

Iran: Impact of Sanctions Relief Following the Preliminary Nuclear Agreement with the P5+1



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Iran and the P5+1 nations (United States, United Kingdom, France, Russia, China, and Germany) reached a landmark preliminary understanding last week setting forth parameters on a final agreement on Iran's nuclear program. Last week's agreement, once finalized in the form of a Joint Comprehensive Plan of Action (JCPOA), will legally implement strict limitations on Iran's nuclear program in exchange for significant sanctions relief for Iran. The parties hope to finalize the JCPOA by the June 30, 2015 deadline, wherein the new changes in the legal framework will be implemented. No laws and regulations have changed yet.

This Client Alert provides a summary of what was agreed upon under the sanctions regime and how it could impact existing laws and regulations.

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Inspections, Limitations, and Procurement

The April 2, 2015 preliminary agreement involves a variety of restrictions on Iran's nuclear program, including a very wide-ranging inspections and monitoring regime, which President Barack Obama claimed will be the most intrusive placed on any country's nuclear program. Some limitations on the program will last for up to 25 years. Further, the agreement calls for the establishment of a dispute resolution mechanism wherein P5+1 states can address grievances if they believe Iran is not holding up to its commitments. Additionally, an international procurement channel will be established for Iran to lawfully obtain supplies and technologies for its nuclear energy program in an effort to enhance transparency.

Sanctions Relief

As stated, the parameters issued last week offer limited sanctions relief, and will result in the removal of those U.S. and European Union (E.U.) sanctions that were imposed due to Iran's nuclear program over the past decade. All United Nations Security Council (U.N.S.C.) resolutions on Iran's program will be lifted in phases in conjunction Iran's fulfillment of the respective requirements, such as actions on certain facilities, reporting, and limitations on enrichment. However, a new Security Council resolution will be issued that will implement the JCPOA, which will retain certain key provisions on cargo inspections and non-proliferation involving Iran.

As detailed above, U.S. and E.U. sanctions will be phased out in stages, following Iran's fulfillment of its respective obligations. The timetable for these milestones has not yet been established but will be finalized as part of the JCPOA. Interpreting last week's White House release, examples of the types of U.S. sanctions that could eventually be suspended under a final JPCOA include:

- Secondary U.S. sanctions on certain third country activities in key Iranian sectors such as petrochemicals, the automotive industry, precious metals trade, and oil purchases from Iran
- Threshold limitations on third country sales of refined petroleum and fuel to Iran and the provision of related goods, services, and technologies for related sectors
- Restrictions on certain types of third country investment in Iran's energy industry
- Removal of asset blocking provisions imposed on a number of Iranian financial institutions
- Some limitations governing certain third country financial institutions' correspondent accounts in the United States
- U.S. travel bans imposed on certain officials involved in Iran's country's nuclear program

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These are speculative based on an interpretation of what has been announced to-date. All details including the timing of such suspensions will be clarified in the JPCOA and subsequent pronouncements.

Notably, U.S. sanctions based on Iran's support of terrorism, human rights abuses, and ballistic missiles will continue to be in force and enforced. This would appear to include the Iranian Transactions and Sanctions Regulations (ITSR), whose predecessor was originally imposed in 1995 and today serves as one of the principal bodies of the U.S. sanctions architecture in place against Iran, affecting most unilateral U.S. sanctions, such as the sale of U.S.-origin goods, services, and technologies to Iran.

Some other sanctions which have been implemented during the time Iran's nuclear case has been under U.N. Security Council review will continue to be implemented as they were imposed for other reasons, such as Iran's alleged human rights abuses. These include some of the provisions of the Comprehensive Iranian Sanctions Accountability and Divestment Act of 2010 (CISADA) and the Iran Threat and Syria Human Rights Act of 2012.

Furthermore, there will be mechanisms to reintroduce sanctions if Iran fails to meet its obligations.

As detailed above, the laws have not yet formally changed, and will not be until the final JPCOA is issued. Nonetheless, current authorizations and prohibitions in the sanctions remain in effect. However, those sanctions limitations that were suspended through the Joint Plan of Action (JPOA) following the November 2013 Geneva Agreement will continue to be suspended.

Compliance and Enforcement Going Forward

It is clear that while this agreement, when finalized, will provide notable sanctions relief to Iran and will facilitate at least a limited reintegration of Iran into the world economy. This will, however, entail a long process that will take significant time. The euphoria and enthusiasm connected with this deal have inevitably resulted in some confusion as to the scope and timing of the suspension of certain sanctions.

It must be emphasized that last week's agreement does not currently relieve third country or U.S. parties of any current limitations under U.S. law. It is therefore critical that businesses around the globe have full clarity as to (1) the current state of sanctions; and (2) the impact of any changes or potential changes in applicable sanctions laws and regulations on their respective current or desired activities.

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Notably, there have been no signals that the United States will relent on its vigilant enforcement of U.S. sanctions. In fact, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) in a release on April 3 stated:

As of today and until a JCPOA is concluded, other than the sanctions relief provided under the JPOA, all U.S. sanctions remain in place and will continue to be vigorously enforced.

In other words, it is most likely that none of the agreed terms will be implemented until at least June 30. Laws will remain unchanged until the JPCOA is implemented. Importantly, OFAC and the Department of Justice can past pursue violations of the law within the statute of limitations, even if the same activities at issue are permitted under law at the time of enforcement. Enforcement can take place even after the JCPOA is legally implemented. Given the possibility of very punishing penalties, businesses in both the United States and third countries should be particularly aware of this and are strongly advised to ensure diligent and comprehensive compliance with all applicable laws.

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