

Client Update

Congress Establishes Framework for U.S. Approval of Iran Sanctions Deal

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On May 14, 2015, the U.S. House of Representatives passed the [Nuclear Agreement Review Act of 2015](#), which the Senate had previously passed on May 7, 2015. If President Obama signs the legislation, as is widely expected, it will establish procedures for review by Congress of any deal with Iran that involves the lifting of sanctions in exchange for limits on Iran's nuclear program. The new U.S. legislation comes just over a month after the [announcement](#) of a [framework](#) for an agreement on nuclear issues between Iran and, the European Union and the P5+1 (or E3+3) powers (the U.S., UK, France, China, Russia and Germany). It substantially defuses concerns that the U.S. Congress would attempt to pre-empt President Obama's authority to agree to any deal with Iran at all.¹

The framework agreement between the EU, P5+1 and Iran, described as parameters for a Joint Comprehensive Plan of Action ("JCPOA"), was agreed on April 2, 2015 following months of negotiations and built on previous interim agreements. But the deal is not yet final or certain. The parties are conducting further negotiations on the text of the JCPOA itself, with the objective of reaching a final agreement by June 30, 2015.

¹ The new U.S. law will require the President to submit to Congress any agreement with Iran at least 60 days before any statutory sanctions are lifted or suspended, in order to give Congress time to pass legislation disapproving the deal. However, any legislation disapproving an agreement with Iran would itself be subject to presidential veto, which could only be overridden by a two-thirds vote of each of the two houses of Congress. Currently, it is believed that any opposition to a negotiated agreement with Iran will not be able to gather sufficient votes to override a presidential veto even if it garners a majority in Congress. The law also will require the President to report to Congress every 90 days on Iran's compliance with any final agreement, and it calls for expedited consideration of legislation to re-impose sanctions in the event of an uncured material breach of the agreement by Iran.

If the deal holds, many of the most significant global sanctions affecting Iran's economy and people will fall away, allowing for a partial re-entry of Iran into the global financial system. There are a number of different sets of sanctions against Iran, based on various perceived violations of international norms: nuclear proliferation, human rights violations, support for terrorism and misuse of ballistic missiles.

The sanctions relating to nuclear proliferation imposed by the UN, EU and U.S. will be lifted or suspended, but the other sanctions imposed variously by the U.S. and EU will not be affected. The U.S. and EU sanctions will be suspended—not lifted permanently—after the International Atomic Energy Agency has verified that Iran has taken all of its key nuclear-related steps. The UN sanctions, according to the framework agreement, will be lifted and replaced by a new UN resolution “simultaneous with the completion, by Iran, of nuclear-related actions addressing all key concerns.” It is not clear whether this is envisaged to take place before or after the IAEA verification that will allow the suspension of U.S. and EU sanctions.

The sanctions to be lifted or suspended are broad ranging and differ significantly by the regime imposing them.

U.S. SANCTIONS

According to the framework, U.S. nuclear-related sanctions against Iran will be suspended, but sanctions related to terrorism, human rights abuses and ballistic missiles will remain in place. The details have not been specified and are subject to further negotiation. At a minimum, however, this is likely to mean that entities and individuals designated as proliferators of weapons of mass destruction as a result of their involvement in Iran's nuclear program will have their designation removed or suspended.² It also is likely to involve the suspension of a substantial part of the “secondary” sanctions that the U.S. imposes on third-country companies that deal with Iranian financial institutions or with Iran's energy, shipping and petrochemical sectors³ to the extent those sanctions are identified as having been adopted in response to Iran's nuclear

² See Weapons of Mass Destruction Proliferators Sanctions Regulations, [31 C.F.R. Part 544](#).

³ See, e.g., Iran Sanctions Act of 1996, as amended, *reprinted in note following* [50 U.S.C. § 1701](#); Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, as amended, *codified in relevant part at* [22 U.S.C. §§ 8511-8513, 8513b-8519](#); National Defense Authorization Act For Fiscal Year 2012, *codified in relevant part at* [22 U.S.C. § 8513a](#); Iran Threat Reduction and Syria Human Rights Act of 2012, *codified in relevant part at* [22 U.S.C. §§ 8721-8727](#); Iran Freedom and Counter-Proliferation Act of 2012, *codified at* [22 U.S.C. §§ 8801-8811](#).

program rather than on the basis of counterterrorism, ballistic missile or human rights concerns.

The extent to which the proposed JCPOA will affect the primary U.S. embargo on Iran remains unclear. That embargo generally prohibits imports of Iranian-origin goods and services to the U.S., exports of U.S.-origin goods and services to Iran, and other dealings by U.S. persons and their foreign subsidiaries directly or indirectly involving Iran.⁴ Over the years, that embargo has been ratcheted up in response to concerns both about terrorism and about the proliferation of nuclear and other weapons. Whether the JCPOA will call on the U.S. to scale back those restrictions to a significant degree remains to be seen. In any event, according to the framework agreement, the architecture of the sanctions on Iran will be retained for much of the duration of the JCPOA deal and will allow for “snap-back” in the event of significant non-performance.

EU SANCTIONS

EU nuclear-related sanctions against Iran that would be suspended are likely to include the following:⁵

- Asset freezes imposed on hundreds of individuals and entities;
- Restrictions on transfers of funds to and from Iran;
- Dealing with the Iranian banking sector, particularly by EU credit and financial institutions;
- Restrictions on the provision of insurance to Iranian persons;
- Restrictions on financing or supporting Iranian enterprises involved with oil, gas or petrochemicals, or providing key equipment; and
- Restrictions on importing, purchasing or transporting Iranian gas, oil and petrochemicals.

The EU sanctions relating to human rights abuses, which contain asset freezes and restrictions on exports of certain goods, will remain in place, however. Since the human rights sanctions and nuclear sanctions both contain restrictions relating to dealings in military and dual-use goods, it is not clear to what extent those restrictions will be suspended.

⁴ Iranian Transactions and Sanctions Regulations, [31 C.F.R. Part 560](#).

⁵ As set out in [Council Regulation \(EU\) 267/2012](#) (as amended by a number of Council Regulations and Council Implementing Regulations).

UN SANCTIONS

UN nuclear-related sanctions against Iran⁶ that would be suspended include in particular asset freezes on persons and companies determined by the UN as engaging in, associating with, or supporting Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.

However, a number of other restrictions and provisions in the existing resolutions will be re-established by a new UN Security Council resolution that will endorse the framework and urge its full implementation. These include:

- Bans on the dealing with and transfers of sensitive technologies and activities;
- Restrictions on conventional arms and ballistic missiles;
- Requirements for cargo inspections; and
- The power to impose new asset freezes where necessary.

CONSEQUENCES OF IRAN'S NON-COMPLIANCE

The suspension of the sanctions is dependent on Iran's promise to perform or to refrain from performing certain actions, including agreeing (a) not to enrich uranium at one of its facilities, (b) to keep uranium enrichment at another facility within certain limits, (c) not to build any new facilities for enriching uranium for at least 15 years and (d) to reduce its current nuclear stockpile by a specified amount. The IAEA will be charged with monitoring Iran's satisfactory completion of its obligations under the JCPOA.

If Iran fails to fulfil any of its obligations under the JCPOA, the EU and U.S. sanctions will be restored immediately. The framework agreement is less specific on UN sanctions, stating only that UN sanctions *may* be re-imposed in the event of Iranian non-compliance.

IRANIAN RESPONSE

While the framework agreement takes a high-level, unspecific position on exactly which sanctions are to be lifted or suspended, the Iranian Foreign Ministry has made a [public statement](#) setting out what sanctions it expects to see lifted:

⁶ As set out in [UN Security Council Resolution 1737 \(2006\)](#) (as amended and extended by [UN Security Council Resolution 1803 \(2007\)](#) and [UN Security Council Resolution 1929 \(2010\)](#)).

According to the reached solutions, after the implementation of the Comprehensive Plan of Joint Action, all of the UN Security Council resolutions will be revoked, and all of the multilateral economic and financial sanctions of the EU and the unilateral ones of the US including financial, banking, insurance, investment, and all related services, including oil, gas, petrochemicals, and automobile industries will be immediately revoked. In addition, nuclear-related sanctions against real and legal individuals, entities, and public and private institutions, including the Central Bank, other financial and banking institutions, SWIFT, shipping and aviation industries of the Islamic Republic of Iran, oil tanker companies, will be immediately removed. Also, the P5+1 member countries are committed to restraining from imposing new nuclear-related sanctions.

This list, and perhaps its translation, is to be considered with some scepticism. In particular, the U.S. and EU sanctions will not be revoked so much as suspended, with the threat of re-imposition remaining over Iran. The contents of the sanctions to be suspended may well also be somewhat broader than the EU and U.S. consider they have agreed to. This indicates there remains some work to do before a final agreement can be reached. However, the differences that may exist between the sides do not appear unbridgeable.

Similarly, the timing of the suspension of sanctions is another negotiating point yet to be resolved. The framework agreement states that U.S. and EU sanctions will be suspended only when the IAEA verifies that Iran has taken “all of its key nuclear-related steps.” However, on April 15, Iranian President Hassan Rouhani [stated](#) that Iran would only accept a deal if all sanctions were lifted when the deal is agreed; this follows a similar [demand](#) made one week earlier by Iranian Supreme Leader Ayatollah Khamenei.

CONSEQUENCES FOR BUSINESS

The reopening of lawful, legitimate business with Iran could be a significant opportunity for many businesses around the world that have been prevented from tapping that market. This will particularly affect companies in the energy industry, as Iran is one of the world’s leading oil and gas producers. Financial companies, which have seen almost all dealings with Iran restricted by sanctions, will also be considering how and when to return to Iran.

Previous experience should be a guide. Interim stages in the negotiations between the P5+1 and Iran led to the relaxation of certain restrictions, such as a

number of restrictions relating to oil.⁷ Yet most companies operating in the EU and U.S. were very wary to rush back in, both because of fears that the negotiations might fail and relaxations be reversed, and based on reputational concerns about dealing with Iran. We would not be surprised if this pattern is repeated, even if the JCPOA becomes final and holds; any “rush back to Iran” will be slow and paced, with one eye over the shoulder for the response of regulators, markets, financiers and industry players. We at Debevoise remain available to assist companies that wish to navigate this path.

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Please do not hesitate to contact us with any questions.

⁷ See [Issue 8](#) of the Debevoise & Plimpton Sanctions Alert for a description of the previous relaxation, which was subsequently extended.