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New US and EU Guidance on Interim Agreement for Iran Sanctions Relief

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As we have discussed previously, on November 24, 2013, the United States and the other members of the P5+1 (United Kingdom, France, Germany, Russia and China) reached agreement with Iran on the JPOA, an initial understanding on the disposition of Iran's nuclear program. The JPOA is a significant development in US-Iran relations, representing a first step towards a potential "mutually-agreed long-term comprehensive solution that would ensure Iran's nuclear programme will be exclusively peaceful." In exchange for Iran's suspension of certain sensitive nuclear activities, the US and EU agreed to ease certain sanctions on Iran for a six-month period beginning when the parties arrived at certain technical understandings under the JPOA.

On January 12, 2014, the P5+1 and Iran reached technical understandings under the JPOA that enabled its implementation as of January 20, 2014. As part of implementation, the US and EU temporarily eased a variety of Iran sanctions and issued specific guidance for compliance.

Challenges Ahead

Even though recent guidance in the US and EU has begun to define the contours of Iran sanctions relief under the JPOA, compliance will remain a significant challenge for many US and foreign firms. In light of the "limited, targeted, and reversible" nature of the sanctions relief, it is unlikely to materially impact the ability of most US firms to do business with Iran. For others, navigating a partial and temporary sanctions suspension will have to be handled with great caution: certain complex financial transactions could implicate restrictions beyond the scope of the JPOA relief, and we expect the US Department of the Treasury's Office of Foreign Assets Control (OFAC) to aggressively enforce sanctions measures outside of this scope over the next six months.

Based on past experience in these matters, US financial institutions will likely continue to abide by their own risk tolerance when it comes to possible transactions that may be subject to Iran sanctions relief under the JPOA. This could mean that many such firms will decide to refrain from processing transactions even if they fall within the scope of JPOA suspensions or are specifically licensed during this six-month period. These and other developments relating to implementation of the JPOA merit ongoing scrutiny over the coming weeks and months.

Key Provisions of US Guidance

The United States Departments of State and the Treasury jointly issued the "Guidance Relating to the Provision of Certain Temporary Sanctions Relief in Order to Implement the Joint Plan of Action Reached on November 24, 2013, Between the P5+1 and the Islamic Republic of Iran" (US Guidance).[1] The United States is implementing the sanctions relief through a series of waivers and a new licensing policy issued by OFAC; no legislative action is required.

We note the following with respect to the US Guidance. First, it reiterates that the sanctions relief is extremely narrow in scope, noting that relief will be "limited, targeted, and reversible" and that OFAC will continue "to vigorously enforce our sanctions against Iran that are not subject to the limited relief." Indeed, we have seen OFAC enforcement actions continue since the January 20 implementation of the interim deal,[2] and US officials have stated that the JPOA does not mean that Iran should be viewed as "open for business."

Second, the relief is only short-term and may be revoked "at any time if Iran fails to meet its commitments under the JPOA." The US Guidance notes that relief will be limited to transactions related to sanctionable conduct that were initiated after January 20, 2014 and that will be fully completed by July 20, 2014. In other words, absent an extension or other future guidance, sanctionable activity that commenced prior to January 20, 2014 or is concluded after July 20, 2014 would still face exposure to US sanctions enforcement because it would fall outside the six-month period of relief.

Third, the relief will not materially impact the ability of most US firms to do business with Iran. With only *limited*, *potential* exceptions (*e.g.*, regarding civil aviation and humanitarian activities), the sanctions relief will not apply to US persons and US-owned or US-controlled foreign entities, which are still generally prohibited from engaging in transactions with Iran (and providing "associated services") under the JPOA.[3]

Fourth, Iran sanctions still generally apply to transactions with entities blocked by OFAC as Specially Designated Nationals (SDNs) for reasons other than their affiliation with the Government of Iran or their status as an Iranian depository institution (*e.g.*, for proliferation or terrorist activities). This means, for example, that even though a particular type of transaction may otherwise be permitted under the JPOA, the transaction may still constitute sanctionable activity if it involves an SDN that is not specifically exempted in the US Guidance.[4]

Fifth, the US Guidance addresses certain indirect transactions with Iran involving "associated services"-particularly relevant for non-US financial services, insurance, and logistics firms. It defines "associated services" as "any necessary services-including any insurance, transportation, or financial services-ordinarily incident to the underlying activity covered by the JPOA."[5] US officials have underscored that such associated services only encompass those services necessary to transport an underlying good that is covered by the sanctions relief and not those required to facilitate investment activity. As described below, such services are now authorized in certain circumstances associated with the export of petrochemical products, the auto industry, gold and other precious metals, and the civil aviation industry.[6] It remains unclear, however, how certain associated services, such as insurance and reinsurance services, which typically result in contracts and claim payments well beyond a six-month period, will be handled under the US Guidance.

Specifically, the US Guidance and related compliance information covers seven areas:

Sanctions Related to Iran's Export of Petrochemical Products

The first area of relief covers certain sanctions on purchases by non-US persons of petrochemical products exported from Iran, as well as associated services that are required to carry out such transactions. As part of this relief, such transactions exclusively for the export of Iran's petrochemicals may involve certain specified Iranian depository institutions, as well as 14 other Iranian entities on the SDN List that are specified in an Annex to the US Guidance.

Sanctions Related to Iran's Auto Industry

The second area of sanctions relief covers the sale, supply, or transfer to Iran of goods (including complete knock-down kits, or CKDs) and services (including shipping, warranty, insurance and maintenance services) used in connection with the automotive sector by non-US persons, as well as associated services that are required to facilitate such transactions. Such transactions may not involve any person on the SDN List, other than certain specified Iranian depository institutions.

Sanctions Related to Gold and Other Precious Metals

The third area of sanctions relief covers the sale to and purchase from Iran of gold and other precious metals by non-US persons, as well as associated services that are required to carry out such transactions. Such transactions may not involve persons on the SDN List, other than certain specified Iranian depository institutions or certain specified political subdivisions, agencies or instrumentalities of the Government of Iran. Finally, the funds for these purchases of gold and other precious metals may not be drawn from certain "Restricted Funds."[7]

Sanctions Related to Civil Aviation

The fourth area of sanctions relief covers Iran's civil aviation industry. OFAC has issued a new Statement of Licensing Policy on Activities Related to the Safety of Iran's Civil Aviation Industry (SLP) on the supply and installation of spare parts to ensure the safe operation of Iranian commercial passenger aircraft (including Iran Air) and associated services and safety-related inspections and repairs. US persons, US-owned or -controlled foreign entities, and persons involved in the export of US-origin goods may be granted a specific license from OFAC under this SLP. US officials have noted that OFAC may seek to expedite the licensing process to accommodate the six-month JPOA window but underscored that the licensing process will remain highly technical and complex. Furthermore, sanctions on the conduct of activities by non-US persons related to the safe operation of Iranian civilian aircraft have been temporarily suspended.

Sanctions Related to Iran's Export of Crude Oil

The fifth area of sanctions relief involves Iran's export of crude oil.[8] Although the regime for oil sanctions on Iran remains intact, the United States has agreed to not seek further reductions from current purchasers of Iranian crude oil (China, India, Japan, the Republic of Korea, Taiwan and Turkey). These nations may maintain their current average level of imports from Iran but may not increase their average quantities of Iranian crude oil imports during that period. All other US sanctions on Iran's energy sector (such as those relating to the provision of goods, services or investment) remain in force.

Facilitation of Humanitarian and Certain Other Transactions

The sixth area of sanctions relief relates to the establishment of a mechanism to purchase and pay for the export of food, agricultural commodities, medicine and medical devices to Iran, as well as Iran's payments of its United Nations obligations, Iran's payments for medical expenses incurred abroad by Iranian citizens, and Iran's payments of an agreed amount of governmental tuition assistance for Iranian students studying abroad. Foreign financial institutions who may become involved in hosting this new mechanism will be contacted directly by the US government for further guidance.

Repatriation of Iranian Revenue Held Abroad

Finally, the P5+1 and Iran have agreed on a process to authorize the release in installments of approximately $4.2 billion of Iran's Restricted Funds over the JPOA period. The US government is working directly with relevant foreign financial institutions and, unless an institution is contacted by the US government in writing that an installment release is not sanctionable, any release or receipt of these installments would expose the institution to US sanctions. Between February 1 and July 20, 2014, the guidance envisions a schedule of eight installments between $450 and $550 million to Iran, subject to Iran fulfilling its JPOA obligations.

Key Provisions of EU Guidance

On January 20, 2014, the EU amended its Regulation 267/2012 concerning Iran sanctions to give effect to the JPOA. Like the US sanctions relief, the EU relief provides only a six-month window during which contracts may be initiated and executed. Likewise, the remainder of EU sanctions remain in force.

EU guidance, to date, has only reiterated the following changes to the EU's sanctions regime pursuant to the January 20 amendment:

- suspends the prohibition on the provision of insurance, reinsurance and transport in relation to Iranian crude oil sales to its current customers;
- suspends the prohibition on the import, purchase or transport of Iranian petrochemical products and related services;
- suspends the prohibition on the provision of vessels to enable the transport of Iranian crude oil and petrochemical products;
- suspends the ban on trade in gold and precious metals with the Iranian government, its public bodies and the Central Bank of Iran; and
- increases by tenfold the thresholds for authorizing financial transfers to and from Iran in order to ease legitimate trade with Iran.

The Potential for Enhanced US Sanctions Legislation

Many in Congress remain skeptical of the JPOA and have sought to proceed with new, tougher sanctions legislation against Iran that would take effect in the event Iran failed to meet its commitments under the JPOA. Although this effort has been met with strong resistance by the Obama Administration, which has issued a veto threat, a key legislative proposal in the US Senate (The Nuclear Weapon Free Iran Act of 2013) has garnered nearly 60 co-sponsors. At the moment, however, a vote on new legislation appears unlikely, as Senate Majority Leader Harry Reid has stated, "We're going to wait and see how this plays out."

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[1] In conjunction with the US Guidance, the US government released a "Frequently Asked Questions Relating to the Sanctions Relief Provided for in the Joint Plan of Action (JPOA) between the P5+1 and the Islamic Republic of Iran" sheet.

[2] This includes a $152 million settlement agreement announced on January 23, 2014 between OFAC and Clearstream Banking, S.A. to resolve OFAC's investigation surrounding Clearstream's use of its omnibus account with a US financial institution to hold securities on behalf of the Central Bank of Iran.

[3] The JPOA therefore maintains a global limitation on sanctions relief for many non-US firms.

[4] For example, OFAC has noted that transactions with the Tidewater Middle East Co., a key Iranian ports operator that has been listed as an SDN for its relationship to the Iranian Revolutionary Guard Corps, will still be considered sanctionable activity, even if the transaction is related to activities that have been otherwise granted sanctions relief under the JPOA. It is possible, however, that additional port facilities may become available for such activities without exposure to sanctions.

[5] Provided, however, that unless otherwise noted, such services may not involve persons identified on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List).

[6] For these sectors, the US Guidance generally waives "correspondent or payable-through account" sanctions with respect to foreign financial institutions over the JPOA period.

[7] The term "Restricted Funds" refers here to: (i) any existing and future revenues from the sale of Iranian petroleum or petroleum products, wherever they may be held, and (ii) any Central Bank of Iran (CBI) funds, with certain exceptions for non-petroleum CBI funds held at a foreign country's central bank.

[8] Most details of this area of relief had already been presented in November 2013. *See* "White House Fact Sheet: First Step Understandings Regarding the Islamic Republic of Iran's Nuclear Program," November 23, 2013.

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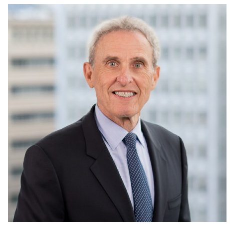

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