



Iran Nuclear Agreement: U.S. Companies and Sanctions Relief

On September 17, 2015, resolutions aimed at preventing President Obama from lifting sanctions in accordance with the Iran nuclear agreement (Joint Comprehensive Plan of Action – “JCPOA” or “the Agreement,” signed July 14, 2015) failed to obtain the 60 votes needed to proceed to final passage in the Senate. Thus, it appears that implementation of the Agreement will move forward according to the negotiated timetable. U.S. manufacturers, exporters and service providers may now want to know what that means for the lifting of sanctions, and for the prospects of doing business in or with Iran.

The answer is: initially, not much. While the Agreement provides substantial detail regarding the process and plans for removing sanctions, it does not in itself ease any sanctions (beyond those limited license expansions already granted in January 2014 as part of the negotiating process).

The timetable is:

1. On “**Adoption Day**,” likely October 19 (90 days after the UN Security Council approved the Agreement by Resolution 2231 on July 20), the U.S. and European Union (EU) will commence easing or ending various sanctions.
2. Those changes will become effective on “**Implementation Day**,” the day on which the International Atomic Energy Agency (IAEA) certifies that Iran has fulfilled its initial commitments under the JCPOA. U.S. State Department officials estimate that reaching Implementation Day will require at least six months, and could take as long as up to a year.

In the meantime, U.S. and EU sanctions remain fully in force. See *Statement*, July 14, 2015 U.S. Department of the Treasury, Office of Foreign Assets Control; *Notice to Exporters*, July 15, 2015, UK Export Control Organisation.

Critical Points

- **U.S. “primary sanctions” remain in force even after Implementation Day.** With limited exceptions, the sanctions targeted for lifting in conjunction with the JCPOA are so-called “secondary sanctions” – those that have been imposed (by legislation and Executive Orders) in the past few years specifically to hinder development of Iran’s nuclear program, and prevent non-U.S. persons, banks and businesses from supporting specific sectors of the Iranian economy such as energy, mining, shipping and financial services. These will be lifted on Implementation Day, and certain Iranian persons and firms will be removed from the Specially Designated Nationals (SDN) list maintained by the Treasury’s Office of Foreign Assets Control (OFAC). This will allow non-U.S. persons and firms to transact business with Iran in these areas.

U.S. persons and companies – and for purposes of Iran sanctions, foreign entities “owned or controlled” by U.S. persons or companies – will still be subject to “primary sanctions.” These sanctions, which date back 20 years, are designed as counterterrorism measures and are to remain in place (with a few exceptions). These measures also apply to non-U.S. persons who cause a U.S. person or entity to violate them, and to any transfers of specified U.S. products and technology to Iran. U.S. persons thus will



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remain prohibited from dealing in general with or in Iran.

The exceptions to primary sanctions specifically provided in the JCPOA include (a) the importation of certain Iranian origin foods, (b) the importation of Iranian origin carpets, and (c) most notably, licenses for the export, sale, lease or transfer to Iran of commercial passenger aircraft (and parts and services). Further, the Agreement's Annex II indicates that the U.S. may license foreign subsidiaries of U.S. persons or companies to "engage in activities with Iran that are not inconsistent with this Agreement," although the scope of those possible licenses remains undetermined. Existing OFAC export licenses (for certain foodstuffs and specified medical supplies) will continue in place.

- **European Union sanctions, on the other hand, will be largely lifted.** The EU will terminate most of its existing sanctions on Implementation Day, including restrictions on goods and services related to nuclear development (to the extent consistent with the UN Resolution), financial transfers and services, chemicals, energy, and shipping and insurance business. The EU will also unfreeze the assets of certain designated persons and entities specified in the JCPOA. Certain sanctions will remain for limited periods of time; some transportation businesses, and trade in certain specified metals (such as graphite) and industrial software, will be restricted for eight years after Implementation Day. And while the signing nations

have stipulated that the Iran arms embargo will expire in five years, all providers of listed military hardware and services will continue to be subject to export regulations and restrictions.

Thus, EU-based companies would appear more likely than U.S. firms to reap immediate benefits from post-Agreement business opportunities with Iran. However, dealing with Iran will not be without complications, even for EU enterprises; for one thing, EU multinationals, and especially financial institutions with ties to or investors in the U.S., will need to be mindful of the continuing potential application of the U.S. sanctions that remain in force.

A final note for publicly traded and registered companies: Nothing in the JCPOA, nor in the proposed easing of certain sanctions, affects an issuer's obligation under the Securities Exchange Act of 1934 § 13(r) to make disclosure of any transactions, even if legal and licensed, with the Government of Iran or parties named on the SDN list.

Additional Assistance

Should you have any questions regarding how the Iran or other sanctions regimes, or any other export or international compliance provisions, might affect your business or investment, Phillips Lytle has the depth of experience and breadth of expertise to assist in any way needed. Please contact James Kevin Wholey at jwholey@phillipslytle.com or (202) 617-2714 for more information. ■



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