

Movement Towards Implementation of Iran Nuclear Agreement Brings Limited Easing of Sanctions into Focus

Recent and upcoming milestones fuel expectations of Iran opportunities in 2016.

As reported in our [Client Alert](#) dated July 16, 2015, the [Joint Comprehensive Plan of Action](#) (JCPOA) provides for the eventual termination of most European Union (EU) and UN sanctions and a far more limited easing of US sanctions on Iran. While these changes have yet to take effect and are contingent upon a number of remaining steps, recent events suggest that JCPOA implementation and the related easing of sanctions are increasingly likely to occur at some point in the first six months of 2016.

No New Sanctions Relief (Yet)

October 18, 2015 marked “Adoption Day” of the Nuclear Agreement — which is 90 days after the UN Security Council endorsed the JCPOA and the official date the JCPOA comes into effect. Notably, there is no sanctions relief as a result of Adoption Day. Sanctions relief will occur only on “Implementation Day,” and even then any easing of so-called “primary sanctions” — which prohibit US persons from doing business in or with Iran, as well as exports and reexports of most US-regulated good and technology to Iran — will be extremely limited.

In connection with Adoption Day, the US Treasury Department’s Office of Foreign Assets Control (OFAC) released new [Frequently Asked Questions](#), which covered a number of topics including:

- The President’s release of a [Memorandum](#) to the Secretaries of State, the Treasury, Commerce and Energy to ensure the prompt and effective implementation of the US commitments in the JCPOA on Implementation Day
- The fact that the Secretary of State’s “contingent waivers” of certain US secondary sanctions in preparation for Implementation Day do not take effect until confirmation that the International Atomic Energy Agency (IAEA) has verified that Iran has implemented certain nuclear-related commitments, which will mark Implementation Day
- The fact that the only easing of US sanctions before Implementation Day is that provided under the [Joint Plan of Action \(JPOA\)](#) of November 24, 2013, as extended most recently in July 2015, and clarifying that “all other U.S. sanctions remain in effect”
- The fact that OFAC intends to publish on its website prior to Implementation Day “detailed guidance” and information on the status of US sanctions under the JCPOA
- That OFAC will continue to “vigorously enforce the sanctions that remain in effect” until Implementation Day, and that non-US persons “[e]ntering into contracts involving Iran or its

government before Implementation Day may be sanctionable,” even if contracts “are contingent on the implementation of sanctions relief under the JCPOA”

The timing of Implementation Day is uncertain because it depends on when Iran meets key nuclear-related commitments specified in the JCPOA, such as decommissioning nearly 15,000 centrifuges from its nuclear facilities and significantly reducing its low-enriched uranium stockpile. State Department and OFAC officials have indicated that they expect Implementation Day to come approximately six to nine months after Adoption Day, although it may occur sooner. [Iran has stated](#) that it believes it can meet its JCPOA commits within two months of Adoption Day.

Eventual US Sanctions Relief Will be Limited

It is important to remember that even upon Implementation Day, the US sanctions relief will be limited.

- **Primary US Sanctions to Continue.** For the most part, primary sanctions will remain in effect even beyond Implementation Day. These sanctions have been in place for many years, they are based on anti-terrorism and other policy concerns unrelated to the nuclear issue, they enjoy broad bipartisan support in the US Congress, and there are no indications that they will be lifted in the near term.
- **Easing of Sanctions on Foreign Subsidiaries of US Companies.** The JCPOA provides that the US will “(l)icense non-U.S. entities that are owned or controlled by a U.S. person to engage in activities with Iran that are consistent with this JCPOA.” OFAC has informally stated that it will authorize such activities through a general license. Further details about this expected authorization are not available at this time, but OFAC has indicated that it will release guidance before Implementation Day. Entities that make use of the license will need to consider the strict prohibition on facilitation by US persons, as well as broad export and reexport controls, which will remain in effect beyond Implementation Day.
- **Specific Licenses for Civil Aircraft Related Items and Services.** Although the JCPOA generally does not roll back primary sanctions, it does provide that the US will authorize the export, reexport, sale or lease of commercial passenger aircraft to Iran for civil aviation end use, including to Iran Air. OFAC has informally stated that it will permit these activities pursuant to a specific licensing policy, the details of which are not known at this time but which we expect will be released in advance of Implementation Day. Currently, under JPOA relief, OFAC is prepared to license the sale of parts and repair services to support Iranian civil aviation.

Caution and Possibility of “Snapback”

Once sanctions measures are suspended, they can be “snapped back” if Iran is not fulfilling its obligations under the JCPOA. OFAC has informally advised that, in the event of a snapback, it will not grandfather contracts executed lawfully while sanctions were suspended.

New OFAC Guidance on Provision of Goods and Services to Iranian Government Diplomatic Missions

On October 22, 2015, OFAC released a [new FAQ](#) explaining that US sanctions generally do not prohibit non-US persons from providing “goods and services for the conduct of the official business of the diplomatic missions of the Government of Iran located outside the United States or for the personal use of the employees of the missions.” OFAC also cautioned that US persons or US-owned or -controlled foreign entities can support such activities only if authorized.

EU Publishes Post-Implementation Day Legislative Framework

Adoption Day was also marked by a [joint statement](#) from Iran's Foreign Minister and the EU's High Representative for Foreign Affairs and Security Policy. The joint statement announced the EU's adoption of the legislative framework for lifting all nuclear-related economic and financial sanctions. The EU legislation will come into force on Implementation Day, once the IAEA has verified that Iran has complied with its nuclear-related obligations under the JCPOA.

The Post-Implementation Day legislative framework is contained in [Council Regulation \(EU\) 2015/1861](#), [Council Implementing Regulation \(EU\) 2015/1862](#) and [Council Decision \(CFSP\) 2015/1863](#), which came into force together on October 18, 2015. However, these instruments will only apply on Implementation Day. The main provisions of the new framework are contained in Council Regulation (EU) 2015/1861, which will amend the main EU sanctions contained in [Council Regulation \(EU\) 267/2012](#). The new framework is detailed and needs to be considered carefully.

In summary, key changes include removing prohibitions on:

- The sale, supply, transfer or export of goods and technology that could be used in Iran's nuclear program (although the export of certain dual-use items will require a prior authorization from the competent authorities of EU Member States)
- The sale, supply, transfer or export to Iran of key equipment or technology for certain sectors of the Iranian oil and gas industry
- The import, purchase or transport of crude oil, petroleum products, petrochemical products or natural gas, which originates in Iran or has been exported from Iran, and the provision of financing or financial assistance in respect of these activities
- The sale, purchase, supply, transfer, import or export of gold, precious metals, diamonds, banknotes and coinage (although certain transactions relating to graphite and other semi-finished metals will remain prohibited and others will require a prior authorization from the competent authorities of EU Member States)
- Investing in Iranian entities engaged in certain activities, including oil and gas, and petrochemicals activities

In addition, the requirement that competent authorities of EU Member States are notified of and pre-authorize transfers of funds from the EU to and from Iran will be removed on Implementation Day. Council Regulation (EU) 2015/1862 also anticipates the removal of certain Iranian persons and entities targeted by the EU asset freeze restrictions.

However, at present, all EU sanctions against Iran remain in force until Implementation Day, and the EU has no plans to lift the EU sanctions relating to Iran's violations of human rights even on Implementation Day. In addition, following Implementation Day, activities that are permissible from an EU sanctions perspective will need to be evaluated carefully for compliance with the US sanctions.

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