

Iran Sanctions Deal – Managing Your Risks While Preparing for the New Landscape

The Joint Comprehensive Plan of Action (JCPOA) on Iran's nuclear program presents companies and individuals with a potentially historic opportunity to consider new business opportunities with Iranian counterparties. It also presents unique compliance challenges, including under US economic sanctions, which companies need to take into consideration prior to any prospective business planning.

As we described in our recent client briefing [\["Iran Sanctions Deal – What to Expect, and When"\]](#) the JCPOA does not provide any immediate sanctions relief under either the EU or US sanctions regimes. Rather, no lifting of sanctions will occur until "Implementation Day," which US government officials have speculated will not occur for approximately six to twelve months and is contingent on Iran meeting its obligations as verified by the International Atomic Energy Agency (IAEA). Until then, the full range of currently applicable US secondary sanctions will continue to apply to non-US business with Iran. Moreover, both before and after Implementation Day, the primary US sanctions applicable to Iran-related transactions of "US persons" or through the United States continue to present significant enforcement risks. Investors therefore should be cautious when considering any potential business opportunities involving Iran and should ensure that proper compliance and risk management processes are in place before initiating any exploratory activities.

JCPOA Background

On Implementation Day, the JCPOA contemplates the removal of: (a) nuclear-related sanctions imposed under current UN Security Council resolutions; (b) nuclear-related sanctions of the EU and other UN member states; and (c) US secondary sanctions that expose non-US persons to US designation risk if they engage in nuclear-related sanctionable activity (as defined under the various US Executive Orders associated with Iranian nuclear proliferation). None of these changes will occur until Implementation Day.

Post-Implementation Day, the EU will permit far more activity with Iran than the United States. The United States will continue generally to prohibit Iranian trade and commerce involving US persons, US-origin goods, or the US financial system. The JCPOA contemplates only limited relief from these primary sanctions, whereby OFAC will license or offer to license certain activities by US persons, including aircraft and aircraft parts exports, certain activities of non-US subsidiaries of US companies, and US imports of Iranian carpets and foodstuffs.

The unilateral US sanctions that will remain in place create significant compliance risk not only for US companies but also for any non-US companies that pursue the new Iranian business opportunities if they also do business with the United States, employ

US persons, transact through the US financial system, or handle US-origin goods. A lion's den of US government agencies have jurisdiction to enforce US sanctions, export controls, and related administrative regulations and criminal laws against non-US companies that involve such US jurisdictional elements in their business with Iran. By encouraging a new wave of trade and investment by non-US companies in Iran, the JCPOA will almost certainly create a feast of enforcement opportunities against companies that fail to either heed the risks or impose the necessary controls to prevent the involvement of any prohibited US elements in their future business with Iran. In addition, US secondary sanctions against Iranian entities designated for terrorism or human rights abuses are untouched by the JCPOA, which will continue to expose non-US companies to designation risk for non-US business involving such entities.

Managing the Risk

Many companies and individuals already have begun taking steps to explore potential business opportunities with Iran, leaving them no time to delay in assessing and managing the compliance risk. Sales, marketing, business development, and other corporate departments need to work closely with their internal compliance colleagues and external advisors to ensure that they understand today what is currently permissible activity, as well as to identify and quantify the compliance, legal, and reputational risk of engaging in Iranian business post-Implementation Day. Otherwise, company management will be unable to make an informed judgment as to what business to pursue and when, taking into account the anticipated costs to mitigate and manage the risks associated with the prospective business.

US persons also need to resist the urge to mimic their non-US counterparts, many of whom may be free to engage in work that might not be permissible under the US primary sanctions. For example, the EU will lift restrictions on the export of key equipment or technology for the oil, gas, and petrochemical sectors, but this will have no effect on the OFAC compliance obligations of US persons, the US export controls applicable to US-origin items, or the general applicability of OFAC sanctions to US dollar transactions. Some of these restrictions are subtle and easily overlooked, such as the prohibition on the referral by US persons of Iranian business opportunities that are prohibited for them to non-US affiliates or colleagues.

Non-US companies that are contemplating business with Iran also need to be conscious of the jurisdictional reach of US sanctions and the need to prevent the involvement of impermissible US elements in such business, unless licensed by OFAC.

Travelling to Iran to explore business opportunities carries a different set of risks. The US government has authorized travel and travel-related activities in Iran, but has not exempted from sanctions any transactions or contracts that might result from such travel. Although OFAC does not prohibit US persons from general discussions about business in Iran, the primary sanctions generally prohibit US person involvement in the planning or execution of specific transactions or the provision of any professional services in or relating to Iran, unless licensed by OFAC.

Conclusion

Prior to Implementation Day (*i.e.*, now), the risk of employees engaging in OFAC-prohibited or sanctionable activity is at its highest. All current sanctions will remain in effect until Implementation Day. The non-US companies that are currently pursuing future business in Iran also need to appreciate the US sanctions risks that will continue to apply post-Implementation Day. Confusion over the timing and scope of the JCPOA relief will not shield the business community from potential penalties or reputational harm. As such, in order for companies to maximize the potential opportunities in Iran, it is important to instill strong risk management procedures in the lead-up to Implementation Day.

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