



SANCTIONS BRIEFING

"IMPLEMENTATION DAY" (16 JANUARY 2016) MARKS A SIGNIFICANT RELAXATION OF EU AND US SANCTIONS AGAINST IRAN

On 16 January 2016, or "Implementation Day", legislation in the United States ("US") and European Union ("EU") came into effect, relaxing significantly the sanctions in place against Iran. This followed the issuing of a report by the International Atomic Energy Agency ("IAEA") to the UN Security Council, confirming that Iran had complied with its commitments under the Joint Comprehensive Plan of Action ("JCPOA"). This bulletin sets out the key changes to the sanctions regimes and considers potential implications for business.

1. Background

As set out in our [previous bulletin](#), the JCPOA foresaw the lifting of the EU's nuclear-related sanctions, and US secondary sanctions, upon the fulfilment by Iran of certain nuclear-related commitments, as verified by the IAEA. In recent weeks the projected timescales for this were shortened, and Implementation Day took place on 16 January 2016.

Implementation Day has brought into effect very significant relief against the sanctions previously in effect against Iran. We set out below the key changes, and certain other considerations for businesses considering investing in Iran.

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2. EU developments

The EU's amendments to its sanctions regime were contained in its legislation published on 18 October 2015, known as "Adoption Day", namely:

- [Council Decision \(CFSP\) 2015/1863](#), which amends Decision 2010/413/CFSP;
- [Council Regulation \(EU\) 2015/1861](#) ("Regulation 1861"), which amends Regulation (EU) 267/2012; and
- [Council Implementing Regulation \(EU\) 2015/1862](#) ("Regulation 1862"), which also amends Regulation (EU) 267/2012.

By [Council Decision \(CFSP\) 2016/37](#), published on 16 January 2016, those measures have now entered into effect. Accordingly, the new EU Iran sanctions regime applies as from that date, and the very large majority of the EU's nuclear-related sanctions have now been lifted.

The EU has published a detailed [Information Note](#), containing a significant number of Questions and Answers to assist understanding of the new regime and to promote its uniform application. The UK has also updated its [guidance](#).

Key changes to the EU sanctions regime are highlighted below.

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London

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Sanctions lifted

- Restrictions on the provision of, and the provision of services relating to (a) key equipment used in the oil and gas industries, and (b) naval equipment.
- Restrictions relating to the import, purchase and transport of Iranian petrochemical, crude oil and petroleum products and natural gas.
- Restrictions on the sale and purchase of gold, precious metals and diamonds.
- Restrictions on the sale or supply of Iranian denominated banknotes and coins to the Central Bank of Iran.
- Restrictions on financing certain Iranian enterprises (those involved in the manufacture of certain military or dual-use goods or the oil, gas or petrochemicals industries – although, notwithstanding these relaxations, financing the supply of controlled goods for the military or nuclear industries remains subject to restrictions, as described below).
- Restrictions on transfers of funds to or from Iranian banks or Iranian persons.
- EU financial institutions are no longer prohibited from (a) opening new accounts or correspondent banking relationships with Iranian banks, (b) establishing branches or representative offices in Iran, or (c) establishing joint ventures with Iranian banks.
- Restrictions on the sale or purchase of public or public-guaranteed bonds issued by Iranian persons.
- Prohibition on providing insurance or reinsurance to Iranian persons.
- The restrictions on the provision to Iranian vessels of bunkering and ship supply service and engineering and maintenance to cargo aircraft have been relaxed, but the provision of such services will remain prohibited where the service provider determines that the ship or aircraft is carrying goods listed on the Common Military List or whose sale or supply to Iran is otherwise prohibited.

Sanctions that will remain

- A prohibition on sale or supply to Iran of (a) items which could contribute to the development of nuclear weapon delivery systems, and (b) items on the EU's Common Military List (and, in both cases, the provision of related services).
- Restrictions on the sale or supply to Iran of the nuclear-related items listed in Annexes I and II of Regulation 1861 (and the provision of related services). Authorisations will only be granted if certain criteria relating to the item's end use are met.
- Restrictions on sale or supply of graphite and listed raw or semi-finished metals.
- Restrictions on sale or supply of certain listed software with nuclear and military industry use.

The EU has not announced any changes to its human rights-related sanctions against Iran (set out in Council Regulation (EU) 359/2011). Accordingly, these measures will remain in force. They include restrictions on the provision of specified equipment to Iran that might be used for internal repression and equipment relating to telecommunications monitoring and intercept, as well as a number of listings of individuals and entities subject to asset freezing measures. There are currently 83 individuals and one entity listed as subject to the human rights-related asset freeze.

Further, the lists of "designated" entities and individuals subject to targeted financial sanctions have been amended (Annexes VIII and IX of Regulation 267/2012). The EU has announced that a total of 331 individuals and entities are to be removed from these lists, including a number of large Iranian entities such as National Iranian Oil Company and certain Iranian banks (the list of removals can be found in [Regulation 1862](#)). However, some targets remain, including certain Iranian banks such as Bank Saderat and aviation companies such as Iran Aircraft Industries and Iran Aircraft Manufacturing Company. The EU will also retain the ability to designate new individuals and entities on a number of grounds. The existing prohibition on the supply to designated persons of specialised financial messaging services used to exchange financial data will also remain in force (albeit that the practical impact of this restriction will be affected by the de-listings).

In summary, therefore, an extensive lifting of EU sanctions has now occurred. The remaining EU regime is very limited by comparison with what went before. However, companies will need to continue to carry out due diligence when conducting activity in Iran or transacting with Iranian persons. In particular, the continuing designations mean that it will remain necessary for companies to check the names of their Iranian counterparties against the relevant lists. EU companies will also need to consider carefully any US nexus, in connection with ongoing US sanctions.

3. US developments

In order to fulfill its commitments under the JCPOA, the US government announced several changes to its Iran-related sanctions program on Implementation Day. These changes are described in detail in [guidance](#) and [FAQs](#) issued by the US Department of the Treasury's Office of Foreign Assets Control (OFAC).

Sanctions lifted

Nuclear-Related Secondary Sanctions

The US has lifted nuclear-related secondary sanctions, which are directed toward non-US persons for conduct involving Iran that occurs entirely outside of US jurisdiction. Specifically, the US has lifted the following secondary sanctions:

- Financial and banking-related sanctions;
- Sanctions on the provision of underwriting services, insurance, or reinsurance in connection with activities that are consistent with the JCPOA;
- Sanctions on Iran's energy and petrochemical sectors;
- Sanctions on transactions with Iran's shipping and shipbuilding sectors and port operators;
- Sanctions on Iran's trade in gold and other precious metals;
- Sanctions on trade with Iran in graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes, in connection with activities that are consistent with the JCPOA;
- Sanctions on the sale, supply, or transfer of goods and services used in connection with Iran's automotive sector; and
- Sanctions on associated services for each of the categories above.

Sanctions List Removals

In addition to the lifting of the nuclear-related secondary sanctions set out above, on Implementation Day, the US removed over 400 individuals and entities from OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List"), the Foreign Sanctions Evaders List ("FSE List"), and/or the Non-SDN Iran Sanctions Act List ("NS-ISA List").

Commercial Passenger Aviation

OFAC issued a [Statement of Licensing Policy](#) establishing a favorable licensing policy regime through which US persons and, where there is a nexus to US jurisdiction, non-US persons may request specific authorization from OFAC to engage in transactions for the export, reexport, sale, lease, or transfer of commercial passenger aircraft and related parts and services to Iran, provided that the licensed items are used exclusively for commercial passenger aviation.

Iranian-Origin Carpets and Foodstuffs

OFAC has issued a regulatory [amendment](#) to the Iranian Transactions and Sanctions Regulations ("ITSR"), which will be effective upon publication in the *Federal Register*, to authorize the importation into the US of Iranian-origin carpets and foodstuffs, including pistachios and caviar.

Foreign Entities Owned or Controlled by US Persons

Finally, OFAC has issued a new [general license](#) ("General License H") authorizing US owned or controlled foreign entities to engage in certain transactions involving Iran that would otherwise be prohibited by section 560.215 of the ITSR. More specifically, General License H permits US owned or controlled foreign entities to engage in transactions with the Government of Iran or persons subject to the jurisdiction of the Government of Iran, with certain specified exceptions, including transactions involving (1) the direct or indirect exportation or reexportation of goods, technology, or services from the United States; (2) any transfer of funds to, from, or through the US financial system; or (3) any individual or entity on the SDN List or any activity that would be prohibited by non-Iran sanctions administered by OFAC if engaged in by a US person or in the United States. In addition, General License H authorizes US persons to engage in certain activities otherwise prohibited by the ITSR, namely, activities related to the establishment or alteration of corporate policies and procedures to the extent necessary to allow US owned or controlled foreign entities to engage in transactions involving Iran that are authorized under General License H, and

making available to foreign entities they own or control certain "automated and globally integrated" business support systems. Notably, General License H will make it significantly more feasible for non-US subsidiaries of US companies to conduct business involving Iran.

Sanctions that will remain

Primary Sanctions

The US domestic trade embargo on Iran remains in place. Even after Implementation Day, with limited exceptions, US persons – including US companies – continue to be broadly prohibited from engaging in transactions or dealings with Iran or its government. The clearing of US dollar transactions involving Iran through US correspondent financial institutions will continue generally to be prohibited. US persons also continue to be broadly prohibited from engaging in transactions or dealings with the Government of Iran and Iranian financial institutions, with the exception of transactions that are exempt from regulation or expressly authorized by OFAC. In addition, non-US persons continue to be prohibited from knowingly engaging in conduct that seeks to evade US restrictions on transactions or dealings with Iran or that causes the export of goods or services from the United States to Iran.

Secondary Sanctions

After Implementation Day, secondary sanctions continue to attach to significant transactions with: (1) Iranian persons that are on the SDN List; (2) the Islamic Revolutionary Guard Corps (IRGC) and its designated agents or affiliates; and (3) any other person on the SDN List designated under Executive Order 13224 or Executive Order 13382 in connection with Iran's proliferation of weapons of mass destruction (WMD) or their means of delivery or Iran's support for international terrorism. As of Implementation Day, more than 200 Iranian or Iran-related individuals and entities remain on the SDN List.

Designation Authority

Notably, the US also retains the authority to continue imposing new sanctions under authorities not included within the scope of its JCPOA commitments, including those used to address Iran's support for terrorism, support for persons involved in human rights abuses in Syria or for the Government of Syria, support for persons threatening the peace, security, or stability of Yemen, human rights abuses, and ballistic missile program. For example, the day immediately following Implementation Day, OFAC added to its SDN List 11 new entities and individuals involved in procurement on behalf of Iran's ballistic missile program.

Practical implications

While US implementation of the JCPOA removes a number of obstacles to economic engagement with Iran by non-US companies, the "primary" sanctions applicable to US persons remain almost entirely intact. Consequently, the US sanctions involving Iran will continue to create certain risks and potential complications for non-US companies doing business with Iran. For example, the use of US dollars for Iran-related transactions will continue to be prohibited (with the exception of transactions authorized by OFAC). It will continue to be generally impermissible for a non-US company's US person employees, officers or directors to be involved in Iran-related transactions. US-based lenders, or non-US lenders which comply with OFAC rules as a policy matter, also may continue to demand appropriate representations, warranties, or "ringfencing" protections when lending to non-US companies which conduct business with Iran pursuant to the JCPOA's sanctions relief. US companies, however, will find it easier to re-engage with Iran via their overseas subsidiaries, as the new General License H expressly permits US persons to participate in changes to corporate policy which may be necessary to insulate Iran-related business from the involvement of US persons. In sum, the limited nature of the US sanctions relief under the JCPOA makes it important for non-US as well as US companies to consider carefully the US sanctions issues which may be raised by transactions involving Iran.

4. Comment and other considerations

The lifting of sanctions against Iran will be very welcome news to foreign investors and will create a multitude of investment opportunities in virtually all sectors.

Legal challenges remain, however. In addition to ensuring compliance with those sanctions that remain, ensuring adequate protection against "snap back" risk will be important for anyone looking to invest. This risk arises since

the JCPOA envisages a mechanism whereby sanctions may "snap back" into place if a dispute, for example, regarding ongoing Iranian compliance with IAEA commitments, is not resolved favourably.

Companies may seek such protection in a number of ways, for example by including specific clauses in their contracts such as warranties, exit and termination rights and other remedies. However, it seems likely that investors will receive push back from Government entities in this respect. At the Tehran Petroleum Conference last November it was announced that the new petroleum contracts will not allow snap back risk to be covered under force majeure clauses, and it is expected that Iranian Ministries and other Government entities will be similarly reluctant to allow such protections. Helpfully, the EU's Information Note states any reintroduction of sanctions would not retroactively penalise investment made before the date of snapback, although the US has noted that contracts signed prior to a snapback are not "grandfathered", so continued performance would not necessarily be allowed if snapback occurs.

In addition to ongoing sanctions, Iran continues to face many challenges with corruption, money laundering, terrorist financing and compliance with international human rights standards. Failing to consider such matters could result in both legal and reputational consequences for investors. This will also be an important consideration for any banks looking to finance potential projects, particularly given the caution with which international banks are still approaching the market.

Lastly, investors will need to give further consideration to the statutory and contractual framework surrounding major projects. Whilst a new PPP law was introduced last year, further detailed regulations still need to be implemented and, owing to the many years of sanctions, there has been little development in recent times of a comprehensive contractual risk allocation for major projects with international investors. Developing a robust legal framework will be critical for reassuring investors and banks alike.

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