

Client Alert

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Finalized Iran Nuclear Deal Outlines Changes for U.S. and EU Sanctions

On July 14, 2015, negotiators from Iran, the EU, and the P5+1 countries—China, France, Russia, the United Kingdom, the United States, and Germany—**announced** that they had reached a consensus on the final text of the Joint Comprehensive Plan of Action (“JCPOA”) with Iran. In exchange for Iran’s commitment to scaling back its existing nuclear operations and developing a commercial nuclear program for exclusively peaceful purposes, the remaining parties committed to gradually lift UN Security Council (“UNSC”) sanctions, multilateral sanctions, and national sanctions related to Iran’s nuclear program. Despite this historic agreement, it is important to note that until Implementation Day—expected in four to nine months—**restrictions remain in place. For example, restrictions on U.S. parties and foreign entities owned or controlled by U.S. parties conducting business with Iran remain virtually unchanged.** Once the JCPOA is implemented, however, foreign entities owned or controlled by U.S. persons will be able to obtain licenses from the U.S. government to engage in activities with Iran permitted under the JCPOA. However, the parties agreed to maintain in force the limited sanctions relief set forth in the interim Joint Plan of Action from November 2013.

Stages of the JCPOA

The JCPOA lays out specific milestones for implementation of Iran’s nuclear commitment and sanctions relief:

- **Adoption Day** will occur 90 days after the endorsement of the JCPOA by the UNSC. On July 20, 2015, the UNSC unanimously adopted Resolution 2231 endorsing the JCPOA and suspending the application of certain sanctions measures under existing UNSC resolutions issued with respect to Iran’s nuclear program. Thus, Adoption Day will be October 18, 2015. The JCPOA participants have the option to move Adoption Day to an earlier date if all parties consent to doing so. After Adoption Day, all parties are required to begin making necessary legal and administrative preparations to implement their JCPOA commitments. The United States and the European Union are obligated at this time to take all necessary measures to ensure that required waivers are issued and appropriate measures are taken to cease the application of certain sanctions as of Implementation Day (see below).

- **Implementation Day** will be the date that the International Atomic Energy Agency (“IAEA”) delivers a report verifying that Iran has implemented its nuclear-related commitments under the JCPOA. Although existing legislation will remain in place, the United States and the European Union will cease to apply certain nuclear-related sanctions. U.S. sanctions relief for non-U.S. persons will go into effect as outlined in the JCPOA on Implementation Day. For example, the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”), the U.S. agency that administers most U.S. sanctions programs, has **announced** that, until Implementation Day, the sanctions relief provided for in the Joint Plan of Action (“JPOA”) reached in November 2013 will remain in effect. Any specific licenses issued by OFAC pursuant to the JPOA will remain valid according to their terms until Implementation Day.
- **Transition Day** will be eight years after Adoption Day (i.e., October 18, 2023), or the date on which the Director General of the IAEA submits a report stating that all nuclear material in Iran remains in peaceful activities (known as “the Broader Conclusion” in the JCPOA), whichever occurs earlier. After Transition Day, the United States must seek appropriate legislative action to terminate the sanctions that it ceased to apply as of Implementation Day, and all EU nuclear-related economic and financial sanctions against Iran shall be terminated.
- **UNSCR Termination Day** will take place ten years after Adoption Day (i.e., October 18, 2025). At this time, the provisions of UNSC Resolution 2231 will terminate, assuming that all obligations under the JCPOA have been met by all parties and that sanctions have not been reinstated.

The JCPOA establishes a Joint Commission to settle any disputes that may arise between the JCPOA parties. If any of the parties believe that Iran or the P5+1 have failed to meet their obligations under the JCPOA, the Joint Commission will have 15 days to attempt to reach a resolution on the issue. The JCPOA parties also may refer issues to the Ministers of Foreign Affairs, who may consider the issue in parallel to the Joint Commission review. After the Joint Commission and/or the Ministers of Foreign Affairs consider the issue, disputes may be escalated to an Advisory Board for mediation, which will issue a non-binding opinion after 15 days. In the event that the parties consider the issue unresolved after this 30 day process, the unresolved issue may be used as grounds to cease performance under the JCPOA or to notify the UNSC that the issue constitutes significant non-performance. In the event that the UNSC is notified of significant non-performance by Iran, it would have the ability to reinstate sanctions against Iran under the previous UNSC resolutions, although the sanctions would not apply with retroactive effect to contracts signed prior to the date of reinstatement.

Conditional Sanctions Relief by the United States

First, sanctions that the United States will cease to apply and subsequently terminate are all provisions directed towards non-U.S. persons. The JCPOA 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 the JCPOA, unless the activities are authorized by OFAC.

Second, the JCPOA is intended to target only nuclear-related sanctions. The United States has committed to terminating four Executive Orders (Executive Orders **13574**, **13590**, **13622**, and **13645**) and portions of a fifth (Sections 5-7 and 15 of Executive Order **13628**) on Implementation Day. A number of other Executive Orders not directly related to Iran’s nuclear program will remain in place, such as Executive Order **13553** (allowing the U.S. Government to block property and interests in property of Iranian persons involved in the commission of serious human rights abuses) and Executive Order **13599** (allowing the U.S. to block property and interests in property of the Iranian Government and Iranian financial institutions).

The United States has committed to take the following actions on Implementation Day:

- Sanctions will not be applied with respect to financial transactions between non-U.S. persons and certain entities, including the Central Bank of Iran and other specified financial institutions, the National Iranian Oil Company (“NIOC”), Naftiran Intertrade Company (“NICO”), and the National Iranian Tanker Company (“NITC”).
- Sanctions will not be applied for other financial and banking actions taken by non-U.S. persons, such as: conducting significant transactions related to the purchase or sale of Iranian rials; providing of U.S. banknotes to the Government of Iran; transferring Iranian revenues held abroad; purchasing, subscribing to, or facilitating the issuance of Iranian sovereign debt; providing financial messaging services to the Central Bank of Iran and other designated financial institutions; and performing services associated with these activities.
- Sanctions on the provision of underwriting services, insurance, or re-insurance in connection with activities permitted under the JCPOA will be suspended for non-U.S. persons.
- Sanctions also will not be applied to non-U.S. persons for engaging in certain activities in the energy and petrochemical sectors, including the following: investing in Iran’s oil, gas, and petrochemical sectors; purchasing, acquiring, selling, transporting, or marketing petroleum, petrochemical products and natural gas from Iran; exporting, selling, or providing refined petroleum products and petrochemical products to Iran; transactions with certain entities in the energy sector such as NIOC, NICO, and NITC; and services associated with these activities.
- The United States will suspend its efforts to reduce Iran’s crude oil sales, including by placing limits on the quantities of Iranian crude oil sold and the nations that can purchase Iranian crude oil.
- Sanctions will not be applied with respect to transactions by non-U.S. persons with Iran’s shipping and shipbuilding sectors and port operators, including transactions with the Islamic Republic of Iran Shipping Lines (“IRISL”), NITC, South Shipping Line, and the port operators of Bandar Abbas. Sanctions also will not be applied with respect to services associated with such transactions. The relaxation in shipping sanctions does not extend to the prohibitions under Section 211(a) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (“TRA”), which allows the United States to impose sanctions on persons that knowingly sell, lease, or provide a vessel or provide insurance or reinsurance or any other shipping service for the transportation to or from Iran of goods that could materially contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism.
- Sanctions on Iran’s trade in gold and other precious metals, as well as sanctions on associated services for such transactions, will not be applied to non-U.S. persons. The United States also will suspend the application of sanctions with respect to trade with Iran in graphite and raw or semi-finished metals, provided that the trade is in connection with activities permitted under the JCPOA.
- Sanctions related to the sale, supply, or transfer of goods and services used in connection with Iran’s automotive sector will not be applied to non-U.S. persons.
- The United States will remove certain individuals and entities from the Specially Designated Nationals and Blocked Persons List (“SDN List”), the Foreign Sanctions Evaders List, and the Non-SDN Iran Sanctions Act List. Certain entities being removed from these lists are Iranian financial institutions, as well as individuals and

entities that previously have been identified by OFAC as being part of the Government of Iran. U.S. persons and foreign entities owned and controlled by a U.S. person continue to be prohibited from engaging in transactions with Iranian financial institutions and the Government of Iran (designated with an asterisk in Attachment 3 to Annex II of the JCPOA) pursuant to Section 560.211 of the Iranian Transactions and Sanctions Regulations and Executive Order 13599, even though these individuals and entities no longer will appear on the SDN List.

- The United States will allow U.S. and non-U.S. persons to sell commercial passenger aircraft and related parts, components, and services to Iran exclusively for civil aviation use. The sale, lease, transfer, export, or reexport of spare parts and components for commercial passenger aircraft to Iran also will be eligible for OFAC licenses, as will associated services such as warranty services, maintenance and repair services, and safety inspections. Appropriate conditions will be included in any license to ensure that no aircraft, goods, or services are re-sold or re-transferred to any person on the SDN List.
- The United States will issue licenses allowing for the importation of Iranian-origin carpets and foodstuffs, including pistachios and caviar, into the United States.
- The United States also will begin issuing licenses for foreign entities owned or controlled by a U.S. person to engage in activities with Iran that are permitted under the JCPOA. The licensing policy should make it easier for these foreign entities to engage in the activities outlined in the JCPOA that could be undertaken by their counterparts that are not owned or controlled by a U.S. person.

As mentioned above, the United States will be required to seek legislative action on Transition Day to terminate the previously suspended sanctions. The United States also will be required at that time to remove an additional group of individuals and entities from the SDN List and the other sanctions lists. Finally, the United States must lift additional sanctions on Transition Day. These include sanctions under the Iran, North Korea, and Syria Nonproliferation Act related to the acquisition of nuclear-related commodities and services for the nuclear activities contemplated under the JCPOA, so that the treatment of Iran is consistent with the way that the U.S. treats other non-nuclear weapons states under the Non-Proliferation Treaty. Sanctions on joint ventures related to mining, production, and transportation of uranium also must be lifted at this time, and Iranian citizens will no longer be excluded from careers in the United States in nuclear science, nuclear energy, and the energy sector.

Conditional Sanctions Relief by the EU

Taking effect on Implementation Day, the EU has committed to terminate certain provisions of the EU Regulation implementing its nuclear-related economic and financial sanctions, including related designations. As a result of the lifting of sanctions, the following restrictions and associated services will be lifted:

- Prohibition and authorization regimes on financial transfers to and from Iran
- Sanctions on banking activities
- Sanctions on insurance
- Sanctions on financial support for trade with Iran
- Sanctions on grants, financial assistance, and concessional loans
- Sanctions on Government of Iran public-guaranteed bonds
- Sanctions on the import of oil, gas, and petrochemical products from Iran
- Sanctions on the export of key equipment for the oil, gas, and petrochemical sectors
- Sanctions on investment in the oil, gas, and petrochemical sectors
- Sanctions related to shipping and shipbuilding

- Sanctions related to the transportation sector
- Sanctions on gold, precious metals and diamonds, banknotes, and coinage

Moreover, the EU will also allow in connection with activities consistent with the JCPOA the supply, transfer, or export of software, graphite, and raw or semi-finished metals, such as aluminum and steel to any Iranian person or for use in Iran.

Under the terms of the JCPOA, all nuclear-related economic and financial EU sanctions against Iran shall be terminated by Transition Day, which is October 18, 2023. It is important to note that the EU has imposed economic sanctions on Iran in response to human rights violations. These sanctions will be unaffected by the JCPOA and remain in force. Thus, persons subject to EU sanctions will remain restricted from supplying certain goods and equipment that can be used for internal repression and designated Iranian persons will remain subject to the asset freeze. Moreover, until October 18, 2023, the EU's arms embargo and restrictions on transfer of ballistic missiles also remain in place.

Preparing for a Possible Showdown with the U.S. Congress

Under the terms of the **Iran Nuclear Agreement Review Act of 2015** (H.R. 1191) ("Act"), Congress has 60 days to review the final text of any agreement with Iran; the President may not waive Congressional sanctions during the review period. On July 19, 2015, the U.S. Department of State **transmitted** the full text of the JCPOA, its annexes, and related materials to Congress. The 60 day review period began on July 20, 2015 and will end on September 18, 2015. State Department officials have scheduled closed briefings on the JCPOA for the full House and Senate on July 22, 2015. The following day, Secretary of State John Kerry, Secretary of Energy Ernest Moniz, and Secretary of the Treasury Jacob Lew are scheduled to testify at the first of a series of Senate Foreign Relations Committee hearings.

Although UNSC Resolution 2231 reportedly will not take effect for 90 days, Congressional opponents of the JCPOA have been galvanized by the United States' **approval** of UNSC Resolution 2231 prior to the completion of the 60 day Congressional review period. Senate Foreign Relations Committee Chairman Bob Corker (R-Tenn.), who sent a **letter** cosigned by Ranking Member Ben Cardin (D-Md.) to President Obama on July 16 urging that the UNSC vote be postponed until after Congress had an opportunity to consider the JCPOA, stated that the administration's decision to move forward at the UN was "**contrary to the spirit** of the Iran Nuclear Agreement Review Act." Senator Ted Cruz (R-Texas) has **threatened** to block nominees and funding for the State Department as a result of the UN vote. President Obama appears to be focused on shoring up support from Democrats to ensure that Congress would not have the two-thirds majority needed to override his veto in the event that Congress rejected the deal, going so far as to bring three Democratic congressmen on a recent weekend **golf outing**.

King & Spalding will continue to monitor the progress of the JCPOA and its impact on U.S. sanctions programs. Please contact us if you have any questions or would like additional information.

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