

# What is the Impact of Sanctions Relief Given Iran Following the Geneva Agreement?



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Iran and the five permanent members of the United Nations Security Council and Germany (the so-called “P5+1”) reached a temporary agreement on Iran’s nuclear framework early morning Sunday, November 24, following intense meetings in Geneva. This agreement will have a term of six months, effectively serving as a placeholder before Iran and the P5+1 reach a comprehensive and final agreement.

In exchange for certain limitations on Iran’s nuclear energy program, the P5+1 have decided to afford that country with limited sanctions relief. Although the key theme is “limited,” it is worthy to note that limited does not mean unimportant or negligible. These changes can bear a significant impact for U.S. persons by opening new doors to business and requiring potential changes to compliance programs.

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## Development of Revisions to the Sanctions Regime

Contrary to what some opponents and avid proponents of the Geneva agreement may believe or lead others to believe, the sanctions regime against Iran is still very much in place, a point that the White House has gone through great pains to communicate. However, some parts of the sanctions relief are noteworthy, although it must be seen how these concessions will ultimately take shape legally. In the United States, such concessions will be afforded by the Department of the Treasury's Office of Foreign Assets Control (OFAC), the Department of State, and more broadly the White House, which will likely issue general licenses, directives, and Executive Orders, respectively. These will define the boundaries of what is permitted and what will continue to be barred or require specific authorization. Also notable is that the sanctions relief afforded Iran is reversible should that country renege on its commitments.

## Basics of the Agreement

Beyond the agreement that the U.N., U.S., and European Union (E.U.) will not impose new sanctions on Iran's nuclear related program, notably remains room for human rights and terrorism-related sanctions and designations. Below are some key parts of the arrangement, with some possibilities as to how they could potentially be executed. It must be emphasized that the laws have not changed yet, and as such the analysis below is in many ways speculation.

### 1. **Suspension of sanctions on Iran's petrochemical exports.**

This does not mean that U.S. companies can now import petrochemical products from Iran. What it does likely mean is that companies in third countries importing petrochemicals from Iran will no longer face penalties from the United States. The petrochemical industry in Iran is a significant part of that country's energy industry, and this is therefore a critical gain for the Iranians.

### 2. **Suspension of U.S. and E.U. sanctions on Iran's dealings in gold and precious metals.**

Although these limitations are awkward sounding, their suspension is of significant importance. As Iran is effectively locked out of the international banking system (including the SWIFT messaging network), it had been increasingly relying on moving money around the globe in the form of precious metals such as gold and silver. Iran was also engaging in other commodities trade. Notably, this move by the P5+1 can also suspend the imposition of limitations on companies supplying Iran with metals like aluminum. What is of particular significance is that limitations placed last summer on third country entities through Executive Order 13645 engaging significant Iranian Rial transactions will continue in effect.

### 3. **Suspension of U.S. sanctions on Iran's automobile sector and related services.**

The U.S. imposed strict sanctions on Iran's automotive sector this past summer pursuant to Executive Order 13645 as part of the Iran Freedom and Counter-Proliferation Act (IFCA). The U.S. will effectively suspend the imposition of sanctions on companies in third countries assisting Iran's automobile industry. This is very significant as international companies can be punished under this law even for certain basic provisions of goods and services for the Iranian automotive industry. The Iranian automotive industry is notably Iran's largest economic sector after energy.

4. **Licensing Regime for Civilian Aircraft Servicing in Iran.**

Notably, under the U.S.' Iranian Transaction and Sanctions Regulations (ITSR) promulgated by OFAC, U.S. companies can obtain specific licenses to overhaul U.S. made Iranian civilian aircraft in third countries (e.g., the United Kingdom or United Arab Emirates). Under the Geneva agreement of the 24th, U.S. companies will apparently now be able to obtain licenses to engage in such repairs physically in Iran and engage in related safety services, which will make the functionality of this existing licensing regime not only wider but logistically easier, likely making the services more sought after. Given Iran's ageing civilian aircraft fleet, this is a very notable development, and could be a prelude to direct U.S.-Iran civilian flights, which Iranian President Hassan Rouhani has called for. It could also serve as a first step for a potential removal in the future of sanctions barring the sale of civilian aircraft sales to Iran.

5. **Facilitating Humanitarian Trade.**

This is more significant than it may appear at first glance. This type of trade (in medical goods & supplies, medicines, food, and agricultural products) has largely been authorized pursuant to the Trade Sanctions Reform and Export Enhancement Act (TSRA) and ITSR revisions for quite a while through a general and specific licensing regime. Further, in early September, OFAC released General License E, an authorization permitting a wide range of charitable and other activities in furtherance of Non-Governmental Organizations (NGOs). However, permitted sales and related activities had been very logistically difficult due as UN and perhaps more importantly U.S. sanctions have led international banks to cut dealings with Iran, often in an abundance of caution to avoid penalties. This has created stop-gaps in the flow of medicine, medical goods, foods, etc. (and other permitted transfers) relating to Iran.

What appears to be the case is that there will apparently be efforts made to allow certain non-designated banks and specific banks in the west to process such payments. If this happens, financial transfers will become generally quicker and more reliable. As electronic wiring in some form becomes possible again, this move will thereby lessen the need for the use of third country exchange houses, which are currently widely relied upon.

**Paving the Road towards Commercial Ties with the United States?**

The sanctions relief afforded Iran following the P5+1 agreement dovetail limited relaxations of humanitarian trade as well as certain exports of information technology (IT) goods and services to Iran in recent months. Each of these openings can create substantial opportunities for U.S. businesses with Iran, a large market of roughly 80 million people and perhaps the largest economy in the Middle East North Africa (MENA) region. These soon to be expanded spaces, particularly in the medical, pharmaceutical, agricultural and civil aviation/aerospace industries will be significant and can open the door to wider sanctions relief.

The challenge to U.S. companies will be twofold:

- (1) Ensuring compliance with U.S. laws on the Iran embargo. Sanctions will be in flux and are likely to be under increased frequency of revisions. This increases the onus on companies to modify and update their compliance programs as necessary. A critical factor will be to know exactly what can and cannot be done and what does and does not require specific authorization. The liberalization of these laws is what can lead to guess work, which in turn gives rise to increased exposure to civil and criminal liability.
- (2) Properly guaranteeing sound entry into the Iranian market upon obtaining any necessary authorizations from the U.S. government. This will include:
  - (i) registering intellectual property in Iran (already permitted under general license, albeit subject to certain conditions);
  - (ii) performing due diligence on Iranian counterparties; and
  - (iii) ensuring the entering of sound, enforceable contracts.

What separates doing business with Iran from other peer countries is not just the presence of a robust U.S. sanctions regime, but the fact that Iran is an emerging market that has been largely isolated from international legal norms for decades. It will be critical to have advisors who are familiar with the language and business culture of this market.

We again note that the above is based on information released immediately after the Geneva deal was reached.

These agreed upon provisions have not been made into law yet, and we will have to wait until the actual laws, regulations, and guidance are published before seeing the clear definitions and limits of these laws. Furthermore, laws continue to prohibit U.S. persons from dealing with Iran through subsidiaries or third country parties, and from facilitating most transactions between third country entities and Iran. Naturally, ensuring compliance is imperative.

An overarching concern is that while the relaxation of certain unilateral sanctions may open up some opportunities for U.S. companies, business may misinterpret news articles as being green lights to move forward on transactions. Relying on the news for legal advice is where companies and individuals can start making exceptionally costly mistakes that can lead not only to reputational damage but more importantly civil and criminal liability.

Given the above, if anything, the need for compliance becomes exceptionally more heightened. In the case of Iran, compliance must start before any business decisions are made and all work should be assessed beforehand to determine what, if any authorizations are needed, as well as what if any limitations exist on permitted activities. Companies should expect this to become a long-lasting trend, particularly as U.S. sanctions laws on Iran may continue to change for the coming months or even years.