
Understanding Iran Sanctions for US Business: The New Agreement Brings Some Change But Much is Left the Same

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Summary: On November 24 in Geneva, the United States and the five other members of the P5+1 reached an initial agreement with Iran with the aim of ensuring that Iran's nuclear program will be entirely peaceful. Under the agreement, the United States and the EU will ease certain sanctions on Iran for a period of six months. However, this "limited, temporary, targeted, and reversible" sanctions relief means that US and foreign firms must closely monitor the implementation of the agreement.

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 Joint Plan of Action (JPA), an initial understanding concerning the disposition of Iran's nuclear program. The JPA is a significant development in US-Iran relations, as it represents a first step toward "a mutually-agreed long-term comprehensive solution that would ensure Iran's nuclear programme will be exclusively peaceful." Along those lines, the JPA is intended to be a temporary bridge to a more lasting resolution, as it provides just six months of partial sanctions relief to Iran in exchange for six months of suspended progress in Iran's nuclear energy development.

From a US sanctions perspective, the JPA provides a limited easing of certain sanctions and is unlikely to materially change the ability of most US companies to do business with Iran anytime soon. We anticipate that, like the "unwinding" of other US sanctions in the past, the process of implementing the JPA's "limited, temporary, targeted, and reversible" sanctions relief will be challenging and require careful scrutiny by US and foreign firms seeking to comply with the requirements of new implementing measures. In addition, we anticipate that parties indirectly involved in transactions that may now become authorized-especially financial services, insurance and logistics firms-will proceed with extreme caution in supporting such transactions. Specific information about the scope and terms of sanctions relief will likely be provided by the Obama Administration in the coming weeks, once Iran makes an initial showing that it is meeting its obligations with respect to the nuclear program. In the meantime, all previously existing sanctions against Iran remain in place.

The Joint Plan of Action

Under the terms of the JPA, Iran has agreed to undertake certain measures for six months, including: ceasing enrichment of uranium beyond five percent; diluting or converting into oxide Iran's stockpile of uranium enriched to 20 percent; ceasing advances of activities at key reactors; and submitting to enhanced international monitoring. These concessions are considered critical to lengthening the "dash time," *i.e.*, the minimum time Iran would need to build a nuclear weapon, and thus create an expanded window in which negotiators may continue working toward a more comprehensive agreement.

In exchange, the P5+1 have agreed to the following sanctions-relief measures, also for a period of six months:

- pausing efforts to further reduce Iran's crude oil sales and enabling current customers of Iranian crude oil to purchase their current average amounts (*i.e.*, without further reductions);
- suspending EU and US sanctions associated with the provision of insurance and transportation services in support of Iran's crude oil sales to current customers;
- suspending EU and US sanctions on Iran's petrochemical exports and gold and precious metals (and associated services);
- suspending US sanctions on Iran's auto industry (and associated services);
- licensing the supply and installation in Iran of spare parts, and inspections and repairs, for Iranian civil aviation safety (and associated services);
- refraining from imposing new nuclear-related EU, UN Security Council, or US sanctions (with respect to the latter "acting consistent with the respective roles of the President and the Congress");
- establishing a financial channel to facilitate humanitarian trade for Iran's domestic needs using Iranian oil revenues held abroad; and
- increasing the EU authorization thresholds for transactions for non-sanctioned trade to an agreed amount.

This sanctions relief will not begin for at least several weeks, until Iran makes an initial demonstration to the P5+1 that it has commenced the cessation of nuclear-related activity described in the JPA. Current US sanctions against Iran remain in full effect until that time, and all US sanctions apart from those specifically described will remain in full effect during the six month period.

Analysis

First, it is important for US firms in particular to understand that the JPA provides only minimal sanctions relief that will not in most cases materially change their ability to do business in or with Iran. As the White House stated in its fact sheet, "{t}his relief is structured so that the overwhelming majority of the sanctions regime, including the key oil, banking and financial sanctions architecture, remains in place." The JPA's sanctions relief will primarily benefit current foreign purchasers of Iranian crude oil, such as those in China, India and South Korea. However, there will be no change, for example, with respect to: sanctions affecting exports of petroleum-related products or services to

Iran; Iran's \$100 billion in foreign exchange holdings; dealings with the Central Bank of Iran and other specifically targeted Iranian individuals and entities; or most US restrictions on trade with Iran.

Second, it is not yet clear what form the JPA's sanctions relief will take. The Obama Administration will likely proceed to implement the JPA via Executive Orders and/or general licenses issued by the US Department of the Treasury's Office of Foreign Assets Control (OFAC). None of those implementing measures requires legislative action. The issuance of general licenses in these circumstances would be consistent with the other actions taken by OFAC to ease sanctions in response to particular foreign policy developments, such as the sanctions relief provided to Libya in 2011. However, as the Libyan experience showed, it can be very challenging for firms to navigate the partial rollback of sanctions due to the complexity of affected transactions and the manner in which such transactions tend to implicate various sanctions measures that extend beyond the specified scope of the intended relief.

Third, we anticipate that parties to newly authorized transactions, especially those providing "associated services" as contemplated by the JPA, will proceed with extreme caution in supporting such transactions. Here, too, the Libya case is illustrative, as many firms were reluctant to proceed with transactions covered by sanctions relief without receiving some assurance from OFAC or a legal opinion from outside counsel stating that the proposed transaction was now authorized. This is particularly true with respect to the banking sector; both US and foreign financial institutions will likely be reluctant to process newly authorized transactions until they receive such assurances. This impediment could become even more problematic for financial services firms operating in multiple jurisdictions (e.g., EU and US), where respective authorities adopt divergent views about the timing, scope or application of sanctions relief relative to specific, cross-border transactions. In those cases, transactions performed under the JPA may be deemed permissible in one or more jurisdictions, but impermissible in another.

Finally, we note that on Iran sanctions matters the Obama Administration faces a generally skeptical Congress, which has sought to proceed with new, tougher restrictions against Iran, even in the wake of the JPA. Indeed, Senate Majority Leader Harry Reid stated that while the JPA is "an important first step," the Senate would "take a look at {it} to see if we need stronger sanctions" when the current Senate recess ends on December 9. However, other key legislators on Iran sanctions issues, such as Senator Robert Menendez, have signaled that Congress may be willing to grant the Administration a six-month window to reach a final agreement on Iran's nuclear program before enacting new punitive measures against Iran. One possibility is that new sanctions legislation will be passed, with an effective date six months from enactment.

Compliance with US sanctions against Iran remains a dynamic challenge for many US and foreign firms. The "limited, temporary, targeted, and reversible" sanctions relief provided under the JPA does not significantly ease that challenge, nor materially impact the ability of most firms to do business with Iran. However, the JPA does suspend the application of sanctions for certain types of transactions, as specified above. The effectiveness and scope of intended relief for US and foreign firms contemplating such transactions remain uncertain, as much will depend on implementing measures and guidance issued by OFAC and other respective authorities. Accordingly, we

recommend that US and foreign firms closely monitor developments relating to JPA implementation over the coming weeks and months.

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