

Iran Sanctions "Implementation Day": What You Need To Know

16 January 2016 has been designated "Implementation Day" under the Joint Comprehensive Plan of Action (JCPOA), meaning that the sanctions relief promised in return for International Atomic Energy Agency verification that Iran has met its relevant nuclear-related obligations has now taken effect. In this briefing we consider the extent of the sanctions relief now in place, the sanctions that remain and the compliance challenges for those pursuing opportunities offered by these developments.

Whereas the most significant changes have been to the UN-mandated and EU nuclear-related sanctions, changes to the longstanding US embargo against Iran have been far more modest. As a result, while the opportunities for non-US companies to undertake Iran-related business have expanded, so too have the enforcement risks to the extent that such business includes prohibited US elements or otherwise implicates any of the remaining US sanctions requirements. It is important also to recall that some EU sanctions in relation to Iran remain in place.

Aggressive enforcement of the many remaining US sanctions against Iran by the US Treasury Department's Office of Foreign Assets Control (OFAC) and other US authorities will surely continue, and this may chill the appetite of some non-US companies and their banks to seize post-Implementation Day opportunities.

However, for the JCPOA to succeed in making Iran a long-term stakeholder in nuclear non-proliferation, Iran will have to perceive a continuing economic benefit from its JCPOA bargain, which necessarily must involve an increase in non-US trade and investment. To reconcile the position, we expect OFAC to emphasize the importance of compliance with the remaining sanctions requirements rather than avoidance by non-US companies of all business with Iran.

EU Sanctions Relief

The EU sanctions-related impact of Implementation Day is extensive. All EU nuclear-related sanctions measures against Iran (as set out in Council Regulation 267/2012¹) have now either been amended or removed altogether. In principle, this will open the doors for many important areas of trade and financial transactions that were prohibited or significantly restricted in recent years.

To coincide with Implementation Day, the EU has issued a detailed "[Information Note](#)" which sets out practical information on the scope of the measures now lifted. The Information Note is expressed not to be legally binding but contains useful context to the changes. In particular, section 7 of the Information Note is in the form of sixty-nine questions and answers on practical issues, based on input apparently provided by Member States, the business community and other interested parties. It is intended to serve as a practical tool on the implementation of the JCPOA and the uniform application of the Council

¹ Official Journal of the European Union L 88, 24.03.2012, p.1, as amended. The post-Implementation Day sanctions relief is set out in two Council Regulations amending Council Regulation 267/2012: Council Regulation (EU) 2015/1861 of 18 October 2015 and Council Implementing Regulation (EU) 2015/1862 of 18 October 2015. These latter Regulations, adopted on 18 October 2015 (Adoption Day), became effective on Implementation Day.

Regulations giving effect to the easing of sanctions within the EU.

EU sanctions no longer in place after Implementation Day include most trade and financial restrictions (although many of these will remain off-limits if a person or entity that continues to be a listed sanctions target is involved).

Measures that affected the financial services sector that are now lifted include the general restrictions on funds transfers between EU persons and entities and their Iranian counterparts; prohibitions on banking activities (including the establishment of correspondent banking relationships, and the opening of branches, subsidiaries or representative offices in Iran); prohibitions on the supply of specialised financial messaging services, including SWIFT, to Iranian banks (so long as they are no longer listed as sanctions targets); and restrictions on the provision of insurance and reinsurance. Questions 11 – 31 of section 7 of the Information Note relate to financial, banking and insurance measures and confirm a number of practical issues: such as, that EU financial institutions may now clear transactions involving non-listed Iranian persons and entities, and (in the context of a question relating to the Central Bank of Iran) that any funds or economic resources that had been frozen may be released to persons or entities that have been de-listed as of Implementation Day.

Other EU sanctions that have been lifted include those affecting the oil and gas sector (trade restrictions and prohibitions on investment in Iran's oil, gas and petrochemical sectors); sanctions relating to shipping, shipbuilding and transportation; and the assets freezes imposed on many listed persons and entities including the National Iranian Oil Company, the Central Bank of Iran and most (albeit not all) other listed Iranian financial institutions.

Notably, a significant number of persons and entities listed on the basis of links with nuclear proliferation activities will remain subject to the EU's asset freeze and related financial sanctions for the time being. This includes several banks including Bank Saderat, one of Iran's largest financial institutions and Bank Sepah. Other limitations on trade that could facilitate nuclear proliferation and arms-related restrictions will remain. Exports of dual use goods (goods which could be used for civilian and military or nuclear purposes), certain graphite and raw or semi-finished metals and Enterprise Resource Planning software is no longer prohibited but will continue to be subject to controls requiring prior-authorization. Section 5 of the Information Note usefully summarises the authorization regimes that will apply.

The JCPOA provides only for the lifting of sanctions related to Iran's nuclear activities. EU sanctions related to Iran's human rights record and support for terrorism remain in place. These measures include a ban on the export of equipment which might be used for internal repression as well as equipment for monitoring telecommunications.

US Sanctions Relief

Apart from the US primary sanctions that have restricted US business with Iran for decades, beginning in 2010 the US imposed an increasingly broad regime of secondary sanctions to deter non-US persons from a range of specified "*sanctionable*" Iran-related activities even if they did not involve any US jurisdictional elements.

In accordance with JCPOA requirements, as of 16 January 2016, the United States suspended or revoked all of the nuclear-related secondary sanctions, including by removing hundreds of nuclear-related Iranian Specially Designated Nationals (SDNs) from the SDN list. Thus, a wide range of non-US business with Iran that previously risked a sanctions designation of the non-US participants by the US Government no longer carries that risk.

However, the United States continues to maintain a substantial range of other Iran-related sanctions, including most US primary sanctions, even after Implementation Day. OFAC has issued a Guidance document and set of Frequently Asked Questions to explain the limited sanctions relief and continued wide range of prohibited activity under the US sanctions that will remain.²

The primary US sanctions (which remain in place) not only prohibit most forms of Iran-related business by US persons, but also prohibit business of non-US companies with Iran that involves US persons, US territory, the US financial system or the transfer to Iran of US-origin goods, unless licensed by OFAC.³

² These are available at: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/implement_guide_jcboa.pdf and https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcboa_faqs.pdf

³ Exports or reexports of US-origin goods by US or non-US persons to individuals and entities listed on the Department of Commerce's Denied Persons List and, in some cases, the Entity List will require separate authorization from the Department of Commerce.

As agreed under the JCPOA, OFAC has licensed only a narrow range of transactions to which the US primary sanctions apply, including:

- exportation of commercial passenger aircraft and related parts and services to Iran, on a case-by-case basis;⁴
- importation into the United States of Iranian carpets and foodstuffs;⁵ and
- activities of non-US firms owned or controlled by US persons in which their US parents do not participate.⁶

In addition, US secondary sanctions against non-US business with the approximately 225 OFAC-listed Iranian targets of US terrorism or human rights sanctions (such as the Islamic Revolutionary Guards Corps (IRGC), Mahan Air and Bank Saderat) will continue to create designation risk for non-US companies that engage in significant transactions with or provide material assistance to such SDNs.

Further, even after removing persons and companies classified as "Government of Iran" from the SDN list, OFAC continues to prohibit the involvement of US elements in unlicensed dealings with them.

More broadly, OFAC's primary sanctions continue to prohibit any involvement of the US financial system or other US elements in any dealings by any person anywhere to the extent those dealings relate to Iran or Iranian-origin goods, unless OFAC has licensed or authorized such dealings.

The US also continues to designate new Iranian SDNs in response to sanctionable activity not covered by the JCPOA, including, on 17 January 2016, six Iranian

nationals, one Chinese national and three companies (one in Hong Kong and two in the UAE) for assisting Iran's ballistic missile program.

Snap Back

Under the JCPOA, a snap-back mechanism enables the US and EU to re-impose sanctions if they can demonstrate through a 35-day arbitration procedure that Iran has violated its JCPOA obligations. However, the EU has emphasised that "*all parties to the JCPOA are determined to avoid any behaviour which could be qualified as non-performance and to avoid a re-imposition of sanctions by engaging in the Dispute Resolution Mechanism.*"

OFAC has advised that if snapback occurs, US secondary sanctions would not apply to conduct that was not sanctionable at the time it occurred, but could apply if such conduct continued under pre-existing contracts. OFAC also implied that it could provide a limited period for the unwinding of such contracts after the snap back, before the risk of a US sanctions designation would apply to them. However, since OFAC has not in any event lifted its primary sanctions against Iran, a snapback of US sanctions would largely focus on expanding the risk of designation under restored US secondary sanctions.

The EU Information Note states that in the event of a "snap-back" of EU sanctions, EU sanctions will not be reintroduced with retroactive effect. The Information Note states that the execution of contracts concluded while sanctions relief was in force will be permitted consistent with previous provisions when sanctions were originally imposed, in order to allow companies to wind down their activities. Details about the period of time allowed for the execution of prior contracts will be specified in the legal acts providing for the reintroduction of EU sanctions. There is no guarantee, however, that in the event of snap-back an indefinite period will be permitted for conclusion of contracts entered into now: it may be, as was the case when certain sanctions were first imposed, that a grace period for concluding existing contracts is permitted, beyond which an absolute prohibition will apply.

Those seeking to engage in Iranian business therefore may seek to introduce specific contractual safeguards into arrangements to plan for this eventuality. Whether that would be palatable to Iranian counterparties or prove to be a commercial impediment remains to be seen. Even if specific provisions for snap-back are negotiated, remedial or enforcement measures requiring recourse to Iranian

⁴ See OFAC's "Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services", available at: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/lic_pol_statement_aircraft_jcpoa.pdf

⁵ For the text of the general license see: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/gj_statement_jcpoa.pdf

⁶ See General License H "Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person" to the ITSR, available at: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glh.pdf

courts may prove to be of little practical value in the event that the snap-back provisions are activated.

Conclusion

Many organisations looking to trade with, or make investments in Iran, now that sanctions have been eased may experience a tension between business development personnel who may wish to take advantage of the opportunities offered, and those whose responsibilities are for risk management and compliance. A grasp of the legal parameters that will apply going forward and their impact on transactions, matched with scrupulous due diligence and appropriate investment in compliance resources, will be key in aligning opportunity with risk.

For further background please refer to our previous briefings on this subject:

Iran Sanctions Deal – What to Expect, and When
15 July 2015

http://www.cliffordchance.com/briefings/2015/07/iran_sanctions_dealwhattoexpectandwhen.html

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

31 August 2015

http://www.cliffordchance.com/briefings/2015/08/iran_sanctions_dealmanagingyourriskswhil.html

Iran Sanctions Deal – new Adoption Day measures pave the way for sanctions relief

20 October 2015

http://www.cliffordchance.com/briefings/2015/10/iran_sanctions_dealnewadoptiondaymeasure.html

Authors

UK

Rae Lindsay

Partner, London

E: rae.lindsay
@cliffordchance.com

Jessica Gladstone

Partner, London

E: jessica.gladstone
@cliffordchance.com

Michael Lyons

Senior Associate, London

E: michael.lyons
@cliffordchance.com

Martin Power

Senior Associate, London

E: martin.power
@cliffordchance.com

US

David DiBari

Partner, Washington D.C.

E: david.dibari
@cliffordchance.com

George Kleinfeld

Partner, Washington D.C.

E: george.kleinfeld
@cliffordchance.com

Wendy Wysong

Partner, Washington D.C.

E: wendy.wysong
@cliffordchance.com

Jacqueline Landells

Associate, Washington D.C.

E: jacqueline.landells
@cliffordchance.com

Ali Burney

Associate, Washington D.C.

E: ali.burney
@cliffordchance.com

Germany Contacts

Heiner Hugger

Partner, Frankfurt

E: heiner.hugger
@cliffordchance.com

Sebastian Rakob

Partner, Frankfurt

E: sebastian.rakob
@cliffordchance.com

Stefan Gentsch

Counsel, Frankfurt

E: stefan.gentsch
@cliffordchance.com

Jochen Pörtge

Counsel, Düsseldorf

E: jochen.poertge
@cliffordchance.com

Alexander Cappel

Counsel, Frankfurt

E: alexander.cappel
@cliffordchance.com

Tim Müller

Senior Associate, Frankfurt

E: tim.mueller
@cliffordchance.com

Paul Hauser

Senior Associate, Frankfurt

E: paul.hauser
@cliffordchance.com

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Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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