

U.S. FOCUS: IRANIAN NUCLEAR ACCORD REACHED, BUT SPECIFIC IMPLEMENTATION OF MEANINGFUL U.S. SANCTIONS RELIEF WILL NOT BE IMMEDIATE

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International Trade Alert

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On July 14, 2015, the "P5+1" nations (the United States, China, France, Germany, Russia, and the United Kingdom), together with the European Union and the Islamic Republic of Iran ("Iran"), reached a Joint Comprehensive Plan of Action ("JCPOA") intended to ensure that the Iranian nuclear program will be exclusively peaceful, which, if verified, will trigger the implementation of phased sanctions relief by the United Nations, the United States, and the European Union.^[1] The text of the agreement may be found [here](#).

As detailed below, however, the JCPOA does not provide for the immediate lifting of sanctions. Indeed, a United Nations Security Council Resolution first must be adopted, after which the agreement may take as long as 90 days to come into force. In addition, as detailed below, the JCPOA is subject to a 60-day Congressional review period. Finally, the sanctions lifting and licensing protocols prescribed by the JCPOA will not actually take effect until the International Atomic Energy Agency ("IAEA") has verified that Iran is abiding by its commitments, which could take several additional months.

Furthermore, the JCPOA makes clear that the sanctions the United States "will cease to apply, and subsequently terminate, or modify to effectuate the termination of," pursuant to its commitments under the JCPOA, are those directed specifically toward non-U.S. persons (i.e., so-called "secondary" sanctions), rather than the embargo restrictions applicable to U.S. persons (although the JCPOA does mandate the licensing by the United States of certain activities by U.S. persons, including certain activities relating to Iran undertaken by owned or controlled non-U.S. affiliates of U.S. persons). Accordingly, U.S. persons and U.S.-owned or -controlled foreign affiliates will continue generally to be prohibited pursuant to the Iranian Transactions and Sanctions Regulations from conducting transactions of the types permitted for non-U.S. persons pursuant to the JCPOA, unless specifically authorized by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC").

The following sets forth certain key details regarding the scope and implementation of the JCPOA. The full text of the OFAC announcement regarding the JCPOA may be found in Appendix 1.

SCOPE OF SANCTIONS RELIEF

The JCPOA, once it becomes effective, will result in the comprehensive lifting of all United Nations Security Council sanctions, as well as certain multilateral and national sanctions relating to the Iranian nuclear program. In

the case of the United States, sanctions will no longer be applied to a wide array of previously sanctionable activities by non-U.S. persons, including:

- Financial and banking transactions by non-U.S. persons with certain Iranian banks and financial institutions, including the Central Bank of Iran and specified individuals and entities identified as affiliated with the government of Iran on the list of Specially Designated Nationals and Blocked Persons ("SDN list") maintained by OFAC^[2] (including the opening and maintenance of correspondent and payable-through accounts at non-U.S. financial institutions, investments, foreign exchange transactions, and letters of credit);
- The purchase, sale, acquisition, transportation, or marketing of petroleum, petrochemical products, and natural gas by non-U.S. persons from Iran;
- The export, sale, or provision of refined petroleum products and petrochemical products by non-U.S. persons to Iran;
- Transactions by non-U.S. persons implicating the energy sector of Iran;
- Transactions by non-U.S. persons with Iran's shipping and shipbuilding sectors and port operators; and
- The sale, supply, or transfer of goods and services by non-U.S. persons used in connection with Iran's automotive sector.

Please note, however, that the lifting of the sanctions will not be self effectuating under the agreement, but must specifically be implemented by the U.S. government.

In addition, the United States committed to:

- Removing certain individuals and entities from the SDN list, as well as the Foreign Sanctions Evaders List and the Non-SDN Iran Sanctions Act List;
- Licensing the sale of commercial passenger aircraft and related parts and services, including by U.S. persons, to Iran;
- Licensing non-U.S. persons that are owned or controlled by U.S. persons to engage in activities consistent with the JCPOA with Iran; and
- Licensing the importation into the United States of Iranian-origin carpets and foodstuffs, including caviar and pistachios.

TIMETABLE FOR IMPLEMENTATION OF SANCTIONS RELIEF

The JCPOA will take effect 90 days after the endorsement of the agreement by the United Nations Security Council (or at an earlier date by mutual consent of the JCPOA participants). On this so-called "Adoption Day," the JCPOA participants are expected to begin making the necessary arrangements for the implementation of their JCPOA commitments.

In the case of the United States, these arrangements will include the execution of presidential waivers ceasing the application of the statutorily mandated sanctions targeting non-U.S. persons identified in the JCPOA. These

waivers take effect on the so-called "Implementation Day," the date on which the IAEA verifies that Iran has implemented key nuclear-related measures described in the JCPOA. There is no established timetable for the completion of this verification.

Subsequently, on the so-called "Transition Day," the eighth anniversary of the Adoption Day (or, under certain circumstances, sooner), the United States will be required, among other actions, to seek such legislative action as may be appropriate to terminate, or modify to effect the termination of, the statutorily mandated sanctions targeting non-U.S. persons as set forth in the JCPOA.

The U.S. government has announced, pursuant to the JCPOA, it will be publishing detailed guidance regarding implementation of the JCPOA prior to Implementation Day.

Please note, however, that Congress has 60 days to scrutinize the agreement and then to vote on a resolution to accept or reject the JCPOA or to do nothing, in which case, the agreement would become effective as to the United States. The president can veto any resolution of disapproval and Congress would need a two-thirds majority in each house to override the veto; the president already has announced his intention to veto any disapproval resolution.

EXTENSION OF TEMPORARY SANCTIONS RELIEF, AND CONTINUATION IN FORCE OF CERTAIN OFAC LICENSES

On July 14, 2015, the P5+1 nations and Iran also reached agreement on the extension of the limited, temporary sanctions relief provided for in the Joint Plan of Action ("JPOA") of November 23, 2013, as extended. The U.S. government also will be issuing guidance on the continued JPOA relief.

In addition, the U.S. government announced that specific licenses issued pursuant to OFAC's Second Amended Statement of Licensing Policy on Activities Related to the Safety of Iran's Civil Aviation Industry having an expiration date on or before July 14, 2015 will remain in effect until Implementation Day.

DISPUTE RESOLUTION AND "SNAP BACK" AUTHORITY

The JCPOA also establishes a Working Group on Implementation of Sanctions Lifting, as well as a Joint Commission comprising the JCPOA participants, empowered to hear disputes arising from the implementation of sanctions lifting, including those alleged to constitute nonperformance. In the event an issue cannot be resolved, even after being considered by the Joint Commission and, possibly, the ministers of foreign affairs or a three-member Advisory Board, the unresolved issue can be grounds for the cessation of performance of a participant's JCPOA commitments. Should this occur, because the United States is not obligated to begin dismantling its statutory "secondary" sanctions architecture until Transition Day, the United States immediately may "snap" its sanctions back into place.

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For additional detail regarding any aspect of the JCPOA or relating to OFAC compliance matters more generally, please contact any of the OFAC lawyers identified below. K&L Gates LLP will supplement this advisory as warranted by new developments.

APPENDIX 1

Statement Relating to the July 14, 2015 Announcement of a Joint Comprehensive Plan of Action Regarding the Islamic Republic of Iran's Nuclear Program

- On July 14, 2015, the P5 + 1 and Iran reached a Joint Comprehensive Plan of Action (JCPOA) to ensure that Iran's nuclear program will be exclusively peaceful. Building on the key parameters for a JCPOA announced on April 2, 2015, the JCPOA will provide Iran with phased sanctions relief upon verification that Iran has implemented key nuclear commitments.
- U.S. sanctions relief will be provided through the suspension and eventual termination of nuclear-related secondary sanctions, beginning once the International Atomic Energy Agency (IAEA) verifies that Iran has implemented key nuclear-related measures described in the JCPOA ("Implementation Day"). The U.S. government will publish detailed guidance related to the JCPOA prior to Implementation Day.
- The P5+1 and Iran also decided on July 14, 2015 to further extend through Implementation Day the sanctions relief provided for in the Joint Plan of Action (JPOA) of November 24, 2013, as extended. This JPOA sanctions relief is the only Iran-related sanctions relief in effect until further notice. The U.S. government will issue revised guidance on the continued JPOA relief shortly.
- Effective July 14, 2015, all specific licenses that: (1) were issued pursuant to OFAC's Second Amended Statement of Licensing Policy on Activities Related to the Safety of Iran's Civil Aviation Industry, and (2) have an expiration date on or before July 14, 2015, are hereby authorized to remain in effect according to their terms until Implementation Day.

Notes:

[1] Please refer to a companion K&L Gates LLP alert detailing the implementation of the JCPOA by the European Union, which may be found [here](#).

[2] Sanctions relief generally is not afforded to transactions involving persons on the SDN list.

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