

# US Implements the P5+1 Joint Plan of Action with Iran

January 23, 2014

On Monday, January 20, the US Department of the Treasury ("Treasury") released much-anticipated guidance on its implementation of the Joint Plan of Action ("JPA") agreed to by the US, UK, France, China, Russia, and Germany (collectively the "P5 + 1") and Iran on November 24, 2013.

This guidance follows the White House release of a summary of the technical components of the JPA on January 16, 2014, as well as the release of some details of the steps that the European Union has taken to implement the JPA. The Treasury release includes several components: (i) a Guidance document on "Certain Temporary Sanctions Relief"; (ii) a Statement of Licensing Policy with respect to civil aviation; and (iii) a set of answers to "Frequently Asked Questions" about the sanctions relief.

Together, the Treasury Guidance and related materials offer meaningful detail about the terms of the JPA - but also raise the potential for challenging compliance issues. As described below, the JPA is limited to its terms and contingent upon Iran's compliance with international obligations: as such, the JPA can be suspended or reversed without advance notice. Moreover, because the P5+1 countries (as well as the EU) each have to implement the JPA through their own legal systems, there is a significant potential for inconsistent regulations across key jurisdictions. Within this framework, implementation of the JPA is likely to have significant commercial consequences for global firms in the agriculture, energy, financial services, life sciences and pharmaceutical sectors, including those with interests in the Middle East.

## Key Aspects of the JPA

### Relief Is For Non-US Persons

The JPA provides relief to foreign persons—not US persons. The JPA does not authorize general commercial trade between the US and Iran. Nor does it authorize US Persons<sup>1</sup>, or any foreign entity owned or controlled by a US Person, to trade with Iran - with the exception of certain commercial passenger airline transactions, and the limited types of transactions that were already permitted under US law.

### Blacklisted Parties Remain Blacklisted - Mostly

The JPA does not authorize any transactions with individuals or entities on the Treasury Department's list of Specially Designated Nationals and Blocked Persons ("SDNs"), other than certain exceptions in the context of crude oil sales and civil aviation.

### Major Sanctions Architecture Remains

The JPA does not eliminate the banking/energy sanctions under the Comprehensive Iran Sanctions, Accountability

and Divestment Act (CISADA), as amended, or reconnect Iranian financial institutions to the SWIFT system.

## JPA is Temporary and Conditional

The JPA is limited in duration to six months, from January 20, 2014 until July 20, 2014, with provisions for renewal by mutual agreement of the parties. However, the JPA is also reversible without advance notice; and does not provide a safe harbor for pre-January 20, 2014 conduct that would violate restrictions but-for the JPA. Moreover, the JPA may not be used to "grandfather" conduct beyond the 6-month period: transactions in reliance on the JPA must conclude within the six-month window.

## Context for the Guidance

Since the JPA was announced in late November, there has been significant debate and discussion between the P5+1 and Iran about its implementation, including the timeline, scope and specific terms of sanctions relief. Over the last two months, Iran and the US have publicly disputed the content of the JPA, while many in the US Congress have advocated for the imposition of a new round of sanctions against Iran.

The JPA is an "interim" agreement that is intended to create a framework for negotiations between the P5+1 and Iran on a final, comprehensive settlement of the nuclear issue. By its terms, the JPA is limited, reversible, and expressly conditioned upon Iran's continued compliance with its international commitments. The JPA is only valid for a period of six months—from January 20, 2014 until July 20, 2014—unless extended by mutual agreement of the parties

Notwithstanding the relief provided by the JPA, Treasury has made clear that it reserves the right to investigate and penalize sanctionable conduct that occurred prior to January 20, 2014; "activities ... materially inconsistent with sanctions relief ... outlined in this [JPA] guidance"; and activities that violate US sanctions other than those for nuclear non-proliferation, "such as those used to combat terrorism and the proliferation of weapons of mass destruction."

## Banking and Insurance

The banking and insurance sectors are central components to virtually all of the relief provided by the JPA. The JPA authorizes certain types of transactions as well as their "associated services" - a term that the Guidance defines to mean "any necessary service - including insurance, transportation or financial service - ordinarily incident to the underlying activity" authorized by the JPA. Accordingly, the JPA permits banking, insurance and reinsurance services to be provided alongside newly authorized transactions.

In addition, the JPA creates a new "financial channel" to facilitate increased humanitarian trade with Iran. It is anticipated that this new financial channel is linked to the approved release of \$4.2 billion in Iranian funds currently frozen outside of Iran. These "Restricted Funds" will be released in tranches over the next six months, contingent on Iran's continued fulfillment of commitments under the JPA, and include "existing and future revenues" from petroleum sales and a range of funds from the Central Bank of Iran.

While the Guidance and Frequently Asked Questions provide some detail related to these new banking channels, specific guidance has not yet been issued. Indeed, the Guidance and supporting documents make clear that Treasury will only authorize financial institutions to participate in these channels on an institution-by-institution basis, and only with advance notice in writing from Treasury. Nevertheless, the Guidance documents also note that humanitarian transactions "are not required to be processed through this new mechanism," thus creating the potential for compliance challenges as financial institutions confront questions as to the provenance of funds and the framework for obtaining regulatory authorization.

# Exports of Iranian Crude

The US Government committed under the JPA to "pause efforts to further reduce Iran's crude oil sales," and to take such actions as may be necessary to effectuate existing sales. This means that the US will not require jurisdictions that currently import Iranian crude—China, India, Japan, South Korea, Taiwan, and Turkey—to make further reductions in their Iranian imports from their current average levels. This also means that, during the effective period of the JPA, insurance and shipping services associated with Iran's crude sales to these countries will be permitted.

Notably, this relief from crude oil sanctions applies only to China, India, Japan, South Korea, Taiwan and Turkey—and only to the maintenance of their current average level of crude oil imports from Iran. The JPA does not allow for increased sales, nor does it allow for sales to new markets. Additionally, the JPA has no effect on other US sanctions against Iran's energy sector, including sanctions on investments or the provision of goods and services.

The crude export relief expressly extends to transactions with both the National Iranian Oil Company (NIOC) and National Iranian Tanker Company (NITC), two entities that are otherwise subject to strict US sanctions, as well to any Iranian financial institution listed as a SDN solely as a result of its involvement in Iranian crude oil sales.

In order to provide this relief, the US Government has suspended the following provisions with respect to sales of crude to China, India, Japan, South Korea, Taiwan and Turkey for the six-month period encompassed by the JPA:

- Section 1245(d)(1) sanctions imposed under the National Defense Authorization Act (NDAA) for Fiscal Year 2012;
- Section 302(a) of the Iran Threat Reduction and Syria Human Rights Act (TRA) with respect to transactions involving NIOC;
- Section 5(A)(7) of the Iran Sanctions Act (ISA) as respects NIOC and NITC; and
- A series of provisions under the Iran Freedom and Counter-proliferation Act (IFCA) related to provision of financial services and other associated services, and specific sanctions penalties.

## Petrochemicals

The JPA authorizes non-US/foreign persons to trade in certain Iranian-origin petrochemical products as well as provide "associated services" (e.g., transportation, banking, and insurance) for such transactions. Importantly, this sanctions relief does not extend to finished products, including "pipes, plastic bags, tires, and solvents," and transactions may only be conducted with a specific set of companies that are named in the Annex to the JPA Guidance.

## Auto Industry

During the six-month period of the JPA, non-US persons may engage in the "sale, supply, or transfer to Iran" of goods related to Iran's production of a wide range of vehicles, including passenger cars, light and heavy duty trucks, buses, and motorcycles. Both original parts and after-market equipment are included in the relief, as well as the associated services with such sales—again, subject to the general limitation that no transactions with SDNs may occur unless otherwise excepted. This relief for Iran's auto industry has particular relevance for European auto manufacturers, many of whom had relationships with Iran that were curtailed by changes made to tighten the US and EU sanctions regime over the last 18 months. The US Government estimates that auto industry relief is worth up to \$500 million to Iran over the six months of the JPA, though outside experts believe it could be worth up to \$2.5 billion or more during

that period.

## Gold and Precious Metals

The JPA provides temporary relief from certain sanctions that prohibited Iran from trading in gold and other precious metals. The JPA permits such trade, provided that any transactions must be concluded within the JPA period, and that no SDN may be involved - with the exception of certain Iranian financial institutions and Government of Iran entities that are designated only because of their connection to the Government of Iran. Additionally, to guard against the risk of trade-based money laundering, the JPA Guidance, by its terms, prohibits Iran from using its Restricted Funds to purchase gold or other precious metals, even if such transactions would otherwise qualify as permissible bilateral trade.

## Commercial Passenger Aviation

As part of the Guidance, the US issued a new Statement of Licensing Policy regarding commercial passenger aviation. This document establishes a favorable licensing regime for the sale and installation of spare parts, and the provision of inspection services, to ensure the safe operation of Iranian commercial passenger aircraft, including transactions involving Iran Air. Unlike other aspects of the Guidance, the civil aviation sanctions relief covers both US and non-US persons, and provides a licensing pathway for entities involved in civil aviation to seek approval from the Office of Foreign Assets Control (OFAC) for transactions in this sector.

Importantly, while Iran Air is expressly covered by the new licensing authority, all other Iranian airlines that are listed as SDNs remain subject to restrictions and sanctions. In order to obtain a license for sales or services, including associated services, applicants must provide:

- Complete details on the transactions, including all parties encompassed by the license request;
- Export license information, including Export Control Classification Number (ECCN) details for US-origin goods and technology; and
- Information sufficient to demonstrate that the proposed transactions have a nexus to aviation safety, as opposed to other purposes.

## Conclusions

The JPA and the Guidance have opened the door to a resumption of certain types of trade with Iran that, but for the JPA, would be sanctionable under US law. However, the relief provided by the JPA is limited in scope and duration, and raises several challenging compliance issues.

As noted herein, relief under the JPA is contingent upon Iran's continued adherence to the JPA's terms. This means that active monitoring of the Iran sanctions policy landscape, and the progress of negotiations between the P5+1 and Iran on a "final" deal, is critical. Any deviation from the JPA's terms could result in a cancellation or suspension of the JPA in whole or in part, potentially without any advance notice. Similarly, the breakdown of negotiations on a "final deal" or the lapse of the JPA's six-month effective period could also result in the re-imposition of sanctions otherwise suspended by the JPA.

While the sanctions policy climate is likely to remain uncertain, US regulators have already signaled their intent to vigorously enforce the sanctions that are unaffected by the JPA—as well as to aggressively police any transactions

that occur in reliance on the JPA relief measures. Preventing the collapse of the international framework of Iran sanctions is a key policy priority of the US Government. Continued aggressive enforcement is also a central component of efforts by the US Administration to encourage the US Congress to defer action on a new legislative expansion of Iran sanctions.

Moreover, the JPA implementation announcements occur in a global context, raising the potential of inconsistent regulations. For example, the European Union and its member states are also implementing the JPA sanctions relief in their home markets and under their own laws, a process that has already suggested there may be gaps between US and EU provisions. This is especially true in the banking sector, where portions of the JPA remain to be implemented by the US, and where the new humanitarian channel and release of Restricted Funds require specific guidance from Treasury. Additionally, outside of the US and the EU, there are other countries, such as Canada, that maintain sanctions against Iran that, as a result of the JPA, might no longer be consistent with the international architecture of restrictions.

Even setting aside concerns about sanctions, commercial trade with Iran remains a sensitive matter—from both a legal and a reputational perspective—requiring heightened diligence, particularly with respect to counter-parties and the prevailing need to "know your customer."

1. Under the relevant regulations, a "US Person" means "means 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." See 31 CFR 560.314. All other such persons are non-US/foreign persons.

## Your Key Contacts



**Michael E. Zolandz**

Office Managing Partner,  
Washington, DC

D +1 202 408 9204

M +1 202 441 3901

[michael.zolandz@dentons.com](mailto:michael.zolandz@dentons.com)



**Peter G. Feldman**

Partner, Washington, DC

D +1 202 408 9226

[peter.feldman@dentons.com](mailto:peter.feldman@dentons.com)