CLIFFORD CHANCE

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Iran Sanctions Deal – What to Expect, and When

As has been well reported, on 14 July 2015, the "E3/EU+3" countries (China, France, Germany, the Russian Federation, the United Kingdom and the United States, together with the High Representative of the European Union for Foreign Affairs and Security Policy) and Iran agreed a Joint Comprehensive Plan of Action (JCPOA) on Iran's nuclear programme.[1]

Under the terms of the JCPOA, there will be a phased lifting of all UN Security Council (UNSC) sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance and energy. In exchange, Iran has agreed never to "*seek, develop or acquire any nuclear weapons*", a promise to be backed by detailed inspections and monitoring.

At the outset, it is important to note that there will be no immediate sanctions relief. There will be a wide-ranging lifting of sanctions on "Implementation Day" which has not yet been set and is contingent on Iran meeting its obligations as verified by the International Atomic Energy Agency (IAEA). Given that may take some time, it is currently not anticipated that the Implementation Day will occur before the end of 2015.

In advance of Implementation Day, the UNSC is to pass a resolution to implement relevant JCPOA provisions (forecast to occur over the next 10 days) and then within 90 days thereafter (the so-called "Adoption Day"), the JCPOA parties will have to initiate the necessary legal and regulatory measures and commitments required to take effect on Implementation Day. In the United States in particular, there may well be political hurdles to overcome before this can occur.

Thereafter, the IAEA verification will be the final barrier to implementation. Whether this can occur by the end of 2015 would seem largely in the control of the Government of Iran and the IAEA.

Until then, all current sanctions remain in force (subject to the partial interim relief granted last year which has now been extended).

On the Implementation Day, the JCPOA contemplates the removal of:

- Nuclear-related sanctions imposed under current UNSC resolutions;
- Nuclear-related sanctions of the EU and other UN member states; and
- US extraterritorial 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).

All of those measures can, however, be re-instated "*in the event of significant non-performance by Iran of [its] JCPOA commitments*" (the so-called "snap back" provision).

Even when the phased lifting of economic sanctions begins, some UN and EU measures and most of the US sanctions applicable to dealings by or with US persons or through the US financial system will continue for a further 8 years until the "Transition Day", or the date on which the IAEA has reached the "Broader Conclusion" that all nuclear material in Iran remains peaceful (whichever is earlier). In particular the current arms embargo and certain other measures will remain in place.

The JCPOA includes a dispute settlement mechanism and various provisions that appear directed at preventing the US and EU authorities from taking steps that could undermine the sanctions relief contemplated by the JCPOA.

We set out below a description of the EU and US sanctions that are anticipated to be removed with effect from the Implementation Day:

[1] The full text is available online at: http://eeas.europa.eu/top_stories/2015/150714_iran_nuclear_deal_en.htm

EU Sanctions

The EU will terminate those provisions of Council Regulation (EU) No. 267/2012 (as subsequently amended) which implement nuclear-related sanctions or restrictive measures. Under the terms of the JCPOA, this specifically includes current provisions and prohibitions in relation to the following (including sanctions in relation to the provision of related services):

- Transfers of funds between EU persons and entities, including financial institutions, and Iranian persons and entities, including financial institutions (Articles 30, 30a, 30b and 31 of Regulation 267/2012);
- Banking activities, including the establishment of new correspondent banking relationships and the opening of new branches and subsidiaries of Iranian banks in the territories of EU Member States (Article 33);
- The provision of insurance and reinsurance (Article 35);
- Transactions in public or public-guaranteed bonds (Article 34);
- The import and transport of Iranian oil, petroleum products, gas and petrochemical products (Articles 11, 12, 13, 14 and 14a);
- The export of key equipment or technology for the oil, gas and petrochemical sectors (Articles 8, 9 and 10);
- Investment in the oil, gas and petrochemical sectors (Articles 17(1) and (2)(b) and (c), 17(3), 17(4), 17(5), 20 and 21);
- Sanctions related to shipping and shipbuilding (Articles 10a, 10b, 10c, 37a, and 37b)
- The export of gold, precious metals and diamonds (Article 15);
- Delivery of Iranian banknotes and coinage (Article 16);
- Designation of certain (but not all) persons, entities and bodies (i.e. the asset freeze restrictions).

While from the Implementation Day the sanctions in relation to financial messaging services (i.e. use of SWIFT) will no longer apply as regards those Iranian banks which are to be removed from the lists of designated targets, the restrictions will continue to apply in relation to those Iranian banks that will remain designated targets until the Transition Day.

The sanctions prohibitions in relation to metals (Articles 15a, 15b and 15c) and software (Articles 10d, 10e and 10f) will be amended with effect from the Implementation Day to allow for activities which are consistent with the JCPOA. However, those prohibitions will not be terminated until the Transition Day. Other prohibitions that will remain in place until the Transition Day include those that relate to the transport sector (Articles 36 and 37) and arms and military equipment. In addition, the asset freezing and related restrictions in relation to a number of targets who have been designated in relation to proliferation activities will also remain in place until the Transition Day. The sanctions imposed by the EU separately in relation to human rights abuses are unaffected by the JCPOA.

US Sanctions

The JCPOA will not involve the removal of US sanctions that prohibit trade and commerce between US persons and Iran. Instead, the US Treasury's Office of Foreign Assets Control (OFAC) will maintain most of the sanctions applicable to dealings that involve US persons or the US financial system for many years.

However, the JCPOA also contemplates that from the Implementation Day, OFAC will license certain activities by US persons. These will include aircraft and aircraft parts exports, certain activities of non-US subsidiaries of US companies and US imports of Iranian carpets and foodstuffs. Essentially, after the Implementation Day, the US sanctions against Iran will revert to their status in 2009, when only the US maintained comprehensive sanctions and those sanctions only applied to dealings involving US persons, the US financial system or US origin goods (unless licensed or authorized by OFAC).

OFAC will also remove from the list of Specially Designated Nationals (SDNs) a number of persons, entities and vessels in order to facilitate their involvement in (a) non-US business of non-US persons and (b) certain OFAC-licensed activities under the sanctions applicable to US person/US financial system dealings.

In addition, the extraterritorial sanctions imposed by the United States in response to nuclear proliferation by Iran will be lifted.

Comment

Non-US entities contemplating the yet-to-be newly-authorized business will need to carefully consider the compliance risk associated with the remaining EU and US sanctions requirements as well as the risk arising from the continued scrutiny by law enforcement authorities (and for banks, banking regulators) that any such business satisfies their respective transparency requirements.

Indeed, in a notice issued by the UK Department for Business, Innovation and Skills this week, the UK Government warned that "*Even as sanctions are lifted Iran will remain a challenging place to do business, and banks and other financial institutions may remain reluctant to handle Iran-related transactions while full US sanctions remain in place*".[2] This is not a message that the Government of Iran will welcome. In fact, the JCPOA specifically prohibits the use of alternative regulatory means to maintain the same trade and commerce restrictions that the sanctions relief is supposed to remove.

Although the Government of Iran has access to dispute resolution and other diplomatic channels under the JCPOA to present any such objections, it has no leverage over US law enforcement and banking regulators who will insist on full transparency and strict observation of all remaining US sanctions requirements. Thus, while we expect that the guidance that US and EU sanctions authorities will issue as Implementation Day approaches will address the subject of non-USD transactions by non-US entities with relative clarity, the US guidance likely will not include a safe harbor under other applicable US laws and regulations in regard to OFAC-licensed business involving the US financial system, such as those relating to transparency and record keeping enforced by US criminal authorities and banking regulators.

If Iran adheres to its commitments and sanctions are lifted, the UK Government has said that it will help the business and financial sector take advantage of the opportunities that will arise and to promote trade and investment between the UK and Iran. However the decision whether to trade with or invest in Iran remains a commercial one for businesses, factoring in the ongoing risks and the threat of the re-emergence (i.e., "snap-back") of sanctions in the event Iran does not meet the stringent requirements of the IAEA.

[2] http://blogs.bis.gov.uk/exportcontrol/uncategorized/notice-to-exporters-201520-iran-nuclear-deal-information-for-business

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