



Iran Sanctions Relief after "Implementation Day"



Perry Bechky

Principal, ITI Law

Visiting Scholar, Seattle University School
of Law

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Introductory Caveat

- ▣ Focuses on US sanctions, not on UN, EU, or other countries
- ▣ General overview of the topic, not legal advice
- ▣ Anyone doing (or contemplating) business in Iran should hire an experienced sanctions lawyer to provide you specific legal advice
- ▣ You should closely monitor legal and political developments



Oversimplified History of US Sanctions

- ▣ Iranian Assets Control Regulations, 1979-1981
- ▣ Iranian Transactions & Sanctions Regulations, since 1995
 - ▣ OFAC
 - ▣ IEEPA
 - ▣ Mainly aimed at US persons (plus foreign subsidiaries since 2012)
- ▣ Iran Sanctions Act, since 1996
 - ▣ Secondary or "extraterritorial"
 - ▣ Original focus on oil industry, since expanded
- ▣ Various laws and executive actions, especially since 2010
 - ▣ Alphabet soup: CISADA, FSE, IFCA, NDAA, TRA, and more

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ITSR Overview

- ▣ The main primary sanctions (with some application outside the US)
- ▣ Prohibits almost all business dealings between US persons and Iran, though there are some exemptions and licenses
- ▣ Targets both persons in Iran and GOI globally
- ▣ Property of GOI and Specially Designated Nationals (SDNs) is blocked
 - ▣ 50% Rule, including Barclay's settlement last week
- ▣ Violations may be punished by criminal or civil penalties

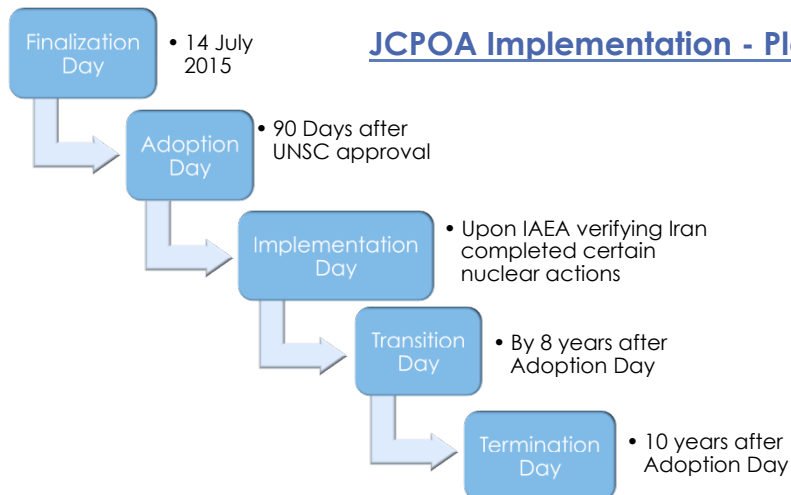
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Joint Comprehensive Plan of Action

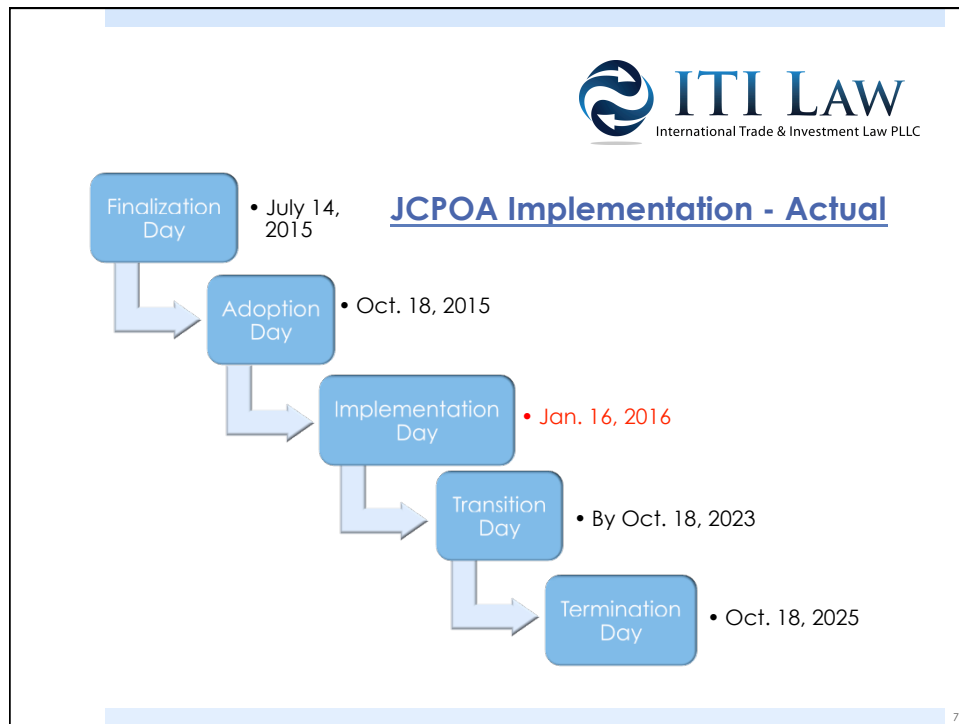
- ▣ **Nuclear commitments for sanctions relief**
- ▣ E3/EU + 3 and Iran
- ▣ Follows provisional agreement of Nov. 24, 2013 (JPOA)
- ▣ Agreed on July 14, 2015
- ▣ Approved by UN Security Council on July 20, 2015
- ▣ Novel and highly detailed (97 pp)
- ▣ Political vs. legal commitment


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JCPOA Implementation - Plan



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Adoption Day

- ▣ Participants to make “necessary arrangements and preparations” for implementation
- ▣ Obama Administration to use its statutory authority to waive certain statutory nuclear-related sanctions – to take effect on Implementation Day
- ▣ President Obama to “take action to direct that all appropriate additional measures be taken” to prepare for sanctions relief on Implementation Day

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Limited Sanctions Relief before Implementation Day

- ▣ Limited sanctions relief had been granted during the nuclear talks (plus the release of \$4.2B). Extended until Implementation Day.
- ▣ Official Guidance: "This ... is the only Iran-related sanctions relief that will be in effect until Implementation Day."
- ▣ US Persons: Civil Aviation Safety + Humanitarian Channel
- ▣ Non-US Persons: Same, plus Temporary suspension of secondary sanctions on certain transactions related to (1) petrochemical exports from Iran, (2) sales to Iran's automotive sector, (3) two-way trade in precious metals, and (4) crude oil exports from Iran.

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Implementation Day in JCPOA

- ▣ US "commits to cease the application of, and to seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, all nuclear-related sanctions[6] as specified in Sections 4.1- 4.9 below, and to terminate Executive Orders 13574, 13590, 13622 and 13645, and Sections 5-7 and 15 of Executive Order 13628, in accordance with Annex V."
- ▣ Limits:
 - ▣ "Seek"
 - ▣ "Nuclear-related sanctions"
 - ▣ FN6: Sanctions affecting US persons (including foreign subsidiaries) will generally continue.
 - ▣ Certain Executive Orders only

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Implementation Day in JCPOA

- ▣ Cease application of most (not all) secondary sanctions – namely, those affecting oil, finance, insurance, shipbuilding, precious metals, and automotive industries
- ▣ Remove about 400 names from OFAC lists
- ▣ Sell commercial passenger aircraft and related parts and services to Iran
- ▣ Import Iranian-origin carpets and foodstuffs, including pistachios and caviar
- ▣ License non-US companies owned or controlled by US persons (subsidiaries) “to engage in activities with Iran that are consistent with this JCPOA”
- ▣ Allow Iranian students in nuclear programs

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Implementation Day, January 16

- ▣ Sec. Kerry confirmed that IAEA verification brought US commitments into effect
- ▣ President Obama issued Executive Order 13716
- ▣ Earlier State Department waivers went into effect
- ▣ OFAC issued General License H re subsidiaries
- ▣ OFAC removed about 400 names from its Lists
- ▣ OFAC issued statement of licensing policy on aircraft exports and general licenses on importing carpets and foodstuffs
- ▣ OFAC and State published guidance

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Near-Simultaneous Actions

- Mutual prisoner release
- US paid Iran \$1.3B to settle an arbitration claim pending since 1981
- OFAC added 11 SDNs for helping Iran's ballistic missile program (Jan. 17)

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Executive Order 13716

- Declares "fundamental shift of circumstances" and revokes 4 executive orders and part of a 5th that had increased sanctions on Iran in 2011-13
- Implements sanctions "outside the scope of the JCPOA":
 - OFAC may block assets of anyone supporting Iran-related SDNs (other than certain banks)
 - State or OFAC may impose a menu of sanctions against anyone engaged in certain activities addressed in IFCA beyond the scope of the waivers
 - Blocks assets of any person OFAC finds to have engaged in corruption or related activities related to diversion of goods intended for Iranian people (plus companies owned or controlled by such persons)

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Waivers

- Announced on Adoption Day, to take effect on Implementation Day
- Statutes allowed such waivers on certification that they are, for example, "vital to the national security of the US"
- Waived specified provisions of IFCA, NDAA 2012, and TRA
- Limited to secondary sanctions, except certain transactions by US persons regarding civil aircraft sales

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Remaining Secondary Sanctions

- On foreign financial institutions for:
 - knowingly facilitating certain "significant financial transaction[s]" with certain SDNs
 - certain dealings in coal, graphite, certain metals, and certain software
- On non-US persons for:
 - supporting the IRGC and its affiliates, agents, and officials
 - certain dealings with SDNs
 - certain dealings in coal, graphite, certain metals, and certain software.

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Foreign Subsidiaries

- ▣ OFAC sanctions routinely apply to foreign branches of US companies, but not to foreign-incorporated subsidiaries
 - ▣ Exception: Cuba sanctions apply to branches & subsidiaries
- ▣ Trend against subsidiaries dealing with Iran
 - ▣ Controversial: "the subsidiary loophole"
 - ▣ OFAC prohibits "approval or facilitation" by US persons
- ▣ TRA of 2012 extended Iran sanctions to subsidiaries, though penalties for violations are paid by the US parent

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General License H

- ▣ Authorizes foreign subsidiaries to do business with Iran
- ▣ But subject to 8 exceptions, including dealings with:
 - ▣ SDNs
 - ▣ FSEs
 - ▣ "Any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate thereof"
- ▣ Authorizes certain conduct by the US parent that would otherwise be prohibited "facilitation"
- ▣ But limits and ambiguities. Legal advice is essential.
- ▣ Remaining secondary sanctions apply to foreign subsidiaries

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OFAC Lists

- OFAC removed about 400 names from its Lists:
 - Specially Designated Nationals (SDN) List
 - Non-SDN Iran Sanctions Act List
 - Foreign Sanctions Evaders (FSE) List
- Removal has limited effect for entities owned or controlled by GOI
 - Created new "13599 List"
- Effect includes "unblocking" Iranian assets
 - Administration estimates "usable" amount of \$56B

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Significance of Ongoing US Sanctions

- Little change to primary US sanctions
- Continuing effects on non-US companies
 - No Iran-related activities in US, by US branches or subsidiaries, or by officers, directors, or employees who are US nationals
 - Continuing prohibition on "approval or facilitation"
 - Includes: No clearing of dollar transactions
 - Remaining secondary sanctions
- Expect continuing need for due diligence, reps & warranties, use of proceeds restrictions, recusal policies, etc.
- Enforcement risks
- SEC disclosures
- State and local sanctions

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Transition & Termination Days

- Transition Day (8 years)
 - "Seek" further legislation to end secondary sanctions
 - Remove more names from the OFAC sanctions lists

- Termination Day (10 years)
 - No further US action called for

- Thus, the primary US sanctions may largely remain in effect past completion of the JCPOA

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Yogi Berra

"It's tough to make predictions, especially about the future."

- Possibly apocryphal or misattributed.
- After all, Yogi is also said to have said, "I really didn't say everything I said."

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Uncertainty

- ▣ Various sources of uncertainty, including:
 - ▣ Iranian compliance → "Snapback" provisions
 - ▣ Congressional resistance
 - ▣ 2016 Elections
 - ▣ Political, diplomatic, and military developments
 - ▣ New sanctions re missile development on Jan. 17
- ▣ Companies must anticipate, manage, and allocate risks
 - ▣ Compliance policies, including anticorruption
 - ▣ Force majeure clauses
 - ▣ Dispute resolution clauses
 - ▣ Political risks

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Glossary 1

- ▣ CISADA – Comprehensive Iran Sanctions and Divestment Act
- ▣ FSE – Foreign Sanctions Evaders
- ▣ IEEPA – International Emergency Economic Powers Act
- ▣ IFCA – Iran Freedom and Counterproliferation Act
- ▣ ISA – Iran Sanctions Act

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Glossary 2

- ITSR – Iranian Transactions and Sanctions Regulations
- JCPOA – Joint Comprehensive Plan of Action
- NDAA – National Defense Authorization Act (2012 and 2013)
- OFAC – Office of Foreign Assets Control
- SDN – Specially Designated National (or Blocked Person)
- TRA – Iran Threat Reduction and Syrian Human Rights Act

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Thank you!

Please do not hesitate to contact me:



Perry Bechky
International Trade & Investment Law PLLC
+1.202.549.5551
pbechky@iti-law.com
http://works.bepress.com/perry_bechky/
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