

Iran Sanctions and the Iran Nuclear Agreement

OCTOBER 21, 2015

Overview

On October 18, the United States and European Union formally adopted an agreement with Iran and several other countries that will affect U.S. and non-U.S. businesses in markedly different ways. The Iran Nuclear Agreement, if and when it enters into force, will lift sanctions imposed by the United Nations and European Union in 2006 when Iran refused to suspend its nuclear enrichment program. It also will end the extraordinary *nuclear-related* U.S. sanctions that threatened “blacklisting” and other punitive measures in order to deter international banks from handling currency transfers and transactions with Iran, discourage international dealings with Iran in shipping and insurance, and stifle global investment in Iran’s most important economic sectors (oil, gas, petrochemical, and automotive). Together with EU sanctions, these “secondary” sanctions put pressure on Iran to enter into a binding nuclear agreement and were suspended in July 2015 as part of the diplomatic negotiations.

Contrary to popular belief, the Iran Nuclear Agreement will have little impact on U.S. businesses, including their overseas branches and controlled foreign subsidiaries—they will remain subject to the broad and long-standing U.S. embargo against Iran. Non-U.S. persons will have fewer restrictions. This disparity has the potential to lead to difficult compliance issues for U.S. persons¹ that invest in non-U.S. markets, or otherwise engage in international transactions that have a nexus with Iran.

The timing of the actual lifting of nuclear-related sanctions is keyed to Iran passing its first International Atomic Energy Agency (IAEA) inspection and demonstrating compliance with certain other provisions of the agreement. It is not clear when this will happen, but experts have estimated it will not be before April 2016. Many non-U.S. companies are not waiting for that to occur and are flocking to Iran to negotiate new or contingent deals. U.S. companies, however, are barred from following suit. Managing the risks of U.S. investors in a global market that is able and eager to do business with Iran, will be of prime importance.

What Sanctions will Remain in Place?

United States

- U.S. persons will continue to be prohibited from importing Iranian-origin goods or services, or exporting U.S. goods, technology, and services to Iran and Iranian persons in any business sector, with limited exceptions for food, medicines and medical devices, and humanitarian contributions, which may be permitted by a license issued by the U.S. Office of Foreign Assets Control.
- U.S. persons will continue to be prohibited from investing in Iran and property held by the Government of Iran.
- Sanctions prohibiting financial, material, or technological support for “Specially Designated Nationals” relating to terrorism and human rights abuses also will remain in place. These sanctions include entities that are majority owned or controlled by Specially Designated Nationals.
- U.S. persons will continue to be prohibited from facilitating non-U.S. persons to engage in transactions that remain prohibited for U.S. persons. Facilitation is not specifically defined but includes providing financing, technical or other support, guarantees, or even business advice.
- A “U.S. person” includes any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States. The restrictions on action by U.S. persons generally also apply to action by entities incorporated outside of the United States that are majority-owned or controlled by a U.S. person.

European Union

Once the agreement takes effect, the only EU sanctions that will remain in place against Iran involve financial sanctions relating to terrorist activities and “Designated Persons.” For a list of “Designated Persons” see http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm. The European Union has agreed to continue to freeze assets in EU countries of active terrorists in Iran and their known supporters.

What Sanctions will be Lifted as a Result of the Iran Nuclear Deal?

The United States and European Union currently maintain far-reaching nuclear-related sanctions that have severely restricted the ability of persons throughout the world to engage in transactions with Iranian persons. Once the sanctions are lifted as called for in the agreement, *non-U.S. persons* will be able to:

- Engage in financial and banking transactions with Iranian banks and financial institutions (including the opening and maintenance of correspondent and payable through-accounts at non-U.S. financial institutions, investments, foreign exchange transactions, and letters of credit);
- Engage in transactions in Iranian currency, the rial;
- Provide financial messaging services (i.e. SWIFT) to the Central Bank of Iran and Iranian financial institutions;
- Provide underwriting services, insurance, or reinsurance to Iranian banks and financial institutions;
- Invest in Iran’s oil, gas, and petrochemical sectors;
- Purchase petrochemical products and natural gas from Iran;
- Export, sell, or provide refined petroleum products and petrochemical products to Iran;
- Trade in gold and other precious metals with Iran;
- Sell, supply, or transfer goods and services used in connection with Iran’s automotive sector.

Compliance

This future disparity in treatment among various jurisdictions has the potential to lead to compliance issues for U.S. persons that conduct business or otherwise engage in transactions with non-U.S. persons or invest in non-U.S. markets.

For example:

- Making a loan to a foreign company whose business primarily involves trading with Iran might be deemed “facilitation” by a U.S. lender. To avoid such result, lenders will need to complete know-your-customer due diligence on borrowers.
- A security traded on a non-US market may be issued by a company that is covered by US sanctions but not by EU sanctions. If so, that security may be off limits to U.S. domiciled investment managers (regardless of the nature of its client).
- Similarly, such security may also be off limits to the U.S. (but not other) clients of non-U.S. investment managers.
- Derivatives, swaps, and other financial instruments based on Iranian company securities may be off limits to U.S. investors.
- U.S. persons working abroad for foreign companies may not assist the foreign business in investments in, or trade with, Iran.

There are substantial hurdles to cross and significant milestones to reach before the nuclear-related sanctions against Iran are lifted. Nevertheless, it is best to anticipate and plan for the compliance complications before these changes to the Iranian sanctions go into effect.

¹ For purposes of Iran sanctions, “U.S. Person” includes citizens and permanent residents, U.S. companies and their overseas branches, majority-owned or controlled foreign subsidiaries, and non-U.S. persons physically present in the United States.

4 Min Read

Related Locations

Charlotte

Chicago

Houston

Los Angeles

New York

San Francisco

Silicon Valley

Washington, DC

Related Capabilities

International Trade

Transactions

Financial Services Transactions & Regulatory

Financial Services Litigation

Mergers & Acquisitions

Private Equity

Litigation/Trials

Related Regions

North America

Related Professionals



Basil Godellas