

Top 10 Things to Know About the Easing of Sanctions Under the Iran Nuclear Agreement

The Iran sanctions landscape is poised to change in early 2016, but US persons and US companies will see far fewer opportunities than their European counterparts

On July 14, 2015, the P5+1 countries (the United States, United Kingdom, France, Russia, China and Germany) and Iran reached a historic nuclear non-proliferation agreement called the [Joint Comprehensive Plan of Action](#) (the Agreement). In line with the framework announced in April 2015 (as discussed in our previous [client alert dated April 27, 2015](#)), the Agreement provides for the termination of most European Union (EU) and UN sanctions and significantly more modest changes to the longstanding US embargo against Iran. The bulk of these changes will likely take effect in early 2016, after the International Atomic Energy Agency ([IAEA](#)) certifies that Iran has met certain of its nuclear-related commitments and other milestones have been reached.

While the implementation of the Agreement is not yet certain, the 100-plus page Agreement provides considerable detail on the remaining required steps and the plans for removing sanctions. At least initially, the changes to US sanctions will be far more limited than will be the case with the EU sanctions, due to the fact that the US maintains many layers of restrictions that predate more recent EU and US measures that are tied to the nuclear issue. At the same time, once sanctions measures are eased, the P5+1 countries will have the ability to “snap back” sanctions if they determine that Iran is not fulfilling its obligations.

1. Agreement triggers few immediate sanctions changes.

The announcement of the Agreement does not yet ease US, EU or UN sanctions beyond the [limited relief already in place](#) under the Joint Plan of Action ([JPOA](#)), which was first implemented in January 2014 and has since then granted limited sanctions relief. Under the terms of the Agreement, additional sanctions relief is contemplated only after IAEA verification and certain other conditions are satisfied. Assuming those conditions are met, most likely about six months from now, the easing of US sanctions will be limited and focused primarily on a roll back of recent nuclear-related sanctions, often referred to as “secondary sanctions,” which are principally administered by the US State Department.

The day the Agreement was announced, the US Treasury Department’s Office of Foreign Assets Control (OFAC), which administers the US embargo against Iran, [confirmed](#) that “U.S. sanctions relief will be provided through the suspension and eventual termination of nuclear-related secondary sanctions beginning once the [IAEA] verifies that Iran has implemented key nuclear-related measures described” in the Agreement. In a [Notice to Exporters](#), the UK Export Control Organisation explained that current EU sanctions will remain in place until the IAEA reports that Iran has complied with its initial obligations under the Agreement.

2. Anticipated timetable for easing of sanctions.

The Agreement sets a number of checkpoints when each party has certain commitments to meet. The P5+1 countries have agreed promptly to submit a resolution to the UN Security Council seeking its endorsement of the Agreement. On “Adoption Day,” which is 90 days after the UN Security Council approves the Agreement, the US and EU will begin to take actions to lift or terminate various sanctions against Iran. These sanctions-related changes will become effective on “Implementation Day,” the day on which the IAEA certifies that Iran has met its initial commitments. US Secretary of State John Kerry recently [stated](#) that it would take “probably six months to a year or so” to reach Implementation Day.

3. The US Congress will review and could seek to block the Agreement.

In the United States, the Obama Administration must submit the Agreement to Congress for up to 60 days of review. If Congress rejects the Agreement, the President has stated he will veto that rejection, and Congress would need a two-thirds majority in both the House of Representatives and the Senate to override the veto. If Congress successfully overturns President Obama’s veto, which most commentators view as unlikely because Republicans and Democrats would have to join together to produce a two-thirds majority in both chambers of Congress, the fate of the Agreement would be in serious doubt. Senator Bob Corker, Republican chairman of the Senate Foreign Relations Committee, [stated](#) that he expects to hold hearings over the next three weeks and to hold a vote in September 2015.

4. The US is focused mainly on easing “secondary” rather than “primary” sanctions.

With limited exceptions, the US sanctions to be lifted are nuclear-related secondary sanctions against non-US persons and entities not subject to US “primary” sanctions. Secondary sanctions, which the US has implemented over the past few years (often in conjunction with EU sanctions measures), are designed to deter non-US persons and firms from engaging in various activities involving certain sectors of the Iranian economy, including energy, the automotive sector, financial services, mining, shipbuilding and shipping.

On Implementation Day, the US will no longer apply a broad range of secondary sanctions related to these sectors of the Iranian economy, and will remove certain Iranian parties from the OFAC list of [Specially Designated Nationals](#) (SDN List). Lifting these secondary sanctions will effectively allow non-US companies and persons to engage in transactions with Iran in these sectors, unless the non-US companies and persons are subsidiaries of US companies or otherwise subject to US primary sanctions. Certain of these secondary sanctions are already suspended, as part of the [JPOA relief](#) that took effect in January 2014.

Primary US sanctions are those that apply directly to (1) the activities of US persons (and in the case of the Iran sanctions, non-US entities that are “owned or controlled” by a US person), (2) non-US persons who cause US persons to violate the sanctions maintained by OFAC, and (3) transfers of US-regulated goods and technology to Iran. These sanctions measures, which date back to 1995, have been imposed mainly for anti-terrorism reasons, they have deep bipartisan support in the US Congress, and they are aggressively enforced. With only limited exceptions (as explained below), these primary sanctions are scheduled to remain in place after Implementation Day. Thus, with just a few exceptions noted below, US persons generally will continue to be prohibited from engaging in transactions or dealings in or with Iran, including with most parties removed from the SDN List.

5. Foreign subsidiaries of US companies may benefit from sanctions relief.

Since October 2012, US law has effectively treated overseas subsidiaries of US companies as persons subject to OFAC's primary sanctions. Section 5.1.2 of Annex II to the Agreement states that the US will "License non-U.S. entities that are owned or controlled by a U.S. person to engage in activities with Iran that are consistent with this [Agreement]." A footnote provides that "U.S. persons and U.S.-owned or -controlled foreign entities will continue to be generally prohibited from conducting transactions of the type permitted pursuant to this [Agreement], unless authorized to do so" by OFAC.

While the scope and mechanics of this authorization have yet to be established, the Annex suggests that OFAC will take steps to approve at least certain categories of transactions by overseas subsidiaries of US companies, through some form of OFAC licensing. Prior to 2012, overseas subsidiaries of US companies were not directly covered by the primary US sanctions against Iran, although a broad range of OFAC prohibitions still imposed legal and compliance risks in connection with trade between such entities and Iran. The anticipated change in OFAC licensing policy may effectively restore at least some overseas subsidiaries to their previous trading positions before the law changed in 2012.

Notably, Secretary Kerry [acknowledged that](#), as a result of the US embargo on Iran, US companies "will not be part of that rush [to do business in Iran] – unless specifically exempted, and very few are." We further note that the Agreement does not affect the Securities and Exchange Commission disclosure obligations under Section 13(r) to the Securities Exchange Act of 1934, which requires issuers that engage in even lawful transactions or dealings with the Government of Iran or certain parties on the SDN List to disclose that information to investors.

6. EU sanctions relief will be more far-reaching.

The Agreement sets out a timetable for lifting the EU sanctions contained in [Council Regulation \(EU\) No. 267/2012 \(as amended\)](#), which sets out the nuclear proliferation sanctions, and the corresponding provisions in [Council Decision 2010/413/CFSP](#). On Implementation Day, the EU will terminate the majority of its sanctions, including restrictions on financial transfers to and from Iran and most restrictive measures targeting the Iranian banking, insurance, oil and gas, petrochemical, shipping, shipbuilding and transportation sectors.

On Implementation Day, the EU will also amend sanctions targeting trade in graphite and certain other metals and software for integrating industrial processes, and remove from the EU's asset freeze sanctions certain persons and entities listed in the Agreement. Restrictions on the export of goods related to Iran's nuclear program and the provision of associated services will also be amended consistent with the provisions of the UN Security Council Resolution approving the Agreement.

7. EU controls on certain exports to Iran will remain.

A number of EU sanctions will remain in place for an estimated eight years after Implementation Day. These include restrictions on financial messaging, certain restrictions on the transport sector, and remaining sanctions targeting trade in graphite and other metals and software for integrating industrial processes. EU businesses operating in the military sector will also remain subject to continuing export restrictions. The P5+1 have also agreed that the arms embargo on Iran will continue for five years.

Although the Agreement requires the EU and its Member States to work towards normalizing trade with Iran (the UK Government has publicly offered to assist UK companies wishing to explore the Iranian market once sanctions are lifted), Iran will remain a challenging market for EU-based companies. Businesses with a global reach will still need to take into account the potential application of the US

sanctions that remain in place. Furthermore, as the UK Export Control Organisation [has noted](#), “banks and other financial institutions may be reluctant to handle Iran-related transactions while full US sanctions remain in place.”

8. The US will allow the supply of certain civil aircraft and related items and services.

One notable exception to the general rule that the Agreement will not roll back US primary sanctions is a provision contained in Section 5.1.1 of Annex II, providing that the US will permit the export, reexport, sale, lease or transfer to Iran of commercial passenger aircraft and related parts and services. OFAC initially moved in this direction in January 2014, when — in connection with the JPOA — it announced a [favorable licensing policy](#) for US parties to supply and install certain civil aircraft safety-related spare parts and related services, including safety inspections, to Iran. The Agreement confirms that OFAC will continue to license these transactions and will expand the favorable licensing policy to the sale and lease of commercial aircraft.

9. Imports of Iranian carpets and food to the US will be permitted.

Upon Implementation Day, OFAC will also permit imports into the United States of Iranian-origin carpets and foodstuffs. An OFAC general license previously allowed for such imports, but it was [revoked in 2010](#).

10. Adoption Day should further clarify the details of sanctions easing.

Although most US and EU sanctions will not be modified until Implementation Day, the US and EU are required to issue waivers (effective on Implementation Day), terminate Executive Orders (in the US case) and commence preparation of regulations (in the EU case) on Adoption Day. Adoption Day, which is likely to be in mid- to late-October, should trigger more detailed guidance from relevant governments concerning the scope, mechanics and timing of sanctions relief under the Agreement.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

[Les P. Carnegie](#)

les.carnegie@lw.com
+1.202.637.1096
Washington, D.C.

[Charles Claypoole](#)

charles.claypoole@lw.com
+44.20.7710.1178
London

[William M. McGlone](#)

william.mcglone@lw.com
+1.202.637.2202
Washington, D.C.

[Robert E. Sims](#)

bob.sims@lw.com
+1.415.395.8127
San Francisco

Eric S. Volkman

eric.volkman@lw.com
+1.202.637.2237
Washington, D.C.

Andrew P. Galdes

andrew.galdes@lw.com
+1.202.637.2155
Washington, D.C.

Jeffrey R. Lord

jeffrey.lord@lw.com
+1.202.637.2380
Washington, D.C.

Robert Price

robert.price@lw.com
+44.20.7710.4682
London

You Might Also Be Interested In

[Top 10 Things to Know About the Future of Sanctions on Iran](#)

[Top 10 Things to Know About President Obama's Cuba-Related Announcement](#)

[Sanctions Update: Continuing Implementation of US Embargo of Crimea Region](#)

[Managing Legal and Business Risks Under the Russia/Ukraine Sanctions: Views from the US, Europe and Moscow \(webcast\)](#)

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <http://events.lw.com/reaction/subscriptionpage.html> to subscribe to the firm's global client mailings program.