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Iran Sanctions Deal Does Not Alleviate Current U.S. Economic Sanctions: "Iran Is Not Open for Business"

U.S. sanctions involving Iran have been a forefront topic recently, with some continuing confusion as to the current state of the sanctions' provisions for most U.S. businesses. On January 20, 2014, the P5 + 1 Agreement (or "Interim Deal") took effect reflecting the six-month interim sanctions deal with Iran that was negotiated in November by a U.S.-led coalition of states. For now, however, the U.S. Government has emphasized that the P5 + 1 Agreement has little impact on trade restrictions currently limiting U.S. trade and investment with Iran.

Published Joint Guidance Confirms U.S. Sanctions Currently Remain

To clarify this position, the U.S. Departments of State and Treasury released **joint guidance** on January 20, noting that, *but for extremely limited exceptions*, no sanctions relief would impact U.S. businesses or foreign companies controlled by U.S. persons. That is, U.S. economic sanctions remain in place, as well as subsidiary liability, Securities and Exchange Commission (SEC) reporting requirements, and all "blocks" on persons and entities on the Specially Designated Nationals (SDN) list. Importantly, the Obama Administration fully intends to continue to enforce Iranian sanctions during the interim period. Indeed, the relief has been described as "limited, targeted and reversible."

Moreover, limited changes temporarily easing restrictions on *non-U.S. persons* with respect to certain defined sectors will not go into effect until such time as they are implemented by the U.S., UK, France, China, Russia, and Germany. In the United States, this will occur via Executive Order of the President and action by the U.S. Department of the Treasury's Office of Foreign Asset Control (OFAC). And, as it is "interim," the deal will be revisited in six months, either to renew it, or to reach a revised final agreement. As such, the changes may be nullified shortly after U.S. implementation gives them effect.

Understanding the Interim Deal

The Interim Deal represents the first time in a decade that Iran has agreed to halt, and in some cases "roll back," aspects of its nuclear program as outlined in a Joint Plan of Action (JPOA) between Iran and the P5 + 1. For instance, Iran agreed to restrict uranium enrichment and address existing stockpiles and inspections, while the P5 + 1 agreed to limited changes to U.S. and EU sanctions programs and to unfreeze certain assets. The P5 + 1 also agreed to maintain current levels of permissible oil transactions and certain insurance and shipping services to facilitate those oil exports. It is contemplated that limited funds from these exports will assist the Iranian government in fulfilling its obligations to reduce its nuclear program, while the rest of the funds will continue to be held in blocked accounts.

Other changes to be implemented by the negotiating states include authorizing transactions by actors impacted by so-called "secondary sanctions," including transactions:

- To provide and service spare parts for civil aviation in order to improve flight safety of Iranian airlines including Iran Air;
- For precious metals including gold;
- Concerning the auto industry; and
- To establish financial channels for certain foreign banks and Iranian banks not specially designated.

With the exception of temporary licensing permitted for civil aviation activities and a "financial channel" to facilitate humanitarian trade, none of the sanctions relief outlined may involve a U.S. person or a foreign entity owned or controlled by a U.S. person, if otherwise prohibited under *any* sanctions program administered by the U.S. Government.

Current exceptions for humanitarian trade of food, agriculture, and medicine will remain, and permit related funds to accrue to Iran to pay United Nations' debts and university tuition for Iranian students abroad.

Recent U.S. Government Testimony Reaffirms that "Iran Is not Open for Business"

If the joint guidance left any uncertainty as to the U.S. position, it was clarified in the testimony of Under Secretary of State for Political Affairs, Wendy R. Sherman, and Under Secretary of Treasury for Terrorism and Financial Intelligence, David S. Cohen, before the Senate Foreign Relations Committee on February 4.

As lead U.S. negotiator for the Interim Deal, Under Secretary Sherman made abundantly clear that, if ongoing negotiations failed to result in a "long-term" deal addressing international concerns over the Iran nuclear program, then the Administration would ask Congress for additional sanctions against Iran. At this point, however, she noted that these would not be passed over the next few months while talks with Iran continue, as such requests would undermine ongoing diplomatic efforts, consistent with President Obama's vow to veto any legislation proposing new sanctions on Iran in his State of the Union address.

Under Secretary Cohen also testified that over the past several weeks, Administration officials have met with foreign banks, businesses, and trade promotion authorities to "explain the limits" in scope and duration of the sanctions relief. He noted that the message to be delivered was that "Iran is not open for business." In reference to his personal meetings with businesses in Turkey, Germany, Italy, and the United Arab Emirates, he emphasized that "anyone doing business with Iran continues to incur significant reputational risk."

Several U.S. Senators raised questions about reports of European business delegations engaging in meetings in Tehran, to which Obama Administration officials have responded that they understood these visits were meant to position the companies for work in the future. Reportedly, U.S. Secretary of State John Kerry took note of such actions, admonishing French Foreign Minister Laurent Fabius that the "business delegation" of more than 100 French executives who traveled to Iran on Monday was "not helpful" and gave the wrong impression that the West could now engage in business as usual in Iran.

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Given the limited and temporary nature of the P5 + 1 Agreement, it is critical for U.S. exporters to be mindful that U.S. sanctions, subsidiary liability, Securities and Exchange Commission (SEC) reporting requirements, and the Specially Designated Nationals (SDN) list remain in place. The Administration has publicly stated that it will continue to vigorously enforce Iranian sanctions during the Interim Deal period. Given the fluid nature of the negotiations, careful monitoring of international and domestic developments is a crucial component of compliance for U.S. companies and U.S.-controlled foreign entities.

If you have any questions about the P5 + 1 Agreement, please contact a member of Venable's **International Trade and Customs Group** or one of the authors of this alert.