

International Trade

Global



Client Alert



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New Deal on Iran's Nuclear Programme

Recent Developments

Over the weekend, Iran and the E3+3 countries (i.e., China, France, Germany, Russia, United Kingdom, United States) announced a provisional deal, the [Joint Plan of Action](#) ("JPA"), to address Iran's nuclear programme, in an important step towards a long-term reduction in tensions between the West and Iran. The JPA envisages a gradual suspension of sanctions to be rolled out in various phases, in return for commitments from Iran on enrichment, non-proliferation and inspection.

Changes to sanctions will require revisions to an already complicated and strict legal regime in the EU and United States. Until these changes have been implemented, the legal position with respect to Iran remains as before.

Implications for Companies Engaging in Transactions with Iran

Given the current lack of detail around how the EU and United States will roll back sanctions, companies should:

- act cautiously on new Iran-related transactions, making sure to confirm that such transactions are permitted under applicable laws and regulations following any roll back of the sanctions and that it is feasible to get paid (i.e., if you are anticipating Iran-related transactions, you should discuss that with your banks to ensure that they understand what you are doing, and what risks it might pose to them);
- include precautionary language in contracts and agreements that seeks to anticipate re-imposition of sanctions by the West; and
- monitor legal developments, particularly in the United States where the role of Congress in setting and removing any sanctions is going to be critical and may conflict with the priorities of the US Administration.

What the JPA Says

The JPA sets out an incremental, step-by-step approach within which "nothing is agreed until everything is agreed". The JPA states that, from a trade viewpoint, the end point of discussions

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is "comprehensive lifting of all UN Security Council sanctions, as well as multilateral and national sanctions related to Iran's nuclear programme." The target timeframe for this is 1 year. This timeframe is aspirational rather than binding though, and will depend on progress on Iran's side on the enrichment and non-proliferation obligations. There is also a shorter timescale for an interim package of confidence-building measures, to be implemented for a provisional period of 6 months, as discussed further below.

While there are substantial possibilities to roll back sanctions, the main thrust of the roll back relates to current or future trade, but not investment. In particular, the roll back of US sanctions appears to focus on secondary/extraterritorial sanctions that target non-US companies outside US jurisdiction for trade sanctions purposes (i.e., parties not subject to the Iranian Transactions and Sanctions Regulations). In addition, there is a limited opportunity to repatriate an unspecified amount of oil and gas related revenue held by the West.

Under the JPA, the first step is a package of interim measures under which Iran would agree to certain steps in relation to its nuclear activities, in return for which the E3+3 would provisionally suspend a number of the existing sanctions. This is to be implemented for a provisional period of 6 months (extendable by mutual consent), though there is no strict deadline for when this will commence. The EU Council of Ministers is reportedly intending to meet in mid-December with a view to amending the relevant aspects of the EU sanctions regime shortly thereafter. The US timescale is less certain.

The key sanctions to be suspended as part of the interim measures are the following:

1. Suspend any further efforts to limit Iranian crude oil sales to third countries. Such sales to the West have in effect ceased, but the United States, and to a lesser extent the EU, has been seeking to force a reduction in sales to third countries, such as China and India, through restrictions on access to the banking system, and prohibitions on the provision of certain associated services from the West. The idea appears to allow Iran's current customers to purchase an amount not to exceed "their current average amounts of crude oil". Exactly how this current average is to be determined is unclear, but it seems clear that the EU and United States will not permit imports of Iranian crude into the EU or United States, but may reduce efforts to block sales to third countries.

In relation to the associated services, the JPA states that it will "suspend the EU and U.S. sanctions on associated insurance and transport services". These restrictions have been a significant impediment to such sales. Even if the provision of these services becomes feasible, however, there is still the question as to how the service-providers will get paid, and exactly what services can be provided. We expect guidance in the EU Member States will cover this issue.

The JPA also notes that "repatriation of an agreed amount

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of revenue held abroad" should be undertaken. The West has frozen a very significant amount of Iranian monies, and the language appears to suggest that some of this could be unfrozen and returned. This would of course require very detailed scrutiny and authorization by the West, possibly in conjunction with the UN. There is also a question mark as to how this idea links to the humanitarian issue noted at point 7 below.

2. Suspend sanctions on petrochemical exports from Iran, as well as sanctions on associated services. These services are defined as "any service, such as insurance, transportation, or financial, subject to the underlying U.S. or EU sanctions applicable, insofar as each service is related to the underlying sanction and required to facilitate the desired transactions. These services could involve any non-designated Iranian entities." The terms "is related to" and "required" will need to be explained, since EU authorities have, up to this point, taken a very restrictive interpretation of any carve-out from the prohibitions.
3. Suspend US sanctions on the Iranian automobile industry. These sanctions were recently imposed by [Executive Order 13645](#) in June 2013 and it remains to be seen how the US government will implement the suspension of these sanctions.
4. Suspend EU and US sanctions on gold and precious metals, as well as associated services.
5. Permit the supply to and installation in Iran of spare parts for safe flight of Iranian civil aircraft through a system of licences. Such licence would also appear to extend to safety related inspections and repair in Iran, as well as associated services for both. The licences would appear to apply to both non-designated Iranian airlines as well as to Iran Air. However, there does not appear to be any other rolling back of sanctions on Iranian civil airlines.
6. No new "nuclear-related" UN Security Council sanctions. Presumably this requires the E3+3 not to seek, support or vote to any UN Security Council resolution which is "nuclear-related".
7. The United States will "refrain from imposing new nuclear-related sanctions". Given the overall relationship between the President and Congress, and current increased sanctions proposals before Congress, this could be a significant stumbling block.
8. "Establish a financial channel to facilitate humanitarian trade for Iran's domestic needs using Iranian oil revenues held abroad". "Humanitarian needs" are defined as:
 - a. food and agricultural products;
 - b. medicine;
 - c. medical devices; and

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d. medical expenses incurred abroad.

There is also a possibility that the channel could be used to pay Iran's UN obligations, and certain university tuition fees.

It is uncertain exactly what such a "financial channel" could be, but the idea appears to be that certain specified non-Iranian banks, and non-designated Iranian banks could operate a system whereby payment for the above is made from Iranian oil revenues held abroad. Currently the EU permits supply of all of the above, and does not apply the authorization process to such supplies. US financial sanctions under the Iranian Financial Sanctions Regulations limit how non-US banks may permit Iranian oil revenues to be used, although transactions related to humanitarian needs are not meant to be restricted under these US financial sanctions. These efforts may represent a way of dealing with the general unwillingness of Western banks to process such payments, now setting up a dedicated payment system whereby humanitarian aid from the West is paid for out of sums already held abroad. This does not appear to be simply a system of offset against frozen funds, since if this were the case, Iranian banks would not need to be involved. Therefore, it is possible that some more expansive system is planned.

9. Finally, the JPA states that the threshold above which transactions need to be authorized in advance by an EU relevant institution should be raised. Currently, advance authorisation is required for all non-humanitarian transactions involving: (i) an "Iranian person" (wherever based) of €40,000 or above; or (ii) an Iranian financial institution of €10,000 or above. Given the practical difficulty of processing payments from Iranian persons and Iranian banks, it is unclear as to whether increasing the threshold would increase the flow of transactions between the West and Iran.

* * *

The foregoing is intended only to provide a general overview of recent Iran sanctions developments. Please do not hesitate to contact us if you have any questions about how these changes might affect your company or if you require advice on any specific transactions or plans.

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Other Baker & McKenzie Client Alerts issued since 2010 regarding sanctions against Iran:

[United Nations, European Union, and United States Significantly Extend Sanctions Against Iran](#)

[President Signs New Iran Sanctions Bill](#)

[Significant Extension of EU Sanctions Against Iran](#)

U.S. Treasury Department Issues New Iranian Financial Sanctions Regulations

Canada Unveils New Trade Sanctions Against Iran

EU Publishes Draft Regulation on New Iran Sanctions

Japan's Sanctions Against Iran: Extension of UNSC Resolution 1929

New Expanded EU Iran Sanctions Come Into Force

U.S. Government Implementation of New Iran Sanctions Legislation

Switzerland Tightens Up Its Sanctions Regime Against Iran

U.S. Government Issues Guidance Regarding New Iran Sanctions Legislation and Publishes Iranian Human Rights Abuses Sanctions Regulations

U.S. Government Imposes Sanctions for Refined Petroleum Product Activities under Amended Iran Sanctions Act and EU Extends Iran Sanctions

FinCEN Imposes New Reporting Requirement on Iranian Financial Transactions

UK Prohibits All Dealings Between UK and Iranian Banks

Administration Announces New Sanctions Against Iran's Energy Sector and Financial System

Further Round of EU Sanctions Against Iran

U.S. Government Blocks Government of Iran, Central Bank of Iran, and Iranian Financial Institutions

OFAC Reissues Iranian Financial Sanctions Regulations

EU Significantly Extends Sanctions on Iran

U.S. Government Significantly Expands Sanctions Targeting Iran

Non-U.S. Subsidiaries of U.S. Companies Now Subject to U.S. Sanctions Targeting Iran

EU Further Strengthens Sanctions Measures on Iran

OFAC Issues Iranian Transactions and Sanctions Regulations

OFAC Amends Iranian Transactions and Sanctions Regulations to Implement Executive Orders 13622 and 13628 and New Wind-Down General License

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