IRAN SANCTIONS RELIEF AND FURTHER EU REGULATORY DEVELOPMENTS IN 2016

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Antitrust, Competition & Trade Regulation Alert

LIFTING OF IRAN SANCTIONS

Introduction

On 16 January 2016 ("**Implementation Day**"), the majority of the European Union's ("**EU**") economic/financial sanctions against Iran were lifted after the International Atomic Energy Agency ("**IAEA**") verified that Iran is abiding by its commitments under the Joint Comprehensive Plan of Action ("**JCPOA**").

In July 2015, we published an insight article (click here) explaining the Iranian Nuclear Accord and setting out a timeline for its implementation and the removal of EU sanctions on Iran.

Since then, the requirements for the removal of EU sanctions on Iran have been fulfilled, culminating in the verification and lifting of EU sanctions on Implementation Day as mentioned above. The timeline below sets out the key landmark dates under the JCPOA, with the dates in red still to come.

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On the day that the JCPOA came into force, the EU adopted the legislation needed to lift the sanctions (namely Council regulation (EU) 2015/1861, Council Implementing Regulation (EU) 2015/1862 and Council Decision (CFSP) 2015/1863), the provisions of which came into force on Implementation Day, removing most EU restrictions on trade with Iran.

Under the JCPOA, the EU will release the remaining economic/financial sanctions on Transition Day and the United Nations Security Council ("**UNSC**") will terminate the provisions and measures in the relevant resolution and will "no longer be seized of the Iran nuclear issue".

It is important to note that the EU's human rights-related sanctions, anti-terrorism sanctions and an arms-embargo are unaffected, as these regimes were not part of the JCPOA and remain in force. The JCPOA relates only to financial/economic sanctions.

Which EU sanctions have been lifted?

In the EU, it is now no longer prohibited to:

- sell, supply, transfer or export certain dual-use items (items that could be used for military purposes but are normally used for civilian purposes as set out in Council Regulation No 428/2009) to Iran;
- sell supply, transfer or export certain equipment or technology, including gas and oil equipment to Iran;

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- import or purchase crude oil, petrochemicals and gas originating in, or having been exported from, Iran;
- sell, purchase, supply, transfer, import or export gold, precious metals, diamonds, banknotes and coinage to or from the Iranian government or any person controlled by it;
- grant loans or credit to Iranian persons involved with oil and gas or petrochemicals; and
- transfer funds to and from Ian (including to and from financial institutions in Iran), provide financial services and provide or broker insurance to Iran.

Furthermore, the list of persons, entities and bodies subject to asset freezes and travel bans have been reduced from approximately 93 people to 29 people and from 467 entities to 94 entities.

However, prior authorisations from national authorities will be required in order to sell, supply, transfer or export to Iran:

- goods and technology listed in the Nuclear Suppliers Group list;
- goods and technology that the EU has listed on the basis that it could contribute to various activities inconsistent with the JCPOA (including dual-use items);
- certain software designed for use in nuclear and military industries; and
- graphite and certain listed raw or semi-finished metals.

Authorisation is also required for the provision of technical, brokering or financial assistance related to such materials, goods, technology and software.

The sale, supply, transfer or export of certain goods and technology contained in the Missile Technology Control Regime List remains prohibited, and the JCPOA provides that it will be almost eight years (or on another date in the future that the IAEA concludes that all nuclear material in Iran remains peaceful) until all EU nuclear proliferation-related sanctions will be lifted. The following table provides an overview of the key changes outlined above:

Sanctions Lifted	**Authorisation Needed**	**Prohibited**
Certain dual-use items	Items listed in the Nuclear Suppliers Group list	Items in the Missile Technology Control Regime List
Gas and oil equipment/technology	Listed items (including dual-use items) that could contribute to activities inconsistent with JCPOA	
Crude oil, petrochemicals and gas	Software designed for the nuclear and military industries	

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Gold, precious metals, diamonds, banknotes and coinage	Graphite and raw or semi-finished metals	
Loans or credit to persons involved in oil and gas or petrochemicals		
Transfers of funds and providing financial services		

What if Iran fails to comply with its ongoing commitments?

There are no specific "snap-back" provisions within the EU legislation in the event that Iran reneges on the deal or fails to comply with its commitments; however, Council Regulation 2015/1861 states that "the commitment to lift… restrictive measures… is without prejudice to the dispute resolution mechanism specified in the JCPOA and to the reintroduction of… restrictive measures in the event of significant non-performance by Iran of its commitments." Therefore, if the dispute resolution provisions of the JCPOA were triggered and the process concludes that sanctions on Iran should be restored, the EU would need to pass new legislation to achieve this. The current EU legislation states that, if sanctions are reintroduced, "adequate protection for the execution of contracts concluded in accordance with the JCPOA while sanctions relief was in force will be provided."

What effect do U.S. sanctions on Iran have on EU entities?

Our U.S. regulatory team has provided an alert on the impact that Implementation Day has had on U.S. sanctions on Iran, including EU companies, which can be accessed here.

Should EU entities commence/resume trading with entities connected to Iran?

As the above shows, the mechanics of lifting EU financial/economic sanctions are extremely complex, and there are many restrictions and administrative checks still in place in relation to dealings between EU and Iranian entities. Furthermore, the effect of the United States' secondary sanctions on EU entities and restrictions on the use of the dollar must also be borne in mind when considering whether or not to deal with an Iranian entity. As a result, it is essential that companies review their sanctions compliance programs and obtain legal advice before dealing with Iranian entities.

FURTHER EU SANCTIONS UPDATES

Russia and Ukraine

On 18 December 2015, EU leaders agreed to extend, until the end of July 2016, sanctions imposed on Russia as a result of its continuous involvement in Ukraine. The sanctions:

- prohibit EU financial transactions with major Russian state banks;

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- restrict certain Russian entities from accessing EU capital markets;
- ban exporting certain energy-exploration equipment to Russia; and
- prevent the sale of arms and certain dual-use civilian goods to Russia.

The aim is for the sanctions to encourage Russia to complete implementation of the Ukraine ceasefire agreement (known as the Minsk II Agreement) that was agreed to in February of last year.

It is anticipated that the lists of persons subject to asset freezes and visa bans will be reviewed in February in relation to Ukraine and in March in relation to Russia as a result of decisions by the Court of Justice of the EU.

UK'S NEW "OFFICE OF FINANCIAL SANCTIONS IMPLEMENTATION" TO LAUNCH

The UK government's new "Office of Financial Sanctions Implementation" ("**OFSI**") is scheduled to launch in April 2016. Comparisons have been made between OFSI and the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") — the sanction body in the United States, which enforces sanctions very robustly in comparison with its European counterparts.

It is not yet known whether or not OFSI will have the enforcement powers that OFAC has (such as powers to impose civil penalties and reach out-of-court settlements) but it is important to consider the introduction of OFSI in the context of the government's intention to legislate "early" in this Parliament to increase the penalties for noncompliance with financial sanctions; therefore, whether or not OFSI ends up possessing as extensive powers as OFAC, OFSI will likely become part of a more heavy-handed approach to sanctions enforcement in the United Kingdom.

A more positive consequence for businesses is that it is expected that OFSI will issue more guidance and Q&A-style briefings in relation to sanctions than businesses are accustomed to receiving. The government has said that the new body will "provide a high-quality service to the private sector working closely with law enforcement to help ensure that financial sanctions are properly understood, implemented and enforced."

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