran had met its initial obligations under the [Joint Plan of Action](#) (Joint Plan) with the "P5+1" (the United States, the United Kingdom, France, Russia, China and Germany). This determination effectively triggered a modest easing of certain US and EU trade and economic sanctions measures maintained against Iran. In return for Iran's initial steps, the US government has issued limited and temporary waivers of certain US sanctions, and the Council of the European Union has temporarily amended its primary regulation prohibiting certain activities with Iran.

While hailed as a "[first-step](#)" towards a potentially broader and longer-term agreement, the US government has cautioned that the sanctions relief is "[limited, temporary, targeted, and reversible](#)." Almost all US and EU sanctions against Iran remain fully in force, and these limited steps do not significantly alter the highly-restrictive sanctions landscape that essentially precludes most dealings with Iran.

As we anticipated in our [November 2013 Client Alert](#), the US government's steps focus on easing "secondary" or extraterritorial sanctions measures between non-US parties and Iran and these steps do not loosen most restrictions on US companies and their owned or controlled foreign affiliates. Similarly, the loosening of the EU sanctions is quite limited and possibly ephemeral. Accordingly, all companies — especially but not limited to those with ties to the US or the EU — should continue to exercise extreme care and avoid a broad range of activities that remain subject to sanctions and aggressive enforcement.

Limited Impact on Direct US Sanctions Against Iran

Since the 1990s, comprehensive US trade and economic sanctions have prohibited US persons and US companies from engaging in or supporting virtually all forms of business involving Iran. In late 2012, and as discussed in our earlier [Client Alert](#), the US Congress expanded these sanctions to reach owned or controlled overseas affiliates of US persons or companies.

With minor exceptions for humanitarian activities and transactions related to the safety of Iran's civil aviation industry, US persons and US companies continue to be barred from virtually any form of business involving Iran. The limited exceptions, which apply only for a six-month period between January 20 and July 20, 2014, are as follows:

- **Humanitarian Trade:** US persons were previously authorized through general or specific licenses issued by the Treasury Department's [Office of Foreign Assets Control](#) (OFAC) to sell food products, non-sensitive medicines, and medical devices to most parties in Iran. The Joint Plan will establish a financial channel to further facilitate the use of Iranian oil revenues held abroad to purchase and pay

for, the export of food, agricultural commodities, medicine, and medical devices to Iran, as well as medical expenses incurred abroad by Iranians. In recently issued [Frequently Asked Questions](#), OFAC explained that it will contact those foreign financial institutions from which it seeks involvement.

- **Civil Aviation Activities:** OFAC has issued a [Statement of Licensing Policy on Activities Related to the Safety of Iran's Civil Aviation Industry](#) (Policy Statement), allowing for specific approval to engage in spare parts and services transactions for Iranian civil aviation flight safety. The specific OFAC licenses could permit transactions involving Iran Air, but not any of the other Iranian airlines listed on OFAC's [Specially Designated Nationals and Blocked Persons List](#) (SDN List), such as Mahan Air. Applications for such licensing, which can be [submitted online](#), will be evaluated against statutory restrictions on exports of dual-use items to Iran. The efficiency and effectiveness of this licensing process — which would have to be completed on an expedited basis to allow companies to complete transactions and receive payment within the six-month window — has yet to be determined.

All other US direct sanctions with respect to Iran remain in full effect. OFAC retains the authority and incentive to continue to enforce its Iran sanctions vigorously and to revoke the limited sanctions relief if Iran fails to meet its commitments under the Joint Plan. Under considerable pressure to maintain and enforce existing sanctions, the White House has stated that it will continue its “[aggressive enforcement](#)” of US sanctions against Iran which remain unaffected by the Joint Plan. Indeed, the political pressure in the US against any easing of sanctions on Iran, and the bipartisan threat from Capitol Hill of new and expanded sanctions, will likely further fuel an already aggressive enforcement climate and lead to continued criminal and administrative enforcement actions in response to alleged non-compliance with US sanctions.

Notably, less than one week before the terms of the Joint Plan went into effect, Clearstream Banking, S.A., a European-based financial institution, entered into a \$151.9 million [settlement agreement](#) with OFAC stemming from allegations that Clearstream held approximately \$2.8 billion in securities in the US for the Central Bank of Iran. On January 27, 2014, OFAC announced a \$9.5 million settlement with a major Russian bank, stemming from allegations that the bank transferred in excess of \$41 million through the US financial system on behalf of Bank Melli Iran ZAO. In addition, the US government added several Iranian entities to the SDN List in [December 2013](#), several weeks after the announcement of the possible easing of sanctions under the Joint Plan.

Targeted Impact on Secondary US Sanctions Against Iran

Since 2010, the US Congress and the Obama Administration have added various extraterritorial sanctions measures that target trade and financial activities between non-US parties and Iran, even if the non-US parties have little or no connection to the US. While the Joint Plan eases certain of these “secondary” sanctions, the relief is subject to significant limitations, both in terms of timing and substance.

- **Time Limitations:** The Joint Plan has a built-in six month deadline, expiring July 20, 2014, after which any relief (including the direct sanctions relief described above) is revoked absent an extension or expansion of the relief. In its recently issued [guidance relating to the Joint Plan](#), OFAC explained that the US may continue to enforce sanctions on the following activities:
 - *Activities pre-dating January 20, 2014:* The US retains the authority to investigate and penalize any prohibited dealings that occurred prior to January 20, 2014, even if the dealings would now qualify as authorized under the new rules.

- *Activities not completed between January 20, 2014 and July 20, 2014* (Joint Plan Period): The sanctions relief only pertains to conduct and transactions initiated and completed during the Joint Plan Period. Any conduct for which sanctions have been temporarily suspended that occurs after July 20, 2014 will not be permitted, even if the activities were undertaken pursuant to contracts entered into during the Joint Plan Period.
- **Substantive Limitations:** The US government has temporarily eased sanctions for only the following categories of conduct or transactions by non-US parties. Unless otherwise noted, this sanctions relief does not extend to transactions with parties on OFAC's SDN List.
 - *Exports of Iran's **petrochemical products** and associated services* (defined as services by non-US persons, including insurance, transportation, and financial services, ordinarily incident to the activity): Qualifying petrochemical products are defined in OFAC's [Frequently Asked Questions](#) and additional guidance is available in the [US State Department's Fact Sheet](#).
 - *The purchase from and sale to Iran of **gold and other precious metals** as well as associated services:* Such transactions may involve depository institutions or instrumentalities of the Government of Iran on the SDN List solely pursuant to [Executive Order 13599](#) (issued nearly two years ago). Transacting parties may not use Iran's restricted funds to purchase gold or other precious metals, even if the transaction otherwise [qualifies for bilateral trade](#).
 - *The sale, supply or transfer to Iran of goods and services used in connection with the **automotive sector**, and associated services:* The automotive sector of Iran is defined in [Executive Order 13645](#) to mean the manufacturing or assembling in Iran of light and heavy vehicles, as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles. Goods and services qualifying for sanctions relief include complete knock-down kits as well as shipping, warranty, insurance and maintenance services. Such transactions may involve Iranian depository institutions on the SDN List solely pursuant to [Executive Order 13599](#).

The P5+1 has committed to allow Iran's current importers of Iranian crude oil — China, India, Japan, the Republic of Korea, Taiwan and Turkey — to maintain their current average level of imports from Iran. All other US sanctions on Iran's energy sector — including sanctions on providing goods and services to, or investment in, the energy sector — remain fully in force.

The P5+1 has further agreed to take steps to allow Iran to access \$4.2 billion of oil revenues frozen in overseas accounts. The unblocking action, which will be implemented in instalments, is based on a specified timetable over the six-month Joint Plan Period and is contingent on Iran's completion of the terms of the Joint Plan. The US government will notify in writing any foreign financial institution from which it authorizes funds to be released or received. Unless notified by the US government, any release or receipt of Iran's restricted funds remains subject to enforcement and penalty action.

Impact on EU Regulations

The temporary suspension of certain US secondary sanctions benefits parties located in the EU and elsewhere that are not US persons or US companies, or that are not owned or controlled by US persons or US companies.

In addition and in accord with the Joint Plan, the EU, by enacting [Council Regulation \(EU\) No 2014/42](#) (the Regulation) on January 20, 2014, has amended its main regulation prohibiting activities related to Iran, [Council Regulation \(EU\) No 267/2012](#), to authorize for the Joint Plan Period the following activities:

- Transport of crude oil and petroleum products originating in or exported from Iran: The authorization applies only to products with Harmonized System Code 2709 00, and extends to the related provision of insurance and reinsurance for the import, purchase and transport of such products.
- Import, purchase, and transport of Iranian petrochemical products, and the related provision of insurance, reinsurance and financial assistance: The relevant products are listed in Annex V to *Council Regulation (EU) No 267/2012*. The EU has also authorized the release by EU Member States of Iran's frozen funds and resources the EU deems necessary to execute related contracts.
- Sale, supply, transfer or export of gold, silver, and specified base metals to, or purchase, import or transport of gold, silver, and such metals from, the Government of Iran or any person acting on its behalf: The base metals are listed in Annex II to the Regulation. Covered EU persons are now also permitted to provide direct or indirect technical assistance, brokering services, or financing and financial assistance related to these metals.
- Provision of vessels for the transport or storage of Iranian oil and petrochemical products: The EU has temporarily suspended certain measures barring the provision of vessels for the transport or storage of oil and petrochemical products to Iranian persons.
- Relaxed restrictions on the transfer of funds to or from Iran: The Regulation permits larger amounts of funds to be transferred to or from Iran-related financial institutions. As a result:
 - Fund transfers relating to foodstuffs, healthcare, medical equipment, agricultural or humanitarian purposes require Member State authorization only if the value of the transaction is €1 million or more.
 - Personal remittances require Member State authorization only if the value of the transaction is €400,000 or more.
 - Other fund transfers (to or from Iran-related financial institutions) require Member State authorization if in an amount of €100,000 or more.

Other transfers to or from an Iranian person, entity, or body that do not fall within the specific regime for Iran-related financial institutions set out above will require Member State authorization if the value of the transaction is €400,000 or more. Importantly, however, the Regulation does not alter the requirement that transfers of funds to or from an Iranian person or entity of €10,000 or more require advance notice to the competent authority of the relevant Member State.

Conclusion

While the implementation of the Joint Plan reflects continued progress in negotiations between the P5+1 and Iran, the sanctions relief afforded to date is limited and temporary, and does not meaningfully affect most US persons, US companies and their foreign affiliates, or multinational corporations. Indeed, the core of US and EU sanctions on Iran remain in full force, and they continue to create significant legal, reputational, and practical risks for any persons or entities seeking to do any form of business with Iran.

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