

Client Update

U.S. and EU Take First Steps to Implement Nuclear Deal with Iran

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On October 18, 2015, known as “Adoption Day,” the first major milestone towards the gradual winding down of Iran’s nuclear program was reached: the Joint Comprehensive Plan of Action (the “JCPOA”) was brought into effect. Agreed on July 14 by Iran, the EU and the P5+1 Nations (the United States, United Kingdom, France, China, Russia and Germany), the JCPOA provides for a complex, phased implementation of the various parties’ obligations, including in particular decommissioning steps to be taken by Iran in respect of its nuclear weapons program, in exchange for sanctions relief. The JCPOA was endorsed by the United Nations Security Council (the “UNSC”) on July 20, 2015.

On Adoption Day, the U.S. government issued contingent waivers, to take effect in the future, of the nuclear-related secondary sanctions that U.S. law imposes on foreign companies that do certain types of business with Iran. However, the embargo on trade with Iran by U.S. companies and individuals will largely remain in effect even after the JCPOA is implemented.

In accordance with the terms of the JCPOA, the Council of the EU introduced on Adoption Day the legislative framework required for the lifting of all of its nuclear-related economic and financial sanctions imposed on Iran. This framework consists of Council Regulation (EU) 2015/1861 (“Regulation 1861”), Council Implementation Regulation (EU) 2015/1862 and Council Decision (CFSP) 2015/1863.

The new laws and guidance, removing most of the EU’s sanctions regime and significant U.S. secondary sanctions, will come into force once the International Atomic Energy Agency (the “IAEA”) verifies that Iran has successfully implemented certain nuclear-related measures in compliance with its obligations under the JCPOA. This day, “Implementation Day,” is expected to occur sometime in the first half of 2016.

For more information on the JCPOA, please see our [Client Update](#) of July 17, 2015.

THE UNITED STATES

The United States government issued two key documents on Adoption Day. The first, a memorandum from President Obama, directs the Secretaries of State, Treasury, Commerce and Energy to take all necessary measures to ensure that the United States fulfills its obligations under section 17 of Annex V of the JCPOA.

The second, a substantive directive from Secretary of State John Kerry, sets out the specific U.S. sanctions that will be waived under the Iran Freedom and Counter-Proliferation Act of 2012 (the "IFCA"), the National Defense Authorization Act for Fiscal Year 2012 (the "NDAA"), the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "ITRSHRA") and the Iran Sanctions Act of 1996 (the "ISA"). These proposed waivers will be implemented on Implementation Day.

Iran Freedom and Counter-Proliferation Act of 2012

Of the four laws, the waivers under IFCA will be the most extensive. IFCA authorizes the President of the United States to impose sanctions on non-U.S. parties that transact with Iranian parties. Generally, each of the activities discussed below will be permissible to non-U.S. parties, including non-U.S. financial institutions, but only if the transaction or transactions do not involve persons on the list of Specially Designated Nationals and Blocked Persons (the "SDN List"). The JCPOA contemplates that many entities that are now on the SDN List will be removed on Implementation Day.

- Both U.S. and non-U.S. persons will be allowed to participate in the sale of commercial aircraft and attendant components and certain related services. The JCPOA specifically lists warranty, maintenance, repair services and safety-related inspections as services that will be authorized. We expect, however, that U.S. persons will be required to obtain a specific license from the U.S. Treasury Department's Office of Foreign Assets ("OFAC") before engaging in these transactions.
- Non-U.S. persons can transact in significant goods or services used in connection with the energy, shipping, and shipbuilding sectors of Iran.
- Non-U.S. financial institutions will be allowed to freely transact in Iranian natural gas. Under the previous regime, non-U.S. financial institutions were only able to do so under limited circumstances.

- Non-U.S. persons more generally may freely transact in Iranian precious metals, graphite, raw or semi-finished metals and software for integrating industrial processes. Furthermore, services with respect to the above materials that are (1) used in connection with the energy, shipping, or shipbuilding sector of Iran, (2) used by the Government of Iran, any Iranian financial institution and the Central Bank of Iran, or (3) used by Iran's nuclear program will also be permitted. Significantly however, the transfer of the above materials must be through a procurement channel established pursuant to paragraph 16 of United Nations Security Council Resolution 2231 and Section 6 of Annex IV of the JCPOA, and materials that are used in connection with Iran's military or ballistic missile programs are still subject to secondary sanctions.
- Insurance, reinsurance and underwriting services for any of the above activities are permitted. Furthermore, these services are also permitted for the importation in the United States of Iranian-origin carpets and foodstuffs, including pistachios and caviar.

National Defense Authorization Act for Fiscal Year 2012

Similar to the waivers under IFCA, the NDAA waivers allow foreign financial institutions to transact with the Central Bank of Iran and other Iranian financial institutions without the threat of having their U.S. correspondent account or payable-through account privileges harmed.

Iran Threat Reduction and Syria Human Rights Act of 2012 and Iran Sanctions Act of 1996

The waivers under ITRSHRA and ISA also track the waivers made under IFCA. The ITRSHRA and ISA waivers allow non-U.S. parties to conduct (1) specified insurance, reinsurance and underwriting activities, (2) petrochemical and energy-related transactions and (3) shipping, shipbuilding and port transactions. The ITRSHRA waivers also allow non-U.S. parties to facilitate the issuance of Iranian sovereign debt without the threat of U.S. secondary sanctions.

THE EUROPEAN UNION

Regulation 1863 introduces important amendments to the current EU sanctions regime, as governed by Council Regulation (EU) No 267/2012 ("Regulation 267"). In particular, and subject to certain exceptions, transactions in respect of the following, previously prohibited, can now be conducted subject to prior authorization by the relevant authorities: (1) nuclear materials, (2) dual-use goods, (3) gold, metals and diamonds, (4) software, and (5) shipping and aircraft services. These will be addressed in further detail below.

In addition, Regulation 1863 removes the prohibitions in place under Regulation 267 in respect of the following:

- the transfer of funds to and from Iran;
- the import of oil, gas and petrochemical products from Iran;
- the export of certain technology for, and investment in, the Iranian oil, gas and petrochemical industries;
- certain banking and insurance/reinsurance activities; and
- the sale or purchase of public or public-guaranteed bonds from the Iranian government and other financial institutions.

Changes to these prohibitions are described in greater detail in our July 17 [Client Update](#).

Nuclear Materials, Facilities and Equipment

Under Regulation 267, the following were prohibited: the sale, supply, transfer or export (and associated services such as technical and financial assistance) of certain listed nuclear materials, facilities and equipment, and the sale, supply, transfer or export of all other goods and technology which could be used to contribute to: the development of nuclear weapon delivery systems; the pursuit of nuclear activities about which the IAEA had expressed concern; and enrichment-related, reprocessing or heavy-water-related activities (“Advanced Nuclear Activities”).

With the exceptions of Advanced Nuclear Activities and activities inconsistent with the JCPOA, which remain forbidden, Regulation 1861 now allows commercial activity and associated services in this area subject to licensing from the competent authority in an EU Member State.

Before granting a license, the competent Member State authority must ensure that rights to verify the end-use and end-use location of any supplied item have been obtained from Iran and can be exercised effectively. In addition, other Member States, the EU Commission and the High Representative of the Union for Foreign Affairs and Security Policy must all be notified of the authority’s intention to grant a license at least 10 days in advance.

The following activities can be carried out without the need for prior authorization:

- the supply, sale or transfer to Iran of goods and technology intended for light-water reactors;
- the necessary modification of two cascades at the Fordow facility for stable isotope production;
- the export of Iran's enriched uranium in excess of 300Kg in return for natural uranium; and
- the modernization of the Arak reactor based on the agreed conceptual design and, subsequently, on the agreed final design of such reactor.

Dual-Use Goods

As with nuclear goods, the sale, supply, transfer or export of most dual-use items and technology was prohibited. (Dual-use goods have both military and civilian uses.)

Regulation 1861 now also allows commercial activity and associated services in dual-use goods subject to a license.

Where the authorization sought is in respect of Advanced Nuclear Activities that are inconsistent with the terms of the JCPOA, Member States will also have to submit the proposed authorization to the UNSC for its own approval.

In addition, before granting a license, Member States will not only need to conduct the end-use verification noted above, they will also need to ensure that the requirements of the Guidelines set out by the Nuclear Suppliers Group (an informal body composed of nuclear suppliers that have agreed to abide by an export control regime) have been met, and that the UNSC and IAEA are notified within 10 days of the supply, sale or transfer.

Gold, Metals and Diamonds

Regulation 267 forbade the sale, supply, transfer or export of (1) gold, precious metals and diamonds, and (2) graphite and raw or semi-finished metals, such as aluminum and steel. Regulation 1861 lifts the prohibition in respect of the first category and allows the second category subject to prior authorization.

Prior authorization for graphite and raw or semi-finished metals will not be granted if Member States have reasonable grounds for believing that the sale, supply, transfer or export of the products are intended for uses which include nuclear-related activities inconsistent with the JCPOA, or Iran's military program.

Software

As with the other amendments described in this article, Regulation 1861 now permits the sale, supply, transfer or export of previously restricted software to any Iranian person, entity or body, or for use in Iran, provided prior authorization has been obtained. Authorization will be denied in the same circumstances as those governing metals, described above.

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