

Client Update

Iran Nuclear Sanctions Deal Reached

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INTRODUCTION

On 14 July 2015, Iran, the EU and the P5+1 (the United States, United Kingdom, France, China, Russia and Germany) reached a historic deal for Iran to wind down its nuclear programme in exchange for sanctions relief. The document memorialising this agreement, titled the Joint Comprehensive Plan of Action (the “JCPOA”), runs to some 160 pages and sets out a complex, phased implementation of the various parties’ obligations.

Although the JCPOA has been agreed, significant hurdles remain to the rollback of Western sanctions on Iran, particularly from the United States. The Iran Nuclear Agreement Review Act of 2015, which became Public Law 114-17 in May 2015 (see our [Client Update](#)), requires President Obama to submit the final JCPOA to Congress later this week. There follows a 60-day period in which Congress may pass a joint resolution of disapproval. President Obama has said he would, if necessary, veto any disapproval resolution. In addition, because of the phased implementation of the JCPOA, it is unlikely that even the initial phase of sanctions relief will take place until many months from today, as the International Atomic Energy Agency (the “IAEA”) will first need to verify that Iran has completed a long list of nuclear decommissioning activities.

TIMELINE OF SANCTIONS RELIEF

The JCPOA provides a system of phased sanctions relief, based on the achievement of certain milestones, as set out in the table below:

Milestone	Trigger event	Effect on UN, EU and US sanctions
Finalisation Day	Conclusion of JCPOA negotiations	The P5+1 will submit a UN Security Council resolution endorsing the JCPOA and cancelling existing UN Security Council resolutions relating to Iran's Nuclear programme (the "UN Endorsement Resolution"). Press reports indicate that the UN Endorsement Resolution may be adopted as early as the week beginning 20 July 2015.
Adoption Day	90 days after the UN Endorsement Resolution is adopted, or earlier by mutual consent	No immediate changes to sanctions.
Implementation Day	(1) IAEA verifies that Iran has implemented certain nuclear-related measures; <i>and</i> (2) US and EU implement first phase of sanctions relief	Majority of EU trade and finance related restrictions lifted. Certain Iranian entities also removed from EU asset freeze list. US ceases application of secondary sanctions related to Iran's nuclear activities; removes certain persons from US sanctions lists; adopts policy of licensing civilian aircraft sales and support, import into the US of Iranian-origin carpets and foodstuffs, and activities of non-US subsidiaries of US companies consistent with the JCPOA.
Transition Day	Eight years from Adoption Day or, if sooner, when the IAEA reports that all nuclear material in Iran " <i>remains in peaceful activities</i> "	Remaining EU sanctions relating to military and nuclear equipment, financing and technology lifted. Additional Iranian entities removed from EU asset freeze list. US terminates, or modifies to effect the termination of, secondary sanctions related to Iran's nuclear activities; additional persons removed from US sanctions lists.
UNSCR Termination Day	Ten years from Adoption Day	EU will remove its remaining Iran sanctions framework.

EFFECT OF THE JCPOA ON US SANCTIONS

No US sanctions will be rolled back until the Implementation Date (the date, as noted above, when the IAEA verifies that Iran has implemented certain nuclear-related measures). At that time, the United States has committed to (i) suspend the so-called “secondary sanctions” related to Iran’s nuclear activities; (ii) license certain activities that would otherwise be prohibited; and (iii) remove specific individuals and entities from the US sanctions list. On the Transition Day, the United States has committed to terminating the previously suspended secondary sanctions as well as delisting additional individuals and entities. Until the Implementation Day, the very limited sanctions relief that was previously provided under the Joint Plan of Action (“JPOA”) will continue in effect.

The JCPOA does not propose to remove secondary or other sanctions imposed for other purposes, such as Iran’s support of international terrorist activities or human rights abuses. The JCPOA also will not lift the comprehensive trade embargo with Iran applicable to US persons or to trading with the United States, although limited types of transactions will be licensed. A broader array of activities will be licensed for non-US entities owned or controlled by US persons.

Prior to any of the following measures taking effect, which will occur, at the earliest, on the Implementation Day, OFAC has stated that it will issue related guidance.

Suspension of Secondary Sanctions

“Secondary sanctions” are the sanctions that the United States imposes on third-country companies or financial institutions that engage in certain transactions with Iran. The US nuclear-related secondary sanctions that would be rolled back and ultimately terminated are detailed in Appendix II of the JCPOA and include the following:

- **Financial and banking:** Dealings with the Central Bank of Iran and other specified Iranian financial institutions; transactions in, or involving, the Iranian rial; provision of US banknotes to the Government of Iran. purchasing or facilitating issuance of Iranian sovereign debt; providing financial messaging services to certain Iranian financial institutions; and trading in gold and other precious metals with Iran.
- **Insurance:** Providing underwriting, insurance or reinsurance in connection with activities now authorised under the JCPOA.
- **Energy and petrochemical:** Efforts to reduce Iran’s crude oil sales; investing and otherwise supporting Iran’s oil, gas and petrochemical sectors;

purchasing, selling, transporting or marketing Iranian petroleum, petrochemical products and natural gas; exporting, selling or providing refined petroleum and petrochemical products to Iran; and transacting with certain entities in Iran's energy sectors, including the National Iranian Oil Company, Naftiran Intertrade Company and National Iranian Tanker Company.

- Shipping, shipbuilding and ports: Transacting with Iran's shipping and shipbuilding sectors and port operators, including the Islamic Republic of Iran Shipping Lines, South Shipping Line, National Iranian Tanker Company and the port operator of Bandar Abbas (provided the port operator ceases being controlled by a person on the SDN List).
- Software and metals: Trading with Iran in graphite, coal and raw or semi-finished metals, including aluminum and steel, and software for integrating industrial processes, in connection with activities consistent with the JCPOA.
- Automotive: Selling, supplying or transferring goods and services used in connection with Iran's automotive sector.
- Services: Providing services related to the activities listed above.
- Nuclear-related: Acquiring nuclear-related commodities and services for nuclear activities (consistent with the US approach to non-nuclear-weapons states); entering joint ventures relating to the mining, production or transportation of uranium; and allowing Iranian citizens to engage in higher education coursework related to careers in nuclear science, nuclear engineering or the energy sector.

Licensed Transactions

Under the JCPOA, the United States would license the following transactions, but it is unclear whether this would be implemented through general licenses, a favorable specific-licensing policy, or a combination of the two:

- Commercial passenger aircraft: Selling commercial passenger aircraft and related parts and services to Iran.
- Carpets and foodstuffs: Importing into the United States Iranian-origin carpets and foodstuffs, including pistachios and caviar.
- Activities of non-US subsidiaries: Engaging in activities with Iran consistent with the JCPOA.

Delistings

Finally, the United States would remove numerous individuals, entities, vessels and aircraft from US sanctions lists, including many Iranian individuals and entities listed under the US sanctions program targeted at proliferators of weapons of mass destruction. The entities to be delisted include, among many others:

- The Central Bank of Iran and certain government departments, including the Ministry of Energy and Ministry of Petroleum;
- Certain Iranian financial institutions; and
- Many major Iranian energy and shipping companies and their foreign affiliates, including the Islamic Republic of Iran Shipping Lines (IRISL), National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO) and National Iranian Tanker Company (NITC).

Concurrent with delisting, any blocked assets of these persons will be unblocked and made available to the newly delisted persons. However, transactions with the delisted companies and individuals by US persons and non-US entities owned or controlled by US persons would continue to be restricted by the remaining sanctions on Iran, subject to licenses that OFAC may grant.

EFFECT OF THE JCPOA ON EU SANCTIONS

As with US sanctions relief, the European Union will not lift any part of its existing sanctions regime until Implementation Day. However, once Implementation Day is reached, the European Union has agreed to provide substantially broader sanctions relief than that offered by the US.

Implementation Day Relief

Once this milestone is reached, the European Union will terminate the majority of the existing civilian trade and finance related restrictions set out in Council Regulation (EU) 267/2012 (as amended, “Regulation 267”), including removing restrictions on:¹

- Oil and gas industry and naval equipment: Selling, supplying, transferring or exporting certain technology for the Iranian oil and gas industry or certain naval equipment, and providing associated financial and technical assistance;

¹ A number of these restrictions have already been suspended since January 2014 by Council Regulation 2014/42/EU.

- Iranian oil, petroleum products, petrochemical products and natural gas: Importing, purchasing or transporting Iranian oil, petroleum products, petrochemical products and natural gas (and, in the case of natural gas, entering into related swaps), and providing associated financial services, including insurance and reinsurance;
- Gold, precious metals and diamonds: Selling, supplying, transferring or exporting to, or purchasing from, the Government of Iran and associated persons certain gold, precious metal and diamond products, and providing associated financial services;
- Nuclear industry related materials: Selling, supplying, transferring or exporting certain nuclear industry related materials, such as graphite, and providing associated financial and technical assistance, but only to the extent that such activities are consistent with the JCPOA;
- Military goods: Trading in certain military goods, but only to the extent that such activities are consistent with the JCPOA;
- Iranian currency: Selling, supplying, transferring or exporting newly printed Iranian currency for the benefit of the Central Bank of Iran;
- Oil and gas project and petrochemical industry investment: Financing, investing in or entering into joint ventures with Iranian persons in relation to oil and gas industry projects or the petrochemical industry;
- Fund transfer restrictions: Transferring funds to or from Iran;
- Banking services: EU financial institutions opening bank accounts or establishing correspondent banking relationships with Iranian financial institutions, or establishing representative offices or entering joint ventures in Iran;
- Insurance services: Providing insurance and reinsurance for Iranian legal persons;
- Public bonds: Purchasing or selling public or public-guaranteed bonds to the Iranian government, Iranian companies or Iranian financial institutions, and providing certain associated assistance relating to such bonds;
- Shipping services: Providing bunkering, ship supply services and other services relating to vessels controlled by Iranian persons in certain circumstances, or providing a wide range of services for oil tankers and cargo vessels which are Iranian flagged or owned, chartered or operated by Iranian persons; and

- Oil transport and storage vessels: Making available vessels to Iranian persons for the transport or storage of Iranian oil and petrochemical products.

Implementation Day will also require the European Union to cease applying an asset freeze to certain Iranian companies and Iranian government entities. This includes major Iranian state-owned oil and gas companies, such as the National Iranian Oil Company, Iranian banks and Iranian shipping companies.

Transition Day Relief

Achieving this milestone will lead to the termination of remaining EU restrictions set out in Council Regulation (EU) 267/2012, which primarily relate to military and nuclear-industry related activities. This will include lifting remaining restrictions on:

- Dual-use goods and nuclear industry related goods: Selling, supplying, transferring or exporting dual-use goods and certain goods which may contribute to Iran's nuclear industry or proliferation activities, and providing associated financial and technical assistance; and
- Nuclear industry related investment: Financing, investing in or entering into joint ventures with Iranian persons in relation to the manufacture of certain dual-use goods, certain goods which may contribute to Iran's nuclear industry or proliferation activities and certain ballistic missile related products, or in uranium mining, uranium enrichment.

Transition Day will also require the European Union to remove the remaining nuclear-activity related asset freezes, which primarily affect individuals and companies purportedly involved in Iran's nuclear proliferation activities.

UNSCR Termination Day Relief

The European Union will terminate the remaining framework provisions of Regulation 267 and Council Decision 2010/413/CFSP, the EU Council Decision underpinning the European Union's present sanctions regime against Iran.

The JCPOA does not include any relief from the EU's sanctions against Iran imposed in relation to human rights violations. These broadly consist of asset freezes on individuals and entities involved in human rights abuses and the sale, supply, transfer and export of equipment which might be used for internal repression and certain harmful substances.

UN SANCTIONS

The UN Endorsement Resolution will terminate UN Security Council resolutions 1696, 1737, 1747, 1803, 1835, 1929 and 2224, which set out UN sanctions relating to Iran's nuclear proliferation activities. However, the UN Endorsement Resolution will retain certain UN level restrictions on the transfer of nuclear proliferation sensitive goods, though the details of these restrictions have not yet been officially announced. On UNSCR Termination Day, the United Nations will also terminate the UN Endorsement Resolution and thus cease to have any Iran nuclear-activity related resolutions in force.

"SNAPBACK": POTENTIAL RE-IMPOSITION OF SANCTIONS

The JCPOA implements an obligation on the United States and the European Union to "refrain" from re-introducing sanctions on Iran, but this obligation is stated to be "without prejudice to the dispute resolution process" set out in the JCPOA. The dispute resolution mechanism allows any party to the JCPOA to refer a failure by another party to meet its commitments under the JCPOA to a Joint Commission (consisting of the P5+1 and Iran). This triggers a complex, multistage process:

- 1) On receiving a complaint, the Joint Commission has 15 days to resolve the issue.
- 2) After the Joint Commission has considered this issue, a participant in this process that believes the compliance issue has not been resolved can refer the issue to the ministerial level, with the ministers of the P5+1 and Iran then having a further 15 days to consider the complaint.
- 3) In parallel with (or in lieu of) the process in step (2), the participants may refer the issue to an Advisory Board consisting of three members: two appointed by each of the parties in the dispute, and a third, independent member. The Advisory Board then has 15 days to issue a non-binding opinion.
- 4) After the process in step (3) is complete, the Joint Commission has five days to consider the opinion of the Advisory Board.
- 5) If the issue is still not resolved after step (4), the participant in the process can cease performing its obligations under the JCPOA and may notify the UN Security Council of this issue.
- 6) On receiving notification pursuant to step (5), the United Nations has 30 days to adopt a resolution to continue with UN sanctions relief. If this

resolution is not adopted within this period, the UN sanctions terminated as part of the UN Endorsement Resolution will be re-implemented.

In practice, this mechanism appears to require around 35 days between a breach of the JCPOA taking place and the United States or European Union re-implementing their respective sanctions programmes.

CONSEQUENCES FOR BUSINESS

Although it is likely to take a number of months before the first stage of EU and US sanctions relief is implemented, the JCPOA is a landmark step towards reopening the Iranian market for Western businesses. Press reports indicate that Iran already has started preparing plans to secure some \$100 billion in investment for its oil and gas industry from Western companies, and that EU-based automobile manufacturers have started exploring post-sanctions opportunities in Iran.

However, for the time being, Western companies will need to continue complying with the exhaustive EU and US sanctions on Iran. Even after sanctions relief has been implemented, Western businesses should remain cautious, as the JCPOA allows the European Union and the United States to re-implement their sanctions regimes within 35 days of Iran breaching its obligations.

We at Debevoise are available to assist companies that wish to consider the potential new Iranian opportunities likely to arise in the near future.

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