

**CLIENT ALERT:**

**PRELIMINARY GUIDANCE ON SANCTIONS RELIEF UNDER  
JOINT COMPREHENSIVE PLAN OF ACTION**

August 4, 2015

On July 31, 2015 we participated in a conference call jointly staged by the U.S. State Department and the Office of Foreign Asset Control (“OFAC”) for the compliance community. The purpose of the call, which was held “off the record” with no press participation, was to provide some preliminary guidance for the business community with respect to the key provisions of the Joint Comprehensive Plan of Action (“JCPOA”) agreed between the P5 + 1 countries and Iran on July 14, 2015. The JCPOA, and the annexes to the plan, can be found on the State Department’s website at [www.State.gov/Iransanctions](http://www.State.gov/Iransanctions).

The State Department’s position is that the JCPOA blocks Iran’s pathway to a nuclear weapon and also gives the International Atomic Energy Agency (“IAEA”) unprecedented access to inspect Iran’s facilities. The agreement sets out specific steps which Iran must take to restrict its nuclear program and there will be no sanctions relief until those steps have been taken and verified by the IAEA. In the meantime, the limited sanctions relief granted under the Joint Plan of Action (“JPOA”) of January 2014 will remain in effect. The U.S. sanctions based on Iran’s activities in support of terrorism, human rights abuses and destabilizing activities in the Middle East will remain in force under the JCPOA.

**Milestones Under the JCPoA**

**Finalization Day** - the day the agreement was concluded, July 14, 2015. On July 15<sup>th</sup> a resolution endorsing the JCPOA was submitted to the United Nations Security Council, which passed the resolution on July 20<sup>th</sup>.

**Adoption Day** – 90 days after the Security Council’s July 20th resolution, unless all parties agree on an earlier date. Adoption Day is the date when all parties’ commitments under the JCPOA come into effect.

**Implementation Day** – This will be the day when the IAEA verifies that Iran has implemented its commitments under the JCPOA. Simultaneously with the IAEA’s verification, the U.S. and the EU will relieve the nuclear-based sanctions against Iran.

**Transition Day** - eight years from Adoption Day, or the day when the IAEA has concluded that all the nuclear material in Iran remains in peaceful activities, whichever is earlier. On Transition Day the U.S. will seek termination of the sanctions initially suspended on Implementation Day.

There is no hard date for when Implementation Day will occur. The State Department advised that their best estimate is 6 to 9 months from Adoption Day, which currently is to occur on October 18, 2015. The State Department cautioned, however, that there is no way to know for certain how long it will take Iran to implement its commitments under the JCPOA, or how long it will take the IAEA to verify Iran's implementation.

### **The Iran Nuclear Agreement Review Act of 2015**

Under this legislation the President was required to submit the text of the JCPOA to the U.S. Congress within five days of an agreement having been reached, and then Congress has 60 days to review and approve or disapprove the JCPOA. President Obama has stated that if Congress passes a resolution of disapproval, he will exercise a Presidential veto of that resolution. If Congress can muster the two-thirds majority vote required to override the Presidential veto, then there will be no agreement and no relief from U.S. sanctions.

However, if the deal is approved, then the State Department will begin steps to suspend sanctions once Implementation Day is reached. Those steps will involve terminating Executive Orders containing sanctions and waiving the U.S. statutory sanctions.

### **Snap-Back Provisions**

Under the JCPOA sanctions relief is reversible. If Iran fails to comply with its commitments under the JCPOA, then terminated Executive Orders can be re-issued and waivers of statutory sanctions can be reversed. If sanctions "snap back", there will be no grandfathering of contracts entered into during the period that JCPOA sanctions relief was in effect. Therefore, in re-entering the Iranian trade, companies must consider the potential risk that they would face should sanctions snap back. It is recommended that contracts entered after Implementation Day include a provision whereby the contract can be terminated if sanctions snap back under the terms of the JCPOA.

### **What U.S Sanctions Will Be Relieved On implementation Day?**

The bulk of the U.S. sanctions relief that will be implemented on Implementation Day will relate to secondary sanctions, that is, sanctions relating to the activities of non-U.S. persons that do not involve the United States. The following secondary sanctions relief will be provided:

- Sanctions on sales of Iranian crude oil
- Sanctions on investment in the Iranian petroleum and petrochemical sectors
- Sanctions on the purchase of Iranian petroleum, petrochemical products and natural gas
- Sanctions on the sale of refined petroleum products to Iran
- Sanctions on transactions with Iran's energy sector
- Sanctions on transactions with Iran's shipping and shipbuilding sectors, and with port operators
- Sanctions on Iran's trade in gold and precious metals
- Sanctions on trade with Iran in graphite, raw or semi-finished metals such as aluminum and steel, coal and software for integrating industrial processes.
- Sanctions on the supply of goods and services to Iran's automotive sector
- Sanctions of the provision of underwriting services, insurance and reinsurance, on activities consistent with the JCPOA.

The suspension of these sanctions will also extend to all associated services related to permissible activities, including insurance and transportation.

However, as stated in footnote 6 on page 8 of Annex II to the JCPOA, "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 this JCPOA, unless authorized to do so by the U.S. Department of the Treasury's Office of Foreign Asset Control."

In addition to secondary sanctions relief, over 400 individual and entities currently named on the U.S. Specially Designated Nationals List ("SDN List") will be suspended from that list on Implementation Day. Attachment 3 to Annex II of the JCPOA sets forth the names of those who will be suspended from the SDN List. Note, however, that secondary sanctions against Iran Revolutionary Guard Corps will remain in effect.

### **What Activities Are Permitted Prior to Implementation Day?**

Prior to Implementation Day there is no sanctions relief, other than the limited sanction relief that has been in effect since January 2014 under the JPOA. The U.S. authorities are aware that, in anticipation of Implementation Day, many businesses are eager to market their services and products in Iran and to begin to build a foundation for their entry or re-entry into the Iranian market. However, it was emphasized that until Implementation Day, companies who choose to engage in business in Iran do so at their own risk. Existing sanctions will continue to be enforced. While companies are free to discuss with Iranian entities possible future business, the authorities cautioned that in doing so companies should be exceedingly careful. If a company begins to arrange contracts, even executory contracts, they may cross the line and violate the existing sanctions.

### **Future Guidance**

During the conference call the U.S. authorities gave assurances that they will be providing detailed guidance on sanctions relief in advance of Implementation Day. We will be on the lookout for that guidance and will report when it has been issued.

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