

# US sanctions against Iran

## Latest Update

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There appears to be some confusion in the media and among businesses regarding the scope of recent actions taken by the US government to temporarily ease certain Iran sanctions. This article considers the scope of US sanctions against Iran that remain in effect and the practical impact of temporary easing of certain sanctions resulting from the Joint Plan of Action announced by P5+1 (the US, China, Russia, the UK, France and Germany) and Iran.

## Overview of Topic

1. The US government maintains a complex regime of sanctions against Iran, resulting from a myriad of statutes and Executive Orders. Although actions of US persons and transactions with a US nexus have been subject to broad restrictions for a long time, in recent years the US government has been increasing the scope of Iran sanctions that target certain actions of non-US persons even when the underlying activity has no US nexus. Such non-US persons could expose themselves to potentially significant restrictive measures that the US government could impose against them, which could have an adverse impact on their ability to continue their overall business.
2. US sanctions against Iran can be divided into "primary" and "secondary" sanctions, based on their scope and reach. In both cases, sanctions are imposed to restrict a particular type of activity but the breadth of the prohibitions and the type of the penalties/restrictive measures that could be imposed against violators vary significantly.
3. The temporary six-month easing that became effective on 20 January 2014 as a result of the Joint Plan of Action between P5+1 and Iran primarily applies, on the US side, to certain secondary sanctions and thus provides fairly limited relief. Most of the US sanctions continue to remain in full effect.
4. This article provides a general overview of the primary and secondary US sanctions on Iran, focusing on the temporary easing of certain US sanctions against Iran and the practical impact of such measures.
5. This article focuses on the US sanctions against Iran to provide an insight into the impact of temporary easing of certain sanctions. After outlining in broad terms the primary and

secondary sanctions, the article focuses on the scope of the limited easing of US sanctions that took effect on 20 January 2014.

6. **What are Primary US Sanctions?** The primary US sanctions are set forth in the Iranian Transactions and Sanctions Regulations (ITSR), which are implemented and enforced by US Treasury Department's Office of Foreign Assets Control (OFAC). Those sanctions are based primarily on a number of Executive Orders issued under the IEEPA.
7. OFAC's ITSR primarily contain restrictions applicable to "US persons", prohibiting virtually all trade and other transactions with Iran, directly or indirectly. The restrictions are not limited to financial transactions (payments) or dealings with the Government of Iran or designated parties. Instead, the ITSR restrictions extend to a broad range of activities including exports or imports of goods, technology and services (including insurance, consulting or other types of services), as well as dealings in Iranian-origin goods or services even if the activity is taking place outside Iran.
8. The restrictions set forth in the ITSR have been in place, in one form or another, for many years and, with certain exceptions, have restricted the ability of "US persons" to engage in activities, directly or indirectly, with Iran, without US government authorisation.
9. The term "US person" for purposes of the ITSR includes:
  - a. all US citizens and US permanent residents ("green card" holders), wherever located;
  - b. all persons present in the United States (including transients and visa holders);
  - c. companies and other entities organised under US law, including their foreign branches, as well as US branches and US subsidiaries of non-US companies.
10. As of 9 October 2012, the ITSR restrictions applicable to US persons were extended to entities incorporated outside the United States that are ultimately owned or controlled by US persons or US companies. For purposes of the ITSR, a non-US entity is owned or controlled by a US person if the US person:
  - a. holds a 50 per cent or greater equity interest by vote or value in the entity;
  - b. holds a majority of the seats on the board of directors of the entity; or
  - c. otherwise controls the actions, policies, and personnel decisions of the entity.

11. Consequently, foreign-incorporated subsidiaries of US companies and 50/50 joint ventures outside the United States became fully subject to the broad ITSR restrictions that apply to US persons.
12. In addition to restricting activities within the United States or by US persons, the primary sanctions under the ITSR also restrict activities of non-US persons/entities when:
  - a. goods, software or technology subject to US law are involved;
  - b. US persons are involved in approving or facilitating the transaction; or
  - c. US dollar funds transfers need to clear through the US financial system.
13. As a result, non-US entities engaging in Iran-related transactions that involve, for example, US-origin goods or US dollar transfers that will clear through the US financial system (even if the originating and receiving banks are non-US banks) could expose themselves to possible violations of US sanctions regulations.
14. **What are Secondary US Sanctions?** Historically, there have been limited extra-territorial sanctions targeting certain investments by non-US persons involving the Iranian oil and gas sector. Since July 2010, however, both US Congress and the Obama administration promulgated broad restrictions that specifically target a wider range of Iran-related activities by non-US persons involving sectors beyond oil and gas. These so-called "secondary" US sanctions target the activities of non-US persons even when the underlying activity has no US nexus.
15. Essentially, even if no US persons, US dollars, or US goods/software/technology are involved, a non-US person that engages in a sanctionable activity involving Iran could face exposure under secondary US sanctions. This was a new policy approach for the US government, which effectively requires non-US persons to abandon a range of commercial activities with or in Iran unless they want to face possible restrictions on their ability to do business in or with the United States, or their ability to use US currency or access US financial and capital markets, among other restrictions.
16. Secondary sanctions are not limited to non-US financial institutions, and not all of these sanctions are industry specific. For example, sanctionable activities include the provision of significant financial or other support to Iranian persons or entities designated as Specially Designated Nationals ("SDNs"), even if they are not part of targeted sectors. Similarly, non-US persons who facilitate transactions likely to lead to human rights abuses or censorship in Iran, or who facilitate deceptive transactions on behalf of the Iranian government could also face exposure. In addition, secondary sanctions do target activities in the oil, gas and petrochemical industries as well as companies in the shipping and shipbuilding sectors and those providing goods or services for the Iranian automotive industry. Moreover, these sanctions can adversely affect non-US financial institutions and

(re)insurers, as well as those who are engage in the transfers of precious metals and certain other materials to/from Iran.

17. Non-US persons also could face exposure under US law if they cause US persons to violate sanctions. OFAC has recently published a list of Foreign Sanctions Evaders ("FSEs") who are targeted under US law, and that list is maintained separately from the SDN list. FSEs are not subject to the same asset freeze requirements that apply to the property interests of SDNs that are in the United States or within the possession or control of a US person.
18. If the US government determines that a non-US person has engaged in a sanctionable activity, at least five restrictive measures would now have to be imposed against such non-US person. Those measures range significantly in severity and could include:
  - a. Denial of Ex-Im Bank guarantees, insurance or credit;
  - b. Denial of US export or re-export licenses;
  - c. Prohibition on US government procurement;
  - d. Denial of visas and entry into the United States for senior officers or principal shareholders of the sanctioned entity;
  - e. Prohibition on US financial institutions making loans over \$10 million to the sanctioned entity;
  - f. Prohibition on accessing the US financial system or using US dollars as payment currency to clear funds transfers;
  - g. Blocking (asset freezing) of all property and interests in property that are in the United States or within the possession or control of a US person;
  - h. Prohibition on imports into the United States from the sanctioned person;
  - i. A non-US financial institution could face restrictions on the ability to maintain US correspondent/payable through accounts, effectively cutting it off from access to the US financial system.
- 19.

Depending on the specific secondary sanctions at issue, they are either enforced by OFAC or by the US State Department. To date, the US government has imposed restrictive measures against several entities found to have engaged in sanctionable activities so the enforcement of secondary US sanctions has not been lax. The US government has continued to indicate its willingness to enforce these sanctions vigorously.

20. **What Other Considerations Apply Under US Law?** Pursuant to s.219 of the ITRA, certain Iran- and SDN-related activities must be disclosed by "issuers" required to file annual and quarterly reports with the US Securities and Exchange Commission (SEC). This mandatory disclosure is not limited to US companies and applies to non-US companies that are SEC issuers required to file annual/quarterly reports.
21. The disclosure applies not only to the activities of the issuer but also of its "affiliates" (as that term is broadly interpreted by the SEC). This obligation became effective for reports due to the SEC on or after 6 February 2013. To date, more than 550 disclosures were made in SEC reports filed by US and non-US issuers.
22. Although not all Iran-related activities are subject to the mandatory reporting obligation, the reporting triggers are complex and are not limited only to Iran. For example, certain SDNs could trigger the reporting obligation even if they are not designated under the Iran sanctions, and even if there is a specific OFAC licence to engage in the activity with such SDN. Careful analysis is required to determine whether a specific activity is reportable even if it may not be prohibited by primary or secondary US sanctions against Iran.

## Key Acts

Iran Sanctions Act of 1996, as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA)

Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA)

Iran Freedom and Counter-Proliferation Act of 2012 (IFCA)

International Emergency Economic Powers Act (IEEPA)

Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA)

National Emergencies Act

## Key Subordinate Legislation

Iranian Transactions and Sanctions Regulations

Iranian Financial Sanctions Regulations

Iranian Human Rights Abuses Sanctions Regulations

### **Key Quasi-legislation**

Joint Guidance issued by US Treasury and US State Departments relating to the temporary easing of certain US sanctions.

### **Key European Union Legislation**

Not applicable.

### **Key Cases**

None.

### **Key Texts**

None.

### **Analysis**

#### **KEY AREAS OF COMPLEXITY OR UNCERTAINTY**

See Overview above.

#### **LATEST DEVELOPMENTS**

**What US sanctions have been eased?**

1. US and EU sanctions appear to have had the intended effect considering that the Iranian government agreed to negotiate a temporary deal in late 2013 that would ease some sanctions for a specific period of time. On 20 January 2014, as part of the Joint Plan of Action, the US and EU have implemented "limited, targeted, temporary and reversible" relief from certain sanctions measures in return for Iran's agreement to commence the winding down of certain aspects of its nuclear programme.
2. This limited easing is valid for a six-month period only, until 20 July 2014, and if there is no comprehensive agreement with Iran by that time, those EU and US sanctions that have been temporarily suspended will come back into force. This article focuses on the easing of US sanctions. (See Hogan Lovells article on the [Limited easing of certain Iran sanctions](#) for details of EU sanctions.)
3. In light of the scope of the easing implemented by the US government, this development has a different impact on US companies (and their non-US subsidiaries) compared to non-US companies that are not ultimately owned or controlled by US persons/entities.
4. In summary, there is no real impact on US companies and any non-US entities owned or controlled by them (including non-US subsidiaries and 50/50 joint ventures) because they remain subject to the full scope of primary US sanctions that prohibit virtually all dealings with Iran and those sanctions remain fully in force. Essentially, the primary US sanctions have NOT been suspended at all.
  - a. The only exception relates to the ability of US companies (or non-US entities owned or controlled by US persons) to obtain specific licenses from OFAC for the provision of certain safety-of-flight services and/or parts/components for certain Iranian commercial passenger aircraft.
5. Non-US companies (which are not ultimately owned or controlled by US persons or US entities) can benefit from the limited temporary easing of certain secondary US sanctions, which will not prohibit certain exports of petrochemicals from Iran, activities involving sales of gold/precious metals to/from Iran, sales for the Iranian auto sector, and certain exports of Iranian crude oil to six eligible countries during the six-month period.
  - a. With some limited exceptions, none of those activities can involve Iranian persons or entities who are SDNs.
6. Mandatory reporting to the SEC by companies filing annual/quarterly reports has to be assessed in more detail because a number of Iran-related activities could still trigger SEC reporting obligations even if they are covered by the temporary easing.

**What is the practical impact of easing on US companies and non-US entities owned or controlled by US persons/entities?**

1. Despite enthusiasm in the press and apparent desire of Iranians to re-engage with US businesses, the practical impact is very limited. As noted above, the temporary easing on the US side does not provide any relief for US companies or non-US companies that are ultimately owned or controlled by US persons (including foreign subsidiaries of US companies) because none of the primary US sanctions are subject to the suspension. OFAC's broad sanctions continue to restrict the ability of US companies, their foreign subsidiaries and joint ventures, and US citizens or US permanent residents (green card holders), even if they are living and working outside the United States, from engaging in virtually all activities with or involving Iran or Iranian-origin goods or services.
  
2. The only exception relates to possible licensing by OFAC of certain activities related to the safety of civil aviation in Iran, including by passenger aircraft owned or operated by Iran Air. Specifically, a licence could be obtained from OFAC for:
  - a. services related to the inspection of commercial aircraft and parts in Iran or a third country;
  
  - b. services related to the repair or servicing of commercial aircraft in Iran or a third country; and/or
  
  - c. shipment of goods or technology, including spare parts, to Iran or a third country.
  
3. Although transactions involving Iran Air can be licensed, other Iranian airlines designated as SDNs are not covered by this favourable licensing policy. Even if OFAC issues a specific licence to a particular company for such safety-of-flight repairs, such licence will expire on 20 July 2014, and all activities undertaken pursuant to a licence must be completed by that time.
  
4. For companies that are engaged in the authorised sales of food, medicine, or medical devices to Iran, the joint guidance indicates that US/EU and Iran are in the process of establishing mechanisms to further facilitate the purchase of, and payment for, such humanitarian transactions.
  - a. Although the guidance does not specify the exact mechanisms nor does it identify foreign banks that will process such transactions, it indicates that OFAC will directly contact foreign banks who will be hosting these new mechanisms and will provide such banks with specific guidance.
  
  - b. The US government has clarified that this new mechanism is not the exclusive way to finance or facilitate such authorised sales, and companies may continue to rely on pre-existing exceptions to process such transactions for the sale of food, medicine, or medical devices.



**What is the practical impact of easing on non-US companies (those not owned or controlled by US persons/entities)?**

1. Because virtually all of the areas involving limited temporary easing relate to secondary US sanctions that target non-US companies (i.e., those that are not owned or controlled by US persons/entities), such companies may benefit from this limited relief only for specified activities that have no US nexus (i.e. when the activity does not involve US persons/entities, US currency, or items/software/technology subject to US law). If an activity has a US nexus, the primary US sanctions under the ITSR would apply and would continue to restrict the ability of non-US persons to engage in such activities, as explained above.
2. Most of the secondary sanctions that the US has imposed against non-US companies since July 2010 still remain in place, and the suspension only applies to the activities set out below. In general, secondary US sanctions continue to restrict non-US companies from dealing with Iranian SDNs even if the activity is otherwise covered by a temporary suspension.
3. Specifically, the temporary easing of secondary US sanctions effectively involves a suspension of the prohibition on:
  - a. the export of petrochemical products from Iran when no SDN is involved, other than certain petrochemical companies identified in the Annex to the US guidance (this measure does not authorise the provision of petrochemical products to Iran);
  - b. the sale or transfer to Iran of goods or services used in connection with the Iranian automotive sector, provided that the transaction does not involve any SDNs (other than certain Iranian banks) and that the goods at issue are not subject to US law due to their origin or level of US content;
  - c. the sale of gold and other precious metals to or from Iran, provided that the transaction does not involve any SDNs other than agencies or instrumentalities of the Iranian government designated only because they are owned or controlled by the government and certain Iranian banks;
  - d. the provision of certain services and parts to ensure the safe operation of Iranian commercial passenger aircraft (if a non-US company needs spare parts or technology subject to US law in order to provide these safety-of-flight services, such activities would require a specific licence from OFAC);
  - e. the export of Iranian crude oil to China, India, Japan, Republic of Korea, Taiwan, and Turkey, provided that the transaction does not involve any SDNs other than the National Iranian Oil Company (NIOC) or the National Iranian Tanker Company (NITC), or certain Iranian banks; and
  - f.

the provision of "associated services" that are ordinarily incident to the underlying activities eligible for the temporary easing (such necessary services include insurance, transportation or financial services).

4. The entirety of a transaction has to be completed during the suspension period (including any deliveries, payments, etc.). The US government has advised that there will be no "grandfathering" of activities that start during the suspension but that are not completed by the time the suspension ends.

#### **What about the SEC reporting obligation?**

1. Companies that are required to file annual/quarterly reports with the SEC have to separately analyse the mandatory disclosure obligations under s.219 of ITRA, which added s.13(r) to the Securities and Exchange Act of 1934. A number of the activities eligible for temporary easing described above may still require reporting to the SEC under one or more of the reporting triggers in s.13(r)(A)-(D), including (D)(i)-(iii).
2. The SEC has not yet expressed a view whether it will consider this temporary lifting pursuant to the Joint Guidance (and the associated waivers identified in the guidance) as a "specific authorisation" from a federal agency for purposes of the carve-out from reporting set forth in s.13(r)(D)(iii) for activities that involve an entity owned or controlled by the Iranian government. That reporting carve-out does not apply to all of the reporting triggers under s.13(r).
3. Any activities that involve SDNs designated for weapons proliferation or global terrorism reasons would be reportable as those are not subject to the same reporting carve-out in s.13(r)(D)(iii). For example, safety-of-flight services provided to Iran Air pursuant to a specific OFAC licence may still be reportable under s.13(r)(D)(ii). Non-US companies should carefully assess their SEC disclosure obligations if an activity is eligible for suspension.

#### **POSSIBLE FUTURE DEVELOPMENTS**

The suspension of the sanctions is due to end on 20 July 2014, unless there is a comprehensive agreement in place with Iran by that time.

#### **HUMAN RIGHTS**

None.

#### **EUROPEAN UNION ASPECTS**

Not applicable.

## **Further Reading**

None.

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