

# Client Alert

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## Progress on Iran Nuclear Deal Provokes Congressional Response, Contemplates New Path for U.S. Sanctions

On April 2, 2015, top global diplomats **announced** parameters for the Joint Comprehensive Plan of Action (“JCPOA”) with Iran. This came as a long-awaited step in negotiations between Iran, the EU, and the P5+1 countries—China, France, Russia, the United Kingdom, the United States, and Germany—in an effort to scale back Iran’s nuclear program. The parameters outline central features of the forthcoming final text of the JCPOA, which must be completed by June 30, 2015. While this step represents progress and predicts a revised policy approach down the road, **restrictions on U.S. parties conducting business with Iran remain virtually unchanged.**

### *The JCPOA and Conditional Sanctions Relief*

As King & Spalding **has reported**, the P5+1 first reached agreement on a Joint Plan of Action (“JPOA”) in November 2013. The plan provided Iran with limited and temporary sanctions relief so that the parties could arrive at “**a mutually-agreed long-term comprehensive solution**” for dismantling Iran’s nuclear program. Contested issues, however, such as Iran’s plans for its nuclear centrifuges, protracted negotiations and the JPOA was extended twice. The latest extension is set to expire on June 30, 2015.

The U.S. Department of the Treasury **has confirmed** that from now until the conclusion of the JCPOA, “other than the sanctions relief provided under the JPOA, all U.S. sanctions remain in place and will continue to be vigorously enforced.” On June 5, the State Department **published** its actions taken “to continue implementing the sanctions relief called for in the JPOA,” which include the waiver of certain sanctions under the **National Defense Authorization Act for Fiscal Year 2012**. The sanctions relief under the JPOA provides limited allowances in the crude oil, petrochemical, auto, gold and precious metals, and civil aviation sectors. Importantly, the bulk of these relief provisions **do not apply to U.S. persons or to U.S.-owned or controlled entities**. Thus, companies should continue to proceed with caution before engaging in any transactions with Iranian parties.

The **parameters** for the JCPOA announced on April 2 indicate that Iran may be willing to take significant steps to address its nuclear capabilities. According to these parameters, Iran agreed to cut its installed centrifuges by about two-thirds; to refrain from building any new nuclear enrichment facilities or additional heavy water reactors for 15 years; to submit excess

centrifuges to the International Atomic Energy Agency (IAEA); and to comply with IAEA inspections. The parameters outline a phased approach, with Iran submitting to limitations over a ten, 15, and 25 year period.

In exchange, “Iran will receive sanctions relief, if it verifiably abides by its commitments.” The contemplated relief includes the United States and the EU suspending their nuclear-related sanctions subject to verification by the IAEA that Iran is complying with its commitments. The United States also plans to reinstate—or “snap back”—nuclear-related sanctions “in the event of significant nonperformance.” According to Treasury Secretary **Jack Lew**, “{t}his is not a framework based on trust, it is based on unmatched verification.” Under the parameters for the JCPOA, the United States will still maintain its terrorism, human rights, and ballistic missile-related sanctions programs for Iran. The parameters also allow for the U.N. to lift sanctions if Iran completes actions addressing key concerns, and the Security Council to issue a new resolution to “**endorse the JCPOA** and urge its full implementation.” Additionally, the JCPOA parameters include a dispute resolution process through which parties may address disagreements regarding Iran’s compliance.

### *The JCPOA Fuels Congressional Intervention*

On May 22, President Obama **signed into law** the **Iran Nuclear Agreement Review Act of 2015** (H.R. 1191) (“Act”). The President’s approval followed on the heels of the House’s **passage of the Act** by a vote of 400-to-25, and **bipartisan support in the Senate**, where the Act passed 98-to-1. The Act amends the Atomic Energy Act, **allowing Congress** to review the final text of an agreement with Iran and preventing the President from waiving Congressional sanctions during the review period. Furthermore, the Act implements a mechanism through which the President will certify to Congress every 90 days that Iran is complying with the final agreement. If the President does not make such a certification, or if Iran breaches the final agreement, Congress will be able to reinstate sanctions. Despite smooth passage through the Senate and the House, the Act’s success was the product of months of controversy and compromise.

President Obama has long received criticism from both sides of the aisle regarding his diplomatic approach to Iran’s nuclear program, with many Congressional leaders advocating a tougher stance. When Senator Bob Corker (R-TN) introduced the Act, which proposed to grant Congress the power to approve or reject a nuclear deal with Iran, it was criticized by the Administration. President Obama **defended** the JCPOA and denounced its critics for hindering the negotiation progress. Going into Committee talks, Senator Corker’s Act thus faced the **threat of a Presidential veto**.

However, in mid-April, Senators Corker and Benjamin L. Cardin (D-MD) reached a **compromise** on the bill which garnered much bipartisan support. The compromised language reduced Congress’s review period, and softened the requirement that the President certify that Iran is no longer backing terrorism. With these developments, the White House **stated** that the Act had transformed from legislation the President was “committed to vetoing” to a “compromise that the President would be willing to sign.”

Still, criticism of the Act persisted both at home and abroad. Republicans filed **67 amendments** to the Act, many of which were viewed as serious threats to the Act’s success. Iranian President Hassan Rouhani **criticized** the Act, declaring that the JCPOA negotiations are with the P5+1 countries, and “we are not negotiating with the U.S. Senate or the House of Representatives.” Some have speculated that the passage of the Act will make negotiations with Iran **more difficult**. In fact, 80 members of the **Iranian parliament** have recently proposed legislation with the power to halt nuclear negotiations with the United States.

In the end, the Act moved quickly through the House and Senate. Its success in the House was accompanied by a vote on the Hezbollah International Financing Prevention Act of 2015 (**H.R. 2297**) which **strengthens sanctions** on entities doing business with Hezbollah and the al-Manar TV station, appeasing the Act’s critics. However, **reports indicate** that Congressional tensions may continue this month as the June 30 JCPOA deadline approaches, with Senators Mark Kirk (R-Ill) and Bob Menendez (D-NJ) filing an amendment to the defense budget to extend to 2026 the Iran Sanctions

Act of 1996, which is set to expire in 2016. The Iran Sanctions Act of 1996 provides a basis for several U.S. sanctions on Iran, including nuclear sanctions. If passed, this amendment would undermine the ability of the United States to offer nuclear-related sanctions relief as contemplated by the JCPOA parameters.

## *Questions Persist Regarding JCPOA Implementation*

Despite some compromise on the JCPOA in the United States, its requirements have raised questions as to how compliance and sanctions relief can be effectively implemented. **Henry Kissinger and George Shultz**, for instance, have queried whether the IAEA is capable of the “daunting” task of monitoring and verifying Iran’s nuclear reductions as contemplated by the JCPOA. In response, White House Press Secretary Josh Earnest **has indicated** that the international community is up to the challenge, having planned “the most stringent, intrusive set of inspections that have ever been imposed on a country’s nuclear program,” with inspections that will delve deep into Iran’s nuclear supply chain.

If a nuclear deal is reached, questions remain as to how and when sanctions relief will be implemented. The U.S. **sanctions on Iran** employ a mixture of measures imposed under both Presidential and Congressional authority. The Act subjects the JCPOA sanctions plan to Congressional approval and **prohibits the President** from suspending Congressional sanctions while a deal is under review. However, even if Congress rejects the negotiated JCPOA deal, the President still could exercise some executive authority to grant sanctions relief. **Some have surmised** that the Presidential authority combined with actions by the EU and the U.N. could allow for the JCPOA to survive Congressional rejection.

Further complications arise regarding the timing of sanctions relief, which remains **a contentious issue** heading into the final weeks of negotiation. While the Administration has pursued a **phased approach** to lifting the sanctions, Iran **has insisted** that sanctions be lifted immediately once a deal is reached.

If sanctions relief is granted, it is unclear how the global community will react. Despite opportunities for business development, Reuters **recently reported** that major banks may be hesitant to resume business with Iran given the U.S. Government’s heavy use of penalties for violations of U.S. sanctions. Even with nuclear-related sanctions lifted, other U.S. sanctions against Iran and the continued concern over money laundering would warrant proceeding with caution.

The proposed “snap-back” provisions—where sanctions can be reinstated if Iran does not hold up its end of the bargain—also have **raised concerns** for firms contemplating new business with Iran. The United States has remained committed to snap-back provisions, and the Act grants Congress the power to reinstate sanctions. Reuters has also **reported** that the P5+1 have come to an agreement on snap-back provisions, and plan to use a dispute resolution panel to assess allegations of Iran’s noncompliance and issue non-binding opinions. However, even with the growing consensus, the **question remains** as to how the snap-back provisions would practically be implemented. As the United States continues to pursue the JCPOA deal, the implications of future sanctions relief will play an important role in the national discussion.

King & Spalding will continue to monitor the progress of the JCPOA and its impact on U.S. sanctions programs. Please contact us if you have any questions or would like additional information.

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