Implementation of Joint Plan of Action for Containing Iran's Nuclear Program

January 24, 2014

EXECUTIVE SUMMARY

The permanent members of the United Nations Security Council, plus Germany (the "**P5+1**"), announced on January 20 that they are beginning to implement the November 24, 2013 Joint Plan of Action (the "**JPOA**") for containing Iran's nuclear program. Accordingly, the United States Government (the "**USG**") has agreed that non-U.S. persons (other than foreign companies owned or controlled by U.S. persons) that engage in certain transactions initiated and completed between January 20 and July 20, 2014 (the "**JPOA Period**") relating to Iran's petrochemical and automotive sectors, trade in gold and precious metals, exports of crude oil, and supply and installation of certain spare parts and services for civil aircraft will not be targeted for secondary sanctions under U.S. law. **The announced U.S. policies have almost no impact on persons subject to the Iranian Transactions and Sanctions Regulations ("ITSR"), including U.S. persons and their foreign subsidiaries**, although such persons may seek licenses to sell and export parts or services for the safety of civil aviation in Iran. The six-month relaxation period can be extended by agreement of the parties, but can also be terminated before July 20 in the event of Iran's non-compliance with the JPOA. In addition, the USG will participate in the establishment of a channel to facilitate humanitarian trade for Iranian domestic needs using oil revenues held abroad. Also under the JPOA, approximately $4.2 billion of Iranian funds blocked in accounts in third countries will be released to Iran. The scope and limitations of the temporary relief from secondary sanctions is discussed below.

Background

As previously reported, the P5+1 and Iran reached a preliminary agreement in Geneva on November 24, 2013 to freeze key elements of Iran's nuclear program in exchange for temporary, limited, reversible economic sanctions relief and the repatriation of certain blocked funds held outside of Iran. On January 20, the U.S. State Department **announced** that the International Atomic Energy Agency (the "**IAEA**") has verified that Iran has fulfilled its initial nuclear commitments pursuant to the JPOA and that accordingly, the United States has begun to implement limited sanctions relief pursuant to the JPOA. Our **prior memorandum** describes the commitments Iran has made as part of the preliminary agreement. Previously, on January 14, the European Union ("**EU**") High Representative Catherine Ashton **announced** that the P5+1 and Iran would start the implementation of the first step of the JPOA on January 20. See below for a brief discussion of the EU's actions.

Overview

As outlined by the State Department in its **Overview of Temporary Suspension of Certain U.S. Sanctions** and its **Guidance Relating to the Provision of Certain Temporary Sanctions Relief**, the JPOA sanctions relief relates to a limited number of activities and "associated services"[1] for:

[1] According to the State and Treasury Departments, the term "associated service" means any necessary service – including any insurance, transportation, or financial service – ordinarily incident to the underlying activity for which sanctions relief has been provided pursuant to the JPOA, except in the case of Iran's exports of crude oil, for which the JPOA only references associated (*cont.*)

- Iran's petrochemical exports;
- the provision of goods and services to Iran's automotive sector;
- Iran's trade in gold and precious metals;
- Iran's exports of crude oil; and
- the supply and installation of spare parts, inspections, and associated services necessary for safety of flight for Iranian civil aviation.

Unless otherwise noted, such services, even when supplied by a non-U.S. person, may not involve persons identified on the List of Specially Designated Nationals and Blocked Persons (the "**SDN List**") maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**").

The JPOA sanctions relief allows Iran's six current customers for crude oil exports – China, Japan, South Korea, India, Turkey, and Taiwan – to maintain purchases of crude oil at current average levels during the JPOA Period. Further, Iran and the P5+1 have committed to establishing a financial channel to facilitate Iran making payments for humanitarian transactions and medical expenses, payments of Iran's United Nations ("**UN**") obligations, and up to $400 million toward university tuition for Iranian students studying abroad. To implement this limited sanctions relief, the USG has executed temporary, partial waivers of certain statutory sanctions and has issued guidance regarding the suspension of new sanctions under relevant Executive Orders ("**E.O.s**") and regulations.

The JPOA sanctions relief only applies to activities and associated services that are initiated and completed exclusively during the JPOA Period. Activities undertaken before or after that period, even if they are undertaken pursuant to contracts entered into during the JPOA Period, are sanctionable. This includes, *inter alia*, the shipping and delivery of goods, the receipt of payments, and insurance activities. **Except for the limited and temporary relief provided pursuant to the JPOA**, which the USG can revoke at any time if Iran fails to meet its commitments under the JPOA, **all U.S. sanctions with respect to Iran remain fully in force**. Moreover, U.S. persons and non-U.S. entities owned or controlled by U.S. persons generally may not take advantage of the relief provided in the JPOA; they continue to be subject to the ITSR and prohibited from conducting transactions with Iran unless licensed to do so by OFAC.

Sanctions Relief By Sector

1. Iran's Export of Petrochemical Products

The USG will not sanction persons not subject to the ITSR for participating in the export of petrochemical products[2] from Iran, or providing associated services, as long as such transactions do not involve persons on the SDN List, other than Iranian depository institutions listed solely pursuant to E.O. 13599 (i.e., institutions listed solely with the "[IRAN]"[3] identifier on the SDN List) and the 14 petrochemical companies

(*cont.*)

insurance and transportation services. The Treasury Department further explained that to the extent that the provision of insurance or reinsurance is an associated service of an activity for which the JPOA provides temporary relief, the provision of that insurance or reinsurance during the JPOA Period would not be sanctionable. Otherwise, sanctions on the provision of insurance or reinsurance for certain types of activities involving Iran remain in place.

[2] **E.O. 13622**, Section 10(m) provides a non-exhaustive list of petrochemical products.

[3] The [IRAN] identifier signifies that a listed person is part of the Government of Iran, is owned or controlled thereby or has been found to be acting on the Government of Iran's behalf.

listed in footnote 4 ("**Exempted Petrochemical Company SDNs**").[4] Specifically, the USG will not impose the following secondary sanctions:

- ***Correspondent or Payable-Through Account Sanctions.*** The USG will not impose correspondent or payable-through account sanctions under section 1(a)(iii) of E.O. 13622 (as amended by section 16(b) of E.O. 13645); section 3(a)(i) of E.O. 13645; and sections 561.204(a) and 561.204(b)(3) of the Iranian Financial Sanctions Regulations, 31 C.F.R. part 561 ("**IFSR**"), on foreign financial institutions ("**FFIs**") that conduct or facilitate transactions not otherwise subject to the ITSR for exports of petrochemical products from Iran.
- ***Blocking Sanctions.*** The USG will not impose blocking sanctions under section 2(a)(i)-(ii) of E.O. 13645 with respect to persons that materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of, the Exempted Petrochemical Company SDNs for exports of petrochemical products from Iran.
- ***Menu-based Sanctions.*** Sanctions will not be imposed under section 2(a)(ii) of E.O. 13622 (as amended by section 16(d) of E.O. 13645) on non-U.S. persons not otherwise subject to the ITSR who engage in transactions for exports of petrochemical products from Iran.

As the Treasury Department emphasized in a series of **Frequently Asked Questions and Answers** ("**FAQs**"), any transaction with the Exempted Petrochemical Company SDNs not for the export of petrochemical products from Iran or associated services that are required to facilitate such transaction remains sanctionable. (*See* FAQ #5). Thus, investments in the Exempted Petrochemical Company SDNs or sales of petrochemical precursors, equipment, or services would continue to expose a non-U.S. person engaged in such activity to U.S. secondary sanctions.

2. Iran's Auto Industry

The USG will allow for the sale, supply, or transfer to Iran of significant goods (including complete knock-down kits) or services (including shipping, warranty, insurance, and maintenance services), used in connection with the automotive sector of Iran by non-U.S. persons not otherwise subject to the ITSR, as well as the provision of associated services. Such transactions may not involve any person on the SDN List, other than Iranian depository institutions listed solely pursuant to E.O. 13599. Specifically, the USG will not impose the following secondary sanctions:

- ***Correspondent or Payable-through Account Sanctions.*** The USG will not impose correspondent or payable-through account sanctions under section 3(a)(ii) of E.O. 13645 with respect to FFIs that conduct or facilitate financial transactions for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran.
- ***Menu-based Sanctions.*** The USG will not impose the sanctions described in section 6 of E.O. 13645 (ranging from a ban on the USG contracting with the sanctioned person to the blocking of all property of the sanctioned person within U.S. jurisdiction) with respect to persons that engage in transactions for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran.

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[4] Bandar Imam Petrochemical Company; Bou Ali Sina Petrochemical Company; Ghaed Bassir Petrochemical Products Company; Iran Petrochemical Commercial Company; Jam Petrochemical Company; Marjan Petrochemical Company; Mobin Petrochemical Company; National Petrochemical Company; Nouri Petrochemical Company; Pars Petrochemical Company; Sadaf Petrochemical Assaluyeh Company; Shahid Tondgooyan Petrochemical Company; Shazand Petrochemical Company; and Tabriz Petrochemical Company.

3. Iran's Trade in Gold and Other Precious Metals

The USG will not consider participation in the sale of gold and other precious metals[5] to or from Iran, or the provision of associated services, by non-U.S. persons not otherwise subject to the ITSR to be the basis for secondary sanctions. This sanctions exception applies only to transactions that do not involve persons on the SDN List other than any political subdivision, agency, or instrumentality of the Government of Iran or any Iranian depository institution, listed solely pursuant to E.O. 13599. Additionally, the funds for these purchases of gold or other precious metals may not be drawn from "Restricted Funds," defined as: (i) any existing and future revenues from the sale of Iranian petroleum or petroleum products, wherever they may be held, and (ii) any Central Bank of Iran ("**CBI**") funds, with certain exceptions for non-petroleum CBI funds held at a foreign country's central bank. Specifically, the USG will not impose the following secondary sanctions for conforming precious metals sales:

- ***Correspondent or Payable-through Account Sanctions.*** The USG will not impose correspondent or payable-through account sanctions under section 3(a)(i) of E.O. 13645 with respect to FFIs that conduct or facilitate transactions by non-U.S. persons not otherwise subject to the ITSR for the purchase or acquisition of precious metals to or from Iran.
- ***Blocking Sanctions.*** The USG will not impose blocking sanctions under section 5(a) of E.O. 13622; sections 2(a)(i)-(ii) of E.O. 13645; or section 560.211(c)(2) of the ITSR, with respect to persons that materially assist, sponsor, or provide financial, material, or technological support for, or goods or services in support of, the purchase or acquisition of precious metals to or from Iran or by the Government of Iran.

4. Iran's Export of Crude Oil

The USG will not seek further reductions in the purchase of Iranian crude oil from the current purchasers – China, India, Japan, South Korea, Taiwan, and Turkey – who are permitted to maintain their current average level of imports from Iran during the JPOA Period. The USG has emphasized that no other countries may commence purchasing Iranian crude oil. Specifically, the USG will not impose the following secondary sanctions with respect to transactions involving the purchase of Iranian crude oil, including transactions involving the National Iranian Oil Company ("**NIOC**") or the National Iranian Tanker Company ("**NITC**"), provided that the transactions do not involve persons on the SDN List other than NIOC, NITC, or any Iranian depository institution listed solely pursuant to E.O. 13599:

- ***Correspondent or Payable-through Account Sanctions.*** The USG will not impose correspondent or payable-through account sanctions under sections 1(a)(i)-(ii) of E.O. 13622 (as amended by section 16(a) of E.O. 13645); section 3(a)(i) of E.O. 13645; or sections 561.201(a)(5), 561.204(a), and 561.204(b)(1)-(2) of the IFSR with respect to FFIs that conduct or facilitate transactions by non-U.S. persons not otherwise subject to the ITSR for exports of petroleum and petroleum products from Iran to China, India, Japan, South Korea, Taiwan, or Turkey, and associated insurance and transportation services ("**Exempted Petroleum Exports**").
- ***Blocking Sanctions.*** The USG will not impose blocking sanctions under section 1(a)(iii) of E.O. 13382; section 5(a) of E.O. 13622; sections 2(a)(i)-(ii) of E.O. 13645; section 544.201(a)(3) of the

[5] FAQ #6 notes that for purposes of this sanctions relief, "precious metals" includes silver (including silver plated with gold or platinum, unwrought or in semi-manufactured forms, or in powder form); gold (including gold plated with platinum, unwrought or in semi-manufactured forms, or in powder form); base metals or silver, clad with gold, not further worked than semi-manufactured; platinum, unwrought or in semi-manufactured forms, or in powder form; iridium; osmium; palladium; rhodium; ruthenium; base metals, silver or gold, clad with platinum, not further worked than semi-manufactured; waste and scrap of precious metal or of metal clad with precious metals, other waste and scrap containing precious metal or precious-metal compounds, of a kind used principally for the recovery of precious metal.

Weapons of the Mass Destruction Proliferators Sanctions Regulations ("**WMDPSR**"), 31 C.F.R. part 544; or section 560.211(c)(2) of the ITSR with respect to non-U.S. persons not otherwise subject to the ITSR that materially assist, sponsor, or provide financial, material, or technological support for, or goods or services in support of, Exempted Petroleum Exports.

- ***Menu-based Sanctions.*** The USG will not impose sanctions under section 2(a)(i) of E.O. 13622 (as amended by section 16(c) of E.O. 13645) on non-U.S. persons not otherwise subject to the ITSR who engage in transactions for Exempted Petroleum Exports.

All other U.S. sanctions on Iran's energy sector, including sanctions on providing goods and services to, or investment in, the energy sector, remain in effect.

5. Repatriation of Restricted Funds to Iran

The USG has committed not to impede or sanction the phased repatriation of $4.2 billion of Iranian revenue held abroad. FAQ #8 explains that the P5+1 and Iran have agreed on a process to authorize the release, in installments on specified dates during the JPOA Period, of the specified $4.2 billion of Iran's Restricted Funds. The USG is working with its partners and relevant FFIs to implement this provision. Unless an FFI is notified directly in writing by the USG that an installment release is not sanctionable, any release or receipt of Restricted Funds would expose an FFI to U.S. sanctions.

6. Iranian Civil Aviation

OFAC issued a new **Statement of Licensing Policy on Activities Related to the Safety of Iran's Civil Aviation Industry** ("**SLP**") establishing a favorable licensing policy regime with respect to the supply and installation of spare parts and associated services and safety related inspections and repairs designed to ensure the safe operation of Iranian commercial passenger aircraft (including transactions with Iran Air, an SDN). U.S. Persons, U.S.-owned or -controlled foreign entities, and persons involved in the export of U.S.-origin goods that are interested in providing such parts and services to approved end-users for approved purposes may apply for a specific license from OFAC.

In addition, the USG will not impose correspondent or payable-through account sanctions on FFIs under section 3(a)(i) of E.O. 13645 and section 561.201(a)(5)(ii), or blocking sanctions on non-U.S. persons under section 1(a)(iii) of E.O. 13382; sections 2(a)(i)-(ii) of E.O. 13645; or section 544.201(a)(3) of the WMDPSR, with respect to activities of a type covered by the SLP by non-U.S. persons not otherwise subject to the ITSR.

7. Facilitation of Humanitarian and Certain Other Transactions

The P5+1 and Iran are establishing a mechanism to further facilitate the purchase of and payment for, the export of food, agricultural commodities, medicine, and medical devices to Iran, as well as to facilitate Iran's payments of: its UN obligations; certain medical expenses incurred abroad by Iranian citizens; and agreed amounts of Iranian governmental tuition assistance for Iranian students studying abroad. The Treasury Department will contact FFIs directly and will provide specific guidance if Iran seeks their assistance in hosting or facilitating any of these new mechanisms. In FAQ #9, the Treasury Department notes that, independent of the JPOA, transactions for the sale of food, agricultural commodities, medicine, and medical devices to Iran by non-U.S. persons not otherwise subject to the ITSR are not generally sanctionable, so long as such transactions do not involve persons designated in connection with Iran's proliferation of WMD or WMD delivery systems, or Iran's support for international terrorism.[6] Thus, these transactions are not required to be processed through the new mechanism being developed.

WAIVERS

In order to implement the JPOA, the USG has issued limited waivers of certain statutory provisions contained in the National Defense Authorization Act for Fiscal Year 2012, the Iran Threat Reduction and Syria Human Rights Act of 2012, the Iran Sanctions Act and the Iran Freedom and Counter-Proliferation Act. For further details about the waivers, see Section VII of the **State Department Guidance**.

EU ACTIONS

In exchange for Iran meeting its initial commitments under the JPOA, the EU has also begun formal implementation of the suspension of restrictive measures against Iran. On January 20, the *Official Journal of the European Union* published **Council Regulation of 20 January 2014 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran** (2014/42/EU) and **Council Decision 2014/21/CFSP of 20 January 2014 amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran**, which eased, for six months, the prohibition on the provision of insurance and reinsurance and transport for Iranian crude oil; the prohibition on the import, purchase, or transport of Iranian petrochemical products and on the provision of related services; and the prohibition on trade in gold and precious metals with the Government of Iran, its public bodies, and the CBI or persons and entities acting on their behalf. The EU also increased by tenfold the authorization thresholds in relation to the transfers of funds to and from Iran, as contemplated by the JPOA.

RELATED DEVELOPMENTS

According to a **briefing** by senior U.S. administration officials on January 20, USG officials have begun to travel and reach out to foreign governments and FFIs to explain what is, and what is not, covered by the JPOA. Officials at the briefing emphasized that the nuclear negotiations with Iran are completely separate from other issues of concern involving Iran, particularly its human rights record and support of the Syrian Government and international terrorism. In fact, shortly after the USG's announcement of the implementation of the JPOA, it successfully pressured the UN to rescind the invitation to Iran to participate in this week's Geneva II peace talks on Syria.

Senior administration officials have also noted that they are urging Congress not to enact legislation imposing additional sanctions on Iran. Despite these statements from the Obama Administration, certain members of Congress continue to call for new sanctions targeting Iran; for example, on December 19, 2013, Senator Robert Menendez (D-NJ) introduced a bill (**S.1881**) to impose new economic sanctions on Iran. There have been no votes on this bill, but to date, it has 58 cosponsors (43 Republicans and 15 Democrats). However, Senate Majority Leader Harry Reid (D-Nev.) has reportedly indicated that he will not bring the new Iran sanctions bill to a vote while negotiations with Iran are ongoing, and no new cosponsors have been added since January 9, 2013. It is therefore unclear whether any such legislation is likely to pass.

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[6] For prior OFAC guidance on the sale of certain humanitarian-related goods to Iran, *see* **http://www.treasury.gov/resource-center/sanctions/Programs/Documents/hum_exp_iran.pdf** and **http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_guidance_med.pdf**.

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CONCLUSION

The P5+1 and Iran will negotiate during the JPOA Period with the goal of reaching a comprehensive agreement with respect to Iran's nuclear program. We will continue to update our clients as the USG implements the JPOA sanctions relief provisions and as the parties continue their negotiations. In the meantime, as the State and Treasury Departments have repeatedly emphasized, the USG will continue to enforce U.S. sanctions laws and regulations against those who engage in sanctionable activities that are not covered by the limited JPOA sanctions suspensions.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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