

Significant relief of sanctions against Iran, but certain restrictions remain

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On 16 January 2016, the International Atomic Energy Agency (IAEA) confirmed that Iran has complied with its obligations under the Joint Comprehensive Plan of Action (JCPOA) conditional to the first phase of sanctions relief. The JCPOA is the result of an agreement reached on 14 July 2015 between the E3/EU+3 (France, Germany, the United Kingdom, the European Union, China, Russia and the US) and Iran. The JCPOA was subsequently adopted on 18 October 2015 (Adoption Day). As a result of last Saturday's event, significant EU and US sanctions relief is in effect as of 16 January 2016, known as Implementation Day under the JCPOA. Certain nuclear-related sanctions remain in place, however, and the sanctions related to the Iranian human rights situation remain entirely unaffected and in full force.

This Legal Alert outlines EU and US sanctions relief now in effect and highlights EU and US restrictions which require careful attention and remain applicable to doing business with Iran.

EU sanctions relief

EU sanctions relief covers a broad range of sanctions. Below is a brief, non-exhaustive overview of the most important changes in EU sanctions.

Export and import

- The restrictions on the purchase, import and transport of crude oil, petroleum products, petrochemical products and natural gas and the provision of related services, some of which had already been suspended, have now been lifted.
- The prohibition on the sale, supply, transfer and export of certain equipment and technology for key sectors of the oil and gas industry as well as the petrochemical industry and the provision of related services has been lifted.
- The same applies to naval equipment and technology and related services.
- The sale, supply, transfer and export of dual-use items and the provision of related services to Iran is no longer prohibited, but now requires prior authorisation.
- The export of military items and provision of related services to Iran remains prohibited.

Investments

- The restrictions on investments, prohibiting the participation in, financing of, and cooperation with certain Iranian enterprises, including in the oil, petrochemical and gas industry, have been lifted.
- Entering into arrangements with enterprises involved in nuclear-related and military activities remains subject to restrictions.

Sanctions against designated persons and entities

- Importantly, the asset-freezing measures and the corresponding prohibition on making available any funds or economic resources to designated persons and entities are to be treated with more caution.
- As from 16 January 2016 (Implementation Day), certain parties and entities have been delisted. However, a considerable number of persons and entities remain listed and thus subject to restrictions. The restrictions with regard to the remaining persons and entities will only be lifted on Transition Day (see below on next steps under the JCPOA).
- The sanctions under Council Decision 2011/235 and Council Regulation 359/2011 including against a considerable number of persons and entities involved in human rights violations remain in full force and effect.
- No business may be entered into with sanctioned entities or persons, whether directly or indirectly. Any entity owned or controlled by such a person must be considered sanctioned as well.
- Before entering into any Iran-related transaction, carefully verifying whether any of the parties involved or their ultimate beneficial owners are subject to any sanctions is essential.

Transfers of funds and financial services

- The restrictions regarding the transfer of funds between financial institutions in Iran and the EU have been lifted.
- The notification and prior authorisation thresholds regarding payments to and from Iranian persons and entities have been lifted.
- A number of Iranian financial institutions remain subject to sanctions. No funds may be transferred to or from such financial institutions. In addition, no financial messaging services may be provided to such institutions, which practically excludes them from the international transfer of funds.
- The restrictions regarding the provision of insurance, re-insurance and related brokering services to Iranian entities and persons have been lifted.

US sanctions relief

Secondary sanctions

US sanctions relief is largely limited to "secondary" sanctions. These sanctions, targeting non-US persons and entities that are not owned or controlled by US persons or entities engaging in activities relating to Iran and deemed contrary to US interests, are lifted as of Implementation Day. However, secondary sanctions continue to apply to non-US persons for conducting transactions with any of the more than 200 Iranian or Iran-related individuals and entities who remain or are placed on the Specially Designated Nationals (SDN) List (with notations referencing secondary sanctions), despite the general lifting of secondary sanctions. Thus, it remains important to screen any prospective business partners involved in Iran-related transactions against the SDN List.

Primary sanctions

US persons, however, remain subject to very strict “primary” sanctions against Iran and are still prohibited from engaging in virtually any transactions involving Iran. This includes US-incorporated and/or US-based entities as well as any US nationals and permanent residents working abroad. Other persons working and residing in the US also may not engage in any business involving Iran. They also may not “facilitate”, i.e. support or act in furtherance of any Iran-related business of any foreign entities or employees in any way, including administrative and technical support. Finally, they may not refer any Iran-related business to foreign entities or employees.

Of particular importance, owned or controlled foreign affiliates of US companies now are generally authorised to engage in a broad range of activities involving Iran, subject to certain limitations. Thus, foreign affiliates of US companies are not prohibited from re-entering the Iranian market. Moreover, their US parent companies are now authorised to amend corporate compliance policies to authorise such business of their non-US subsidiaries and to allow the subsidiaries to utilise any automated and globally integrated computer, accounting, email, telecommunications, or other business support system, platform, database, application, or server necessary to store, collect, transmit, generate, or otherwise process documents or information related to authorised transactions. The use of such systems in connection with any transfer of funds to, from, or through a US depository institution or a US-registered broker or dealer in securities in furtherance of any Iran-related transactions, however, is not authorised. As noted, US personnel and US parent companies also may not facilitate transactions undertaken by their foreign affiliates, which can create significant compliance challenges, despite the broad authorisation accorded to foreign subsidiaries of US companies.

Specially Designated Nationals

Furthermore, a great number of parties are delisted from the Specially Designated Nationals (SDN) list. However, dealings with these parties remain prohibited for US persons under US Iranian Transactions and Sanctions Regulations (ITSR).

Product-related restrictions

In addition, significant product-related restrictions remain applicable to items subject to US law for re-export to Iran. Specifically, no controlled items (i.e., items with an ECCN other than EAR99) subject to the US Export Administration Regulations may be re-exported to Iran, and no items (regardless of export classification) may be procured directly or indirectly from the US specifically or predominantly to fill any Iran-related order. These restrictions also apply to non-US persons dealing with US controlled products. Thus, due care must still be taken that when fulfilling any order or service request relating to Iran or an Iranian person, those orders may not be fulfilled using US products controlled for Iran. Finally, no US vendors or service providers may become involved in any Iran-related transaction, meaning that non-US companies may not induce a US person to get involved in any such transaction.

Snap-back: possibility of re-imposition of sanctions

The EU, the US and the UN may re-impose all or certain sanctions if Iran does not comply with its commitments under the JCPOA. Such re-imposed sanctions, however, would not apply

retroactively, and should therefore not affect any conduct taken place prior to any re-imposition.

What it means

As outlined above, significant sanctions relief is in effect as of 16 January 2016, which opens up important business opportunities for many foreign companies. The lifting of sanctions will allow foreign companies to invest in the Iranian economy and enter into various transactions with Iranian parties and relating to Iranian products.

However, important EU and US restrictions remain applicable to doing business with Iran, which require careful attention. In addition, there will be practical hurdles to take. It is expected that international banks, especially those with ties to the US, will continue to be hesitant to process payments relating to transactions with Iran, even when the underlying transaction is allowed under the remaining sanctions.

When considering entering into any business in Iran or with Iranian parties, a number of steps need to be taken into account, including to:

- conduct a careful screening of persons and entities involved in any transaction and require them to represent that they are neither subject to sanctions, nor owned or controlled by, or acting on behalf of such a party
- provide for the possibility to terminate the contract without liability in case relevant sanctions are re-imposed
- verify whether your financing agreements allow entering into the intended Iran-related activities
- verify whether the products and technology involved are subject to any product-related restrictions and whether your supplier contract allows re-export to Iran
- verify whether any US parties are involved or whether there is any other US nexus to the contemplated transaction
- consult your banks about the processing of payments in advance.

What is next under the JCPOA

As set out in our [Legal Alert of 17 July 2015](#) the JCPOA provides for a phased approach:

- The first phase of EU and US sanctions relief, discussed above, is in effect as of 16 January 2016.
- The second phase of further EU and US sanctions relief will be implemented on Transition Day, which will occur at the latest eight years after Adoption Day, i.e. 18 October 2023, or earlier if the IAEA reaches the “Broader Conclusion” that Iran’s nuclear material is used for peaceful purposes only.
- The third phase is entered into ten years after Adoption Day, i.e. 18 October 2025, at which stage the UN Security Council measures and all remaining nuclear-related EU sanctions against Iran are to be lifted (UNSCR Termination Day).