

## Client Alert

---

August 6, 2015

# Iran Sanctions: Change is Coming, But Risks and Uncertainties Remain

The Joint Comprehensive Plan of Action (“JCPOA”) that was signed on July 14, 2015 among Iran and the United States, Germany, UK, France, Russia and China (referred to as “P5+1” in the United States and “E3+3” in the EU) could lead to a dramatic reduction in international sanctions against Iran and has the potential to open up major business opportunities in Iran for global companies. Over the short term, however, not much is going to change, as formal implementation of the JCPOA and enactment of sanctions relief is at best many months away. Set forth below is a brief summary and outline of JCPOA implementation and potential sanctions relief.

### CONDITIONS TO EFFECTIVENESS

It is important to emphasize that implementation of sanctions relief under the JCPOA is subject to the satisfaction of certain conditions, and also to U.S. political considerations. One condition was quickly satisfied on July 20, 2015, when the JCPOA was endorsed by the UN Security Council. The second major condition (“Implementation Day”) will occur only following International Atomic Energy Agency (IAEA) verification that Iran has implemented certain specified measures as detailed in the JCPOA, including decommissioning and dismantling portions of Iran’s nuclear development program. Initial reports from governmental authorities, such as the German Federal Office for Economic Affairs and Export Control (BAFA), indicate that implementation and IAEA verification of these measures is not likely to occur until the first quarter of 2016. Until Implementation Day, the P5+1/E3+3 have agreed that all existing Iran sanctions, including sanctions with extraterritorial effect (that is, applicable to non-U.S. and non-EU persons), will remain in place. We note that since November 2013, when Iran and the P5+1/E3+3 reached an initial understanding on Iran’s nuclear program, limited sanctions relief has been in effect and such relief will remain in effect until Implementation Day.

There are also political complexities that may affect ultimate sanctions relief, at least for U.S. companies. The JCPOA represents a national executive level agreement among the P5+1/E3+3 and, as such, does not require approval by the U.S. Congress or the national legislative bodies of the other P5+1/E3+3 countries. However, under the 2015 Iran Nuclear Agreement Review Act, the Obama administration cannot act on sanctions relief until the U.S. Congress completes a 60-day review of the JCPOA. There has been strong opposition from both parties in the U.S. Congress, but opponents will need to have a two-thirds vote in both houses in order to block the JCPOA and override a certain Presidential veto. At this stage, the outcome of such a vote is not certain.

Looking towards the longer term, however, following Implementation Day, new commercial opportunities can be expected for EU and other non-U.S. companies in key sectors such as oil, gas and petrochemicals, as discussed more fully below. Given the longstanding U.S. and EU sanctions against Iran, the reduction of sanctions envisioned by the JCPOA will provide Iran with a real opportunity to return to the global economy.

# Client Alert

---

## KEY DATES UNDER THE JCPOA

The following is a timeline of key dates and milestones:

- **“Adoption Day”**: Given UNSC endorsement of the JCPOA on July 20, 2015, Adoption Day will be October 18, 2015. On that date, the P5+1/E3+3 parties will begin to make preparations for implementing the JCPOA.
- **“Implementation Day”**: Following confirmation by the IAEA that Iran has adopted the JCPOA-required measures, the JCPOA reduction of U.S. and EU sanctions will be implemented. It is expected this may occur in the first quarter of 2016.
- **“Transition Day”**: This day will occur eight years after Adoption Day or as soon as the IAEA determines that Iranian nuclear material is being used only for peaceful purposes, whichever comes sooner. On Transition Day, (i) all provisions of the EU Regulation implementing nuclear proliferation sanctions that were not removed on Implementation Day will be terminated and (ii) all remaining U.S. secondary sanctions against Iran (i.e., sanctions applicable to non-U.S. persons and entities) will be terminated.
- **“UNSCR Termination Day”**: Ten years after Adoption Day, the UNSC will no longer be seized of the Iranian nuclear issue and all remaining EU sanctions will be terminated.

## EXTENT OF SANCTIONS RELIEF

U.S. sanctions relief under the JCPOA is primarily focused on lifting nuclear proliferation-related “secondary” sanctions against non-U.S. persons and entities. These secondary sanctions were implemented beginning in 2010 in an attempt to deter non-U.S. persons and companies from trading with Iran. On Implementation Day, most of the U.S. secondary sanctions will be terminated. This will include removing many Iranian persons and entities from the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) list of Specially Designated Nationals and Blocked Persons (“SDNs”).

However, certain U.S. secondary sanctions will remain in place. For example, non-U.S. financial institutions will remain subject to penalties for engaging in dollar-denominated transactions with Iran, and for dealing with certain Iranian banks and the Iran Revolutionary Guards Corp. Secondary sanctions against non-U.S. persons supporting Iranian terrorist activities, nuclear proliferation and human rights violators, among others, will also remain in place.

Most importantly, U.S. “primary sanctions” that apply directly to U.S. persons and entities and generally prohibit direct transactions between the U.S. and Iran will remain in place. Under the JCPOA commitments of the U.S., foreign subsidiaries of U.S. companies may, however, benefit from sanctions relief. In addition, OFAC is expected to relax some licensing policies for U.S. persons and entities, but OFAC licenses will still be required for most direct U.S. transactions with Iran. OFAC is expected to shortly issue formal guidance on the JCPOA implementation.

Relief of EU sanctions will have a broader impact. As of Implementation Day, EU sanctions restricting Iran’s financial institutions will be lifted. The more restrictive measures affecting Iranian insurance, oil-and-gas,

## Client Alert

---

petrochemical and transportation sectors will also be removed. Following sanctions relief, other permitted activities for EU companies will include:

- joint ventures, taking an ownership interest or establishing new correspondent banking relationships by Iranian banks with EU banks;
- EU persons (including financial institutions) opening representative offices, subsidiaries or bank accounts or creating joint ventures in Iran; and
- granting financial loans and credits to, acquiring or extending participation in, and creating joint ventures with, any Iranian persons engaged in the oil, gas and petrochemical industries. Further clarification around these points is expected as negotiations progress to the next stage.

While EU companies may have advantages over U.S. companies in engaging with Iran, EU companies also must be careful about compliance with the U.S. secondary sanctions that may also apply to non-U.S. financial institutions (including EU financial institutions), and with the U.S. primary sanctions applicable to U.S. persons working outside the U.S., including at EU companies.

### EXERCISING CAUTION

Iran may now present itself as a place of new opportunity for investors, and many companies are signing up agreements in advance of Implementation Day. However, those looking to enter the Iranian market should act with caution and discretion. This is because continued sanctions relief ultimately depends on Iran's ongoing compliance with its obligations under the JCPOA. In the event that Iran fails to comply with its JCPOA obligations, the P5+1/E3+3 can "snap back" existing sanctions. This would bring the existing sanctions immediately back into force.

The risk of a snap-back is coupled with the risks from the challenges the P5+1/E3+3 and Iran would inevitably face when trying to implement the JCPOA. This might delay sanctions relief or even, in a worst case scenario, see the JCPOA collapse entirely. It is also very likely that any failure to reach Implementation Day, or any subsequent failure of Iran to adhere to its JCPOA commitments, will result in the United States and the EU imposing additional sanctions on Iran.

Companies interested in the Iranian market will also have to navigate a plethora of compliance-related issues. As noted above, U.S. primary sanctions and certain U.S. secondary sanctions will remain in place. The EU also maintains its own lists of Iranian parties that will remain prohibited business partners for EU persons.

### NEW OPPORTUNITIES

The relaxation of sanctions promises to create wide-ranging opportunities for investment in Iran. In the immediate future, the Iranian economy will be boosted by the freeing up of an estimated US\$100 billion worth of Iranian assets that have been frozen by the United States and EU as a result of international sanctions. This is equivalent to approximately one-quarter of Iran's GDP. As time goes on, companies will evaluate and act on projects to develop Iran's oil, gas and petrochemical sectors, as well as financial services, insurance, transportation and other key sectors.

# Client Alert

---

However, as discussed above, there are many uncertainties and risks on the road to a new beginning for Iran's economic relationship with the outside world.

Morrison & Foerster is actively monitoring the ongoing JCPOA developments and other U.S. and EU sanctions matters, and we will continue to update our clients and friends on the latest developments. For inquiries concerning sanctions issues please contact one of our attorneys listed below:

**New York**

Barbara Mendelson  
[bmendelson@mofo.com](mailto:bmendelson@mofo.com)

**Washington, D.C.**

Nicholas Spiliotes  
[nspiliotes@mofo.com](mailto:nspiliotes@mofo.com)

**London**

Kevin Roberts  
[kroberts@mofo.com](mailto:kroberts@mofo.com)

**Berlin**

Christoph Wagner  
[cwagner@mofo.com](mailto:cwagner@mofo.com)

**Hong Kong**

Timothy Blakely  
[tblakely@mofo.com](mailto:tblakely@mofo.com)

Carl Loewenson Jr.  
[cloewenson@mofo.com](mailto:cloewenson@mofo.com)

Aki Bayz  
[akibayz@mofo.com](mailto:akibayz@mofo.com)

Duncan Grieve  
[dgrieve@mofo.com](mailto:dgrieve@mofo.com)

Felix Helmstaedter  
[fhelmstaedter@mofo.com](mailto:fhelmstaedter@mofo.com)

Ruti Smithline  
[rsmithline@mofo.com](mailto:rsmithline@mofo.com)

Betre Gizaw  
[bgizaw@mofo.com](mailto:bgizaw@mofo.com)

Marc-Alain Galeazzi  
[mgaleazzi@mofo.com](mailto:mgaleazzi@mofo.com)

**About Morrison & Foerster:**

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for 12 straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at [www.mofo.com](http://www.mofo.com).

*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.*