



IRAN: OPPORTUNITIES FOLLOWING SANCTIONS RELIEF

On 16 January 2016 (Implementation Day), in a move which has been hailed by politicians in Tehran, London, Brussels and Washington, one of the most extensive lifting of sanctions in history took place.

The trigger for that sanctions relief was a report of the International Atomic Energy Agency (IAEA) verifying that Iran has complied with its obligations pursuant to the Joint Comprehensive Plan of Action (JCPOA). In response, the European Union and the United States complied with their respective commitments under the JCPOA to remove a host of sanctions, meaning that a wide range of commercial activities with Iran which were previously prohibited are now permitted.

Not all sanctions have been lifted, and some restrictions do remain. Due diligence and vigilance remain key, but given the extent of the sanctions relief, many businesses will now be looking very closely at trade with Iran to see whether they can benefit from the opportunities which the Middle East's second largest economy presents.

European Union sanctions relief

The Decision of the Council of the European Union triggering the application of the sanctions relief was published in the Official Journal on 16 January 2016. As of 16 January, almost all EU economic and financial nuclear-related sanctions against Iran are lifted.

As highlighted in our earlier briefing¹, a limited number of prohibitions will still apply². These include the following:

- A prior authorisation will be required for the supply of software designed specifically for use in Iran's nuclear or military industries – restrictions in respect of software designed for use in gas, oil, navy, aircraft, financial and construction industries are lifted.
- A prior authorisation will be required for the supply to Iran of graphite, raw and semi-finished metals. The authorisation will not be granted if there are reasonable grounds to determine that the material will be used in

¹ <http://www.hfw.com/iran-sanctions-is-the-end-in-sight-november-2015>

² See Council Regulation (EU) 2015/1861, Council Implementing Regulation (EU) 2015/1862 and Council Decision (CFSP) 2015/1863



connection with reprocessing or enrichment related, heavy water related, or other nuclear related activities inconsistent with the JCPOA, Iran's military or ballistic missile programme; or for the direct or indirect benefit of the Iranian Revolutionary Guard Corps.

- Restrictions on the transportation of goods covered by the EU Common Military list, Missile Technology Control Regime List, the Nuclear Suppliers Group List, or other items that could contribute to reprocessing or enrichment-related or heavy water-related activities and prohibited supplies of graphite, raw and semi-finished metals.

The asset freeze measures remain in place, but the list of nuclear proliferation asset freeze targets has been substantially reduced. Only 59 individuals and 169 entities remain on HM Treasury's list of asset freeze targets (in addition to 83 individuals and one entity under the human rights sanctions regime), in line with the EU's de-listing obligations under the JCPOA. The remaining nuclear proliferation asset freeze targets, including Tidewater Middle East, are due to be de-listed by the EU on Transition Day in 2023. Notwithstanding the de-listing of some Iranian banks on Implementation Day, EU financial institutions are still prohibited from supplying SWIFT services to Bank Saderat, Ansar Bank and Mehr Bank until Transition Day.

For various nuclear-related materials, and ancillary services such as financing, transportation and brokering, the regulation creates three different regimes which apply depending on how a particular item is classified. If the item falls under the Missile Technology Control Regime List, supply and various related services will be prohibited. If the item falls under the Nuclear Suppliers Group

List an authorisation will be required. If the item falls under "other items that could contribute to reprocessing- or enrichment-related or heavy water-related or other activities inconsistent with the JCPOA" list an authorisation will be required on a case-by-case basis.

In an Information Note published on 16 January 2016 the EU provided useful guidance on the EU sanctions relief. One of the key areas considered is "grandfathering", namely whether there will be an exemption for pre-existing contracts if sanctions are re-imposed due to Iran's breach of its commitments under the JCPOA.

The Information Note, which is not legally binding, will give some comfort to businesses which are considering re-engaging in trade with Iran, as it provides as follows:

"In the event of the reintroduction of EU sanctions, sanctions will not apply with retroactive effect. The execution of contracts concluded while the JCPOA sanctions relief was in force and in accordance with the EU legal framework will be permitted consistent with previous provisions when sanctions were originally imposed, in order to allow companies to wind down their activities. Details about the period of time allowed for the execution of prior contracts will be specified in the legal acts providing for the reintroduction of EU sanctions."

United States sanctions relief

On 16 January 2016 the United States lifted most of the secondary sanctions targeted at non-US persons (i.e. the so-called extra-territorial sanctions) as well as the sanctions targeted at foreign entities owned or controlled by US persons.

As expected, the US primary sanctions (i.e. those applicable to US persons

and US companies) are largely unaffected and this is an area that non-US businesses which are considering engaging in trade with Iran need to consider carefully, to ensure that they are not affected by these primary sanctions, for example because the transaction requires payments in US dollars to be made or received.

In respect of the secondary sanctions (i.e. those applicable to non-US persons) the contingent waivers published on 18 October 2015 and considered in our earlier briefing came into effect. Under the terms of these waivers, the Secretary of State undertakes not to impose sanctions in connection with:

- Dealing with the energy, including natural gas, port operating, shipping, or shipbuilding sectors of Iran.
- Provision of underwriting services, insurance and re-insurance.
- Transactions with, or facilitation of a significant financial transaction on behalf of, the Government of Iran, certain Iranian financial institutions and any entity owned or controlled by them.
- Purchase of the sovereign debt of Iran or the debt of any Iranian state controlled entity and associated services.

Secondary sanctions continue to apply to trade in graphite, raw and semi-finished metals where these materials will be used in connection with the military or ballistic missile program of Iran, or if the materials have a potential nuclear end-use, unless approval has been received through the procurement channel set out in Section 6 of Annex IV of the JCPOA.

The US President adopted an Executive Order revoking Executive Orders 13574, 13590, 13622, and



13645 and amending Executive Order 13628. As a result of the revocations, further relief is provided in respect of the areas covered by the contingent waivers, including Iranian energy, port operating, shipping and shipbuilding sectors. In addition, secondary sanctions relating to the purchase of Iranian rial, dealings with the Iranian automotive sector, and for the purchase or acquisitions of the US banknotes, were lifted.

The US Office of Foreign Assets Control (OFAC) also de-listed around 400 individuals and entities from its Specially Designated Nationals and Blocked Persons List (the SDN List), Foreign Sanctions Evaders list and non-SDN Iranian sanctions list. More than 200 Iranian or Iran-related individuals and entities remain on the SDN List and any non-US persons dealing with these individuals and entities may still be subject to the US secondary sanctions. Due diligence and vigilance on Iranian counterparties will still be critical.

Non-US businesses which are owned or controlled by US persons will now be able to engage in certain trade with Iran, following OFAC's publication of a general licence allowing those entities to engage in trade with Iran, subject to certain exceptions. The general licence does not authorise US-owned or US-controlled foreign entities to engage in any transactions involving, for example, the exportation of goods or services from the US, any transfer of funds through the US financial system, any individual or entity on the SDN or FSE list or any military or law enforcement entity of Iran. That general licence does permit US persons to engage in certain activities to allow the permitted trade.

As most of the primary sanctions will still stay in place, any involvement of a US person or company will still largely be prohibited. The OFAC guidelines make clear that US financial institutions

may not clear US dollar payments for transactions involving Iran.

The relief of the primary sanctions (i.e. those applicable to US persons) is limited to two areas, namely:

- Import into the US of Iranian carpets and certain foodstuffs, together with related transactions, and this will be authorised once the general license is published in the Federal Register.
- The export or re-export to Iran of commercial passenger aircraft and spare parts and components for such aircraft (together with associated services). OFAC has issued a Statement of Licensing Policy (SLP) which establishes a favourable licensing policy regime through which US persons and, where there is a nexus to US jurisdiction, non-US persons may request specific authorisation from OFAC to engage in transactions for the export, re-export, sale, lease or transfer to Iran of commercial passenger aircraft for exclusively civil aviation end-use, spare parts and components for commercial passenger aircraft and provision of associated services, for example warranty, maintenance, and repair services and safety-related inspections.

If sanctions were to be reimposed due to Iran's breach of its commitments under the JCPOA, the US has committed not retroactively to impose sanctions for activities undertaken before the snap-back. The position in respect of pre-existing contracts is less clear: it is unlikely that such contracts will be exempted but the US will work to *"minimize the impact of sanctions on the legitimate activities undertaken prior to the imposition of sanctions"*.

To clarify the scope of the US sanctions relief, OFAC issued helpful guidelines and FAQs available on its website.³



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Recommendations

The sanctions relief presents many opportunities with regard to trade with Iran. However, certain restrictions will still remain in place and on-going due diligence is required to determine whether the intended activities are permitted under the EU and US sanctions regimes. A particular vigilance is recommended in case US persons or payments in US dollars are involved.

The following checklist identifies some of the key points which need to be considered.

- Are any US persons involved?
- Do any payments need to be made in US dollars?
- Does the transaction involve the supply of any US origin goods or goods with US content?

³ <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx>



- Is your Iranian counterparty, or any other party involved in the transaction (for example a port operator or agent) still listed as an asset freeze target or included on the SDN List or any other applicable sanctions list (or owned or controlled or acting on behalf of such an individual or entity)?
- Have you checked that the cargo is no longer subject to any restrictions?
- Can you document and evidence the checks which you have carried out?
- Do you have any pre-existing banking covenants or other contractual warranties or restrictions (for example, trading limits or policy restrictions) which limit your ability to trade with Iran?
- Have you spoken to your bank and insurers and confirmed that they are prepared to support the transaction, in respect of payment and unqualified cover?
- Have you considered how you would deal with any claims from third parties in Iran if those third parties are still included on an applicable sanctions list?
- Do you need Iranian law advice, e.g. on the local requirements to sell your goods in Iran?

If you are considering conducting business in or with Iran/Iranian entities, you should continue to seek legal advice to ensure that your transactions comply with any remaining sanctions requirements.

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