

Nuclear Deal with Iran Establishes Plan for Sanctions Relief

August 11, 2015

EXECUTIVE SUMMARY

On July 14, 2015, the permanent members of the UN Security Council plus Germany (the “**P5+1**”), the High Representative of the European Union (“**EU**”) for Foreign Affairs and Security Policy, and Iran agreed on the final text of a Joint Comprehensive Plan of Action (the “**JCPOA**”) to provide Iran with phased sanctions relief in exchange for Iranian implementation of certain nuclear-related measures. On July 20, 2015, the United Nations Security Council (“**UNSC**”) unanimously adopted Resolution 2231, endorsing the JCPOA, calling on UN member states to support the JCPOA’s implementation, and instituting a framework for the termination of UNSC nuclear-related sanctions on Iran if certain conditions outlined in the JCPOA are met. U.S. sanctions on Iran currently remain in effect, except to the extent temporarily suspended by the Joint Plan of Action (“**JPOA**”) initially agreed to on November 24, 2013, and subsequently extended.

If endorsed and implemented by all parties to the agreement, the JCPOA “will produce,” over the course of several phases described in the JCPOA text, “the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran’s nuclear programme.”¹ Not all U.S. sanctions on Iran are related to Iran’s nuclear program, and neither the lifting of UNSC sanctions nor the implementation of the JCPOA requires the removal of all U.S. sanctions on Iran. U.S. direct sanctions, which require compliance by U.S. persons and entities that they own or control, are generally unaffected by the JCPOA, although the JCPOA provides that the United States will license non-U.S. entities that are owned or controlled by a U.S. person to engage in activities with Iran that are “consistent with [the] JCPOA.” Transactions involving Iran or with Iranian persons or entities by U.S. persons or in U.S. dollars will continue to face considerable, and complex, restrictions for some time to come. In contrast, EU sanctions relief under the JCPOA is more expansive and would open the door for European persons to engage in various dealings in or with Iran that would remain prohibited for their U.S. counterparts and possibly for the European subsidiaries of U.S. companies. Non-U.S. persons should note that a finding of significant nonperformance by Iran of its JCPOA commitments could lead to a “snapback” of sanctions that would significantly encumber any contracts entered into with Iranian counterparties during the period of contemplated JCPOA sanctions relief, as the JCPOA does not “grandfather” such contracts.

This memorandum offers an overview of certain key provisions of the JCPOA, particularly with respect to sanctions, and discusses the conditions under which various forms of sanctions relief may come into effect.

BACKGROUND

The finalization of the JCPOA follows many months of negotiation. On November 24, 2013, the P5+1, the EU, and Iran reached a preliminary agreement, the JPOA, to provide temporary sanctions relief and the repatriation of certain blocked funds held outside Iran in exchange for temporary Iranian nuclear commitments. The JCPOA builds on the JPOA and on parameters announced in April 2015 by several of the negotiating parties.

As negotiations toward a final agreement intensified this spring, a bipartisan majority in Congress enacted

¹ JCPOA, Preamble and General Provisions, v.

the Iran Nuclear Agreement Review Act of 2015 (“**INARA**”), which President Obama signed into law on May 22, 2015. As we have [previously noted](#), INARA established a mechanism for Congressional review of any new agreement reached between the United States and Iran related to Iran’s nuclear program. Pursuant to INARA, on July 19, 2015, the State Department transmitted to Congress the JCPOA, its annexes, and related materials, including a Verification Assessment Report.² On Monday, July 20, 2015, a 60-day Congressional review period began.³

CONGRESSIONAL REVIEW PERIOD

Congress now has until September 17, 2015, to accept, reject, or take no action with regard to the JCPOA. Congressional approval is not required to implement certain U.S. commitments under the JCPOA – particularly the lifting of Executive Orders (“**E.O.**”s) – and a Congressional joint resolution of disapproval would not in itself terminate the JCPOA.⁴ However, American participation in the JCPOA would be substantially complicated if Congress were to override a Presidential veto of a disapproval resolution.⁵

INARA stipulates that, during the Congressional review period, the President “may not waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran under any provision of law or refrain from applying any such sanctions pursuant to” the JCPOA (the “**INARA Restrictions**”).⁶ Although the timing of a potential Congressional vote remains uncertain, the Chairman of the Senate Committee on Foreign Relations, a co-sponsor of the INARA bill, has indicated that a vote to approve or disapprove of the JCPOA will likely not take place until September.

There are various possible outcomes of the Congressional review. If Congress passes a resolution approving the JCPOA, or if the review period ends without a Congressional resolution on the JCPOA, the INARA Restrictions will cease. If Congress passes a resolution rejecting the JCPOA, the INARA Restrictions would remain in place for at least 12 calendar days following the resolution’s passage.⁷ If President Obama vetoes such a resolution, which he has indicated he would, the INARA restrictions would remain in place for at least 10 calendar days following his veto, pending “Congressional reconsideration.”⁸ Congress may override the President’s veto with a two-thirds vote in each chamber. If Congress overrides the President’s veto, the resolution of disapproval would be sustained, and the INARA Restrictions would remain in place.⁹ If Congress fails to override the veto, presumably no resolution would be adopted,¹⁰ and the INARA Restrictions would cease at the end of the 10-day post-veto period, 12-day post-disapproval period, or 60-day Congressional review period, whichever is later.

² INARA directs the Secretary of State to submit to Congress a report assessing the adequacy of the agreement’s safeguards as well as his own ability, and that of the International Atomic Energy Agency (“**IAEA**”), to verify Iranian compliance with the agreement. Pub. L. No. 114-17 § 135(a)(2)(A). INARA directs the President to certify, among other things, that “the agreement includes the appropriate terms, conditions, and duration of the agreement’s requirements with respect to Iran’s nuclear activities” and that the President determines that the agreement meets a list of specified policy goals. *Id.* § 135(a)(1)(C).

³ INARA mandates a 60-day Congressional review period for the JCPOA. *Id.* § 135(b)(2). The Department of State transmitted the JCPOA and its related materials to Congress [on July 19, 2015](#). Day One of the review period is July 20, 2015.

⁴ See INARA § 135(c); JCPOA, Annex II § 4.

⁵ For example, the JCPOA stipulates that by a specified point likely to occur on October 18, 2015, the United States, “acting pursuant to Presidential authorities, will issue waivers... ceasing the application of” specified statutory nuclear-related sanctions. JCPOA, Annex V § 11. Congressional override of a Presidential veto of a joint resolution of disapproval would leave in place legislative restrictions, discussed below, barring the issuance of such waivers.

⁶ INARA § 135(b)(3). The INARA restrictions do not apply, however, to deferrals, waivers, and other suspensions of statutory sanctions pursuant to the JPOA, if such deferral, waiver, or suspension was made at least 45 calendar days before transmission of the JCPOA to Congress. *Id.* § 135(b)(6).

⁷ *Id.* § 135(b)(4).

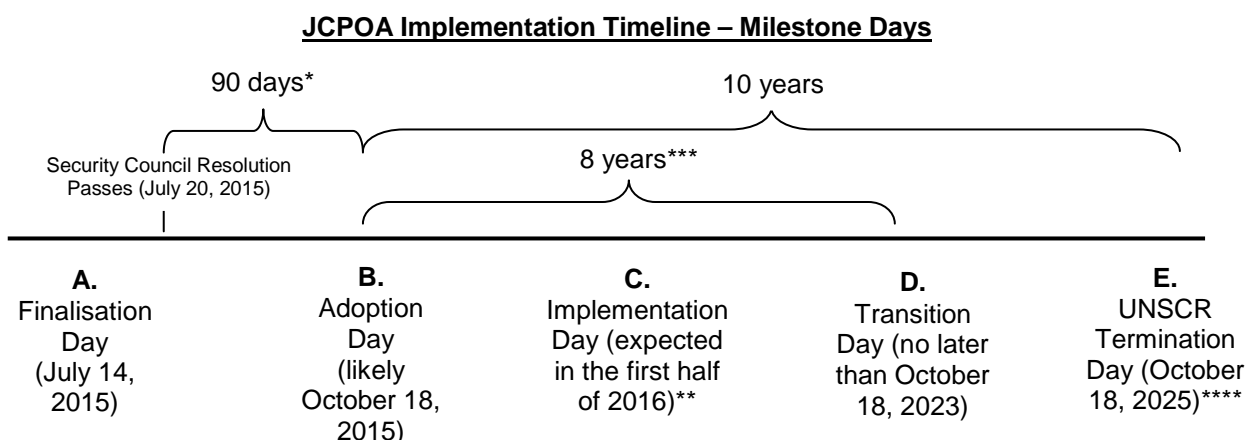
⁸ *Id.* § 135(b)(5).

⁹ *Id.* § 135(c)(2)(B).

¹⁰ No provision in INARA specifically addresses the consequences of Congress failing to override the President’s veto.

JCPOA IMPLEMENTATION PLAN

The JCPOA outlines an implementation plan based on five milestone “Days” on which the parties to the agreement pledge to undertake certain activities. Some of the “Days” are traceable to specific calendar dates; other “Days” include events that may transpire over more than a day. The central milestone, “Implementation Day,” is defined by the “simultaneous” occurrence of various events, each of which may occur over a period of time, relying on a mechanism of simultaneity and reciprocity that is not fully explained in the JCPOA. As a result, the precise timing of the JCPOA commitments – including the effective date of sanctions relief – remains uncertain. Political opposition to the JCPOA in the United States or in Iran, or disagreements over the meaning of certain of the JCPOA’s provisions, could augment this uncertainty.¹¹ The following is a summary of the implementation plan as described in the JCPOA text.



* *Adoption Day* may occur at an earlier date by mutual consent of all JCPOA participants.
 ** *Implementation Day* describes the co-occurrence of various actions by Iran, the IAEA, the EU, and the United States, and may not be a single calendar day. The JCPOA does not define a specific date on which, or by which, Implementation Day will occur, although it is expected to occur in the first half of 2016.
 *** *Transition Day* may occur earlier, upon an IAEA report and Security Council Resolution concluding that all nuclear material in Iran “remains in peaceful activities.”
 **** *UNSCR Resolution Termination Day (“UNSCR Termination Day”)* would not occur if the UN Security Council Resolutions requiring members to impose sanctions on Iran are re-imposed within 10 years of Adoption Day.

A. Finalisation Day

The JCPOA, agreed on Finalisation Day, July 14, 2015, directs the parties to the agreement to take specific steps, upon the conclusion of negotiations, to endorse the agreement and lay the groundwork for its implementation. In particular, it calls for the prompt submission of a UNSC Resolution endorsing the JCPOA and establishing a mechanism to terminate the seven previous UNSC Resolutions obliging member states to impose nuclear-related sanctions on Iran (Resolutions 1696, 1737, 1747, 1803, 1835, 1929, and 2224).¹² Following the finalization of the JCPOA text, the United States delegation to the UNSC submitted a draft resolution endorsing the JCPOA and establishing a mechanism for the termination and potential reinstatement of UNSC nuclear sanctions on Iran. The UNSC unanimously adopted Resolution 2231 on

¹¹ For example, in a letter dated July 24, 2015 to the Director General of the IAEA, Iran’s Ambassador and Resident Representative to the IAEA alleged that remarks made by the White House press secretary on July 17, 2015—in a press briefing largely devoted to lauding the JCPOA and urging support of the JCPOA in Congress—had in fact “amounted to a material breach of the commitments just undertaken by all JCPOA participants” regarding the JCPOA’s mechanism for monitoring Iran’s nuclear compliance. IAEA [INF/CIRC/886](#), “Communication Dated 24 July 2015 Received From the Permanent Mission of the Islamic Republic of Iran to the Agency” (July 29, 2015). See also The White House, Office of the Press Secretary, [“Press Briefing by Press Secretary Josh Earnest, 7/17/2015.”](#)

¹² JCPOA, Preamble and General Provisions, xiv.

July 20, 2015.¹³ (As discussed below, the actual termination of the seven previous nuclear-related UNSC Resolutions is to take effect on Implementation Day. According to Resolution 2231, upon this termination, other restrictions set out in an annex to Resolution 2231 are to come into effect.) The JCPOA also calls for the EU to endorse Resolution 2231 through relevant “Council Conclusions” (which were issued on July 20, 2015).¹⁴ The JCPOA further states that, as of Finalisation Day, Iran and the IAEA will “start developing necessary arrangements to implement all transparency measures” in preparation for Implementation Day. Iran and the IAEA have reportedly engaged in consultations on such arrangements.

B. Adoption Day

Adoption Day, the second milestone in the implementation plan, is the day on which the JCPOA “comes into effect.”¹⁵ Adoption Day is scheduled to occur 90 days after the JCPOA is endorsed by the UNSC, or at an earlier date by mutual consent of all JCPOA participants. Following the UNSC’s adoption of Resolution 2231 on July 20, 2015, Adoption Day is scheduled to take place on October 18, 2015, or earlier by mutual consent.

The JCPOA’s “Implementation Plan” annex (Annex V) states, “Beginning on Adoption Day, JCPOA participants will make necessary arrangements and preparations, including legal and administrative preparations, for the implementation of their JCPOA commitments.”¹⁶ The section of Annex V describing Adoption Day also lists specific actions that the JCPOA participants commit to take.¹⁷ These include:

- The United States, “acting pursuant to Presidential authorities,” will issue waivers to cease the application of specified statutory nuclear-related sanctions, to take effect Implementation Day. The President will also “take action to direct that all appropriate additional measures be taken,” including the termination of specified E.O.s and licensing of certain activities.¹⁸
- The EU and its member states will terminate and/or suspend the specified provisions of Council Regulation No 267/2012 (and corresponding provisions of other Council Decision 2010/413/CFSP) implementing nuclear-related sanctions on Iran, effective on Implementation Day, as described below.¹⁹
- Iran will implement specified commitments made under the “Road-map for Clarification of Past and Present Outstanding Issues regarding Iran’s Nuclear Program,” a separate agreement that Iran entered into with the IAEA on July 14, 2015.²⁰ Iran will further inform the IAEA that, effective on Implementation Day, Iran will provisionally apply the Additional Protocol to Iran’s Safeguards Agreement under the Treaty on the Non-Proliferation of Nuclear Weapons (the “**Additional Protocol**”), pending potential ratification by Iran’s Parliament.²¹

¹³ See UNSC, [Resolution 2231 \(2015\)](#); United Nations Press Office, “[Security Council, Adopting Resolution 2231 \(2015\), Endorses Joint Comprehensive Agreement on Iran’s Nuclear Programme](#)” (quoting statements of Security Council member state representatives on Resolution 2231 and the JCPOA).

¹⁴ JCPOA, Annex V § 4; European Council, “[Council conclusions on the agreement on Iran’s nuclear programme](#)” (July 20, 2015).

¹⁵ JCPOA, Annex V § 6.

¹⁶ *Id.* § 7.

¹⁷ The text is ambiguous as to whether the parties agree to undertake these actions on Adoption Day itself, or whether they agree only to, beginning on Adoption Day, “make necessary arrangements and preparations” to undertake these actions. See *id.*, Annex V §§ 8-13.

¹⁸ *Id.*, Annex V § 11.

¹⁹ *Id.*, Annex V §§ 10, 16.1. Section 16.1 further states that “EU Member States will terminate or amend national implementing legislation as required.”

²⁰ See JCPOA, Annex I § 66; Annex V §9; IAEA, “[IAEA Director General’s Statement and Road-map for the Clarification of Past & Present Outstanding Issues regarding Iran’s Nuclear Program](#)” (July 14, 2015). In his statement, the Director General of the IAEA noted that the road-map sets out a process for the IAEA, working with Iran’s cooperation, to make an assessment by the end of 2015 of “issues relating to possible military dimensions to Iran’s nuclear programme.” Section 14 of the JCPOA states that Iran will implement its commitments under this road-map fully by October 15, 2015, and that the Director General of the IAEA will provide by December 15, 2015 “the final assessment on the resolution of all past and present outstanding issues” to the IAEA Board of Governors. Section 14 of the JCPOA further states that the P5+1 will submit to the IAEA Board of Governors, at or around December 15, “a resolution . . . for taking necessary action, with a view to closing the issue.”

²¹ JCPOA, Annex V § 8.

C. Implementation Day

Implementation Day is described in the JCPOA as occurring sometime after Adoption Day. According to the JCPOA's "Implementation Plan" annex, Implementation Day occurs when two things happen "simultaneously": (i) the "IAEA-verified implementation by Iran" of certain nuclear-related measures; and (ii) the P5+1's implementation of specified forms of sanctions relief, including the termination of previous UNSC sanctions on Iran pursuant to UNSC Resolution 2231.²² Implementation Day, the crucial starting point for sanctions relief, is expected to occur in the first half of 2016, although the JCPOA sets no specific date on which, or by which, it will necessarily take place.

D. Transition Day

Transition Day will occur upon the earlier of: (i) eight years from Adoption Day; or (ii) the submission of a report by the Director General of the IAEA stating that the IAEA has "reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities" (the "**Broader Conclusion**").²³ Transition Day will trigger additional sanctions relief from the EU and the United States (and, in the case of the United States, an effort to achieve specified sanctions relief by "legislative action as may be appropriate"²⁴), as discussed below. Iran will "[s]eek, consistent with the Constitutional roles of the President and Parliament" of Iran, to ratify the Additional Protocol.²⁵

E. UNSCR Termination Day

UNSCR Termination Day will occur ten years from Adoption Day, unless the provisions of the previous UN Resolutions are reinstated in the interim. On UNSCR Termination Day, "the provisions and measures imposed" by the UNSC Resolution endorsing the JCPOA would terminate and the EU would terminate all remaining provisions of Council Regulation (EU) No 267/2012 and Council Decision 2010/413/CFSP.²⁶

CONTEMPLATED SANCTIONS RELIEF

United States Sanctions Relief

In a statement published shortly after the announcement of the JCPOA, the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**") noted that U.S. sanctions relief to Iran "will be provided through the suspension and eventual termination of nuclear-related secondary sanctions." According to OFAC's statement, the U.S. government will issue "detailed guidance" related to the JCPOA prior to Implementation Day.²⁷

On August 7, 2015, the Department of the Treasury and the Department of State jointly issued revised Guidance on the continuation of sanctions relief pursuant to the JPOA (the "**August 7 Joint Guidance**"), and OFAC circulated a revised set of frequently asked questions and answers on this sanctions relief (the

²² See *id.*, Annex V §§ 14-18. A separate section in the main body of the JCPOA, also entitled "Implementation Plan," refers to sanctions relief as taking place "simultaneously with" an "IAEA report *verifying* implementation by Iran" of nuclear-related measures. JCPOA § 34.iii (emphasis added). This reference suggests—and the United States government maintains—that Iran's full performance of certain nuclear commitments must occur *before* sanctions relief is implemented, although this degree of conditionality is not so explicitly articulated in the "Implementation Plan" Annex.

²³ See *id.* § 34.iv; Annex V § 19.

²⁴ See JCPOA § 23.

²⁵ *Id.* § 34.iv; Annex V § 22.1.

²⁶ *Id.*, Annex V §§ 23, 24, 25.1

²⁷ See U.S. Department of the Treasury, "[Statement Relating to the July 14, 2015 Announcement of a Joint Comprehensive Plan of Action Regarding the Islamic Republic of Iran's Nuclear Program](#)" (July 14, 2015). This statement defines Implementation Day as "once the International Atomic Energy Agency (IAEA) verifies that Iran has implemented key nuclear-related measures described in the JCPOA."

“**August 7 FAQs**”).²⁸ According to the August 7 Joint Guidance, the sanctions relief provided for in the JPOA (and subsequent extensions of the JPOA), which we have described in a [previous memorandum](#), will be extended until Implementation Day. The August 7 Joint Guidance cautioned that this “JPOA sanctions relief is the only Iran-related sanctions relief that will be in effect until Implementation Day.”²⁹

Under the JCPOA, the United States has committed to “cease to apply, and subsequently terminate, or modify to effectuate the termination of”³⁰ its “secondary” sanctions aimed at “non-U.S. persons”³¹ that engage in certain activities (even if such activities lack a U.S. nexus) targeted by nuclear-related sanctions. Such secondary sanctions can inflict a range of consequences on non-U.S. persons for participating in proscribed transactions involving Iran, even when acting outside of the United States and in compliance with local law. However, key secondary sanctions on Iran will remain in place under the JCPOA, including secondary sanctions that target foreign financial institutions and other non-U.S. persons that engage in significant transactions with Iranian persons on the Specially Designated Nationals and Blocked Persons List (the “**SDN List**”), as well as secondary sanctions related to Iran’s support for terrorism, human rights abuses, and missile activities.³² Moreover, “direct” sanctions that prohibit U.S. persons from engaging in virtually all commercial dealings with or in Iran, and comprise the vast majority of U.S. sanctions on Iran, will remain in place (except for specific commitments the United States has made to license certain activities, as described below). The JCPOA is explicit in cautioning that “U.S. persons and U.S.-owned or -controlled foreign entities will continue to be generally prohibited from conducting transactions of the type permitted pursuant to this JCPOA, unless authorised” by OFAC.³³ The JCPOA also makes clear that U.S. sanctions relief “is without prejudice to sanctions that may apply under legal provisions other than those cited [in the JCPOA].”³⁴ Finally, issuers’ disclosure obligations pursuant to Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (“**TRA**”), which amended Section 13 of the Securities Exchange Act of 1934, are not affected by the JCPOA.³⁵

²⁸ U.S. Department of the Treasury and U.S. Department of State, [“Guidance Relating to the Continuation of Certain Temporary Sanctions Relief Pursuant to the JPOA Prior to Implementation of the JCPOA”](#) (August 7, 2015); OFAC, [“Frequently Asked Questions Relating to the Continuation of Certain Temporary Sanctions Relief Pursuant to the JPOA Prior to the Implementation of the JCPOA”](#) (August 7, 2015).

²⁹ “Guidance Relating to the Continuation of Certain Temporary Sanctions Relief Pursuant to the JPOA Prior to Implementation of the JCPOA” (August 7, 2015), 1.

³⁰ See JCPOA, Annex II, note 6; Annex V, note 2.

³¹ The JCPOA defines “non-U.S. persons” as “any individual or entity, excluding (i) any United States citizen, permanent resident alien, entity organised under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States, and (ii) any entity owned or controlled by a U.S. person.” JCPOA, Annex II, n.6. This definition is consistent with OFAC’s interpretation of the scope of Iran sanctions applicable to U.S. persons and entities owned or controlled by U.S. persons.

³² See [Iranian Financial Sanctions Regulations](#), 31 C.F.R. §§ 561.201-203; CISADA §§ 105A, 303; [E.O. 13608](#), “Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria” (May 1, 2012); [E.O. 13606](#), “Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology” (April 22, 2012); E.O. 13628 §§ 2-4; and [E.O. 13553](#), “Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions” (Sept. 28, 2010). In testimony at a hearing convened by the Senate Committee on Foreign Relations on July 23, 2015, Secretary of State Kerry and Treasury Secretary Lew each confirmed that the United States retains the right to pass new sanctions against Iran for non-nuclear activities. [Comments during Senate Foreign Relations Committee Hearing, “Iran Nuclear Agreement Review” \(July 23, 2015\)](#). In response to a question from Senator Cardin, Secretary Lew stated that “in principle, we have not taken any of the means that we have of applying economic pressure off the table for non-nuclear purposes.” *Id.* The August 7 Joint Guidance notes that the U.S. government retains the authority to impose sanctions with respect to activities that are “materially inconsistent with JPOA sanctions relief” as outlined in the August 7 Joint Guidance, as well as the authority “to continue imposing sanctions under other authorities, such as those used to combat terrorism, destabilizing regional activity, and human rights violations.” August 7 Joint Guidance, 1.

³³ JCPOA, Annex II, n.6; see also *id.* § 7.1 (“[B]eginning on implementation day such sanctions [outlined in Section 4], including associated services, would not apply to *non-U.S. persons* . . .”) (emphasis added).

³⁴ JCPOA, Annex II, n.14.

³⁵ As we [previously reported](#), Section 219 imposes reporting obligations on issuers required to file annual or quarterly reports with the SEC (including both U.S. domestic and foreign private issuers) with respect to certain Iran-related transactions and transactions involving certain SDNs.

In addition to these U.S. sanctions that will remain in place, the August 7 Joint Guidance notes that, if at any point Iran materially breaches its commitments under the JCPOA, the United States government “has the ability to snap back sanctions” whose application has been ceased or otherwise modified pursuant to the JCPOA. The August 7 Joint Guidance also states that the United States government “will issue further guidance in the event that Implementation Day will not be reached or sanctions are snapped back.”³⁶ As noted above, in the event of a snapback of U.S. sanctions, the JCPOA does not “grandfather” any contracts entered into pursuant to the JCPOA relief. Therefore, the prospect of the possible re-imposition of U.S. nuclear-related sanctions on Iran, and of new U.S. “non-nuclear” sanctions on Iran, will remain a serious consideration for non-U.S. persons doing business in Iran or with Iranian persons for some time to come.

The United States has committed to cease the application of, and to seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, the following the statutory provisions, and to terminate the following E.O.s, in accordance with Annex V:³⁷

- [Iran Sanctions Act of 1996](#): §§ 5(a)(1)-(8) and 5(b)(2);
- [Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010](#) (“**CISADA**”): § 104(c)(2)(E)(ii)(I);
- [National Defense Authorization Act for Fiscal Year 2012](#): §§ 1245(d)(1) and (3);
- [Iran Freedom and Counter-Proliferation Act of 2012](#): §§ 1244(c)(1), (d), and (h)(2); 1245(a)(1)(A)-(C) and (c); 1246(a); and 1247(a);
- [TRA](#): §§ 211(a), 212(a), 213(a), 220, and 501;
- [Iran, North Korea and Syria Nonproliferation Act](#): sanctions on the acquisition of nuclear-related commodities and services for nuclear activities contemplated in the JCPOA;
- [E.O. 13574](#), “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Sanctions Act of 1996” (May 23, 2011);
- [E.O. 13590](#), “Authorizing the Imposition of Certain Sanctions With Respect to the Provision of Goods, Services, Technology, or Support for Iran’s Energy and Petrochemical Sectors” (November 21, 2011);
- [E.O. 13622](#), “Authorizing Additional Sanctions With Respect to Iran” (July 30, 2012);
- [E.O. 13645](#), “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran” (June 3, 2013); and
- Sections 5-7 and 15 of [E.O. 13628](#), “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran” (October 9, 2012).

Each of the specified E.O.s is to be terminated on Implementation Day, effecting sanctions relief in the categories of activity described in sections 4.1-4.7 of Annex II; E.O. 13628 will be terminated in part. The United States generally commits to “[c]ease the application of” nuclear-related statutory secondary sanctions effective Implementation Day, and to seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, such statutory sanctions on Transition Day. The United States represents that the specified provisions of these six statutes and five E.O.s constitute the full and complete list of all U.S. nuclear-related sanctions.³⁸

A. Areas of Sanctions Relief

If implemented, the U.S. sanctions relief described in the JCPOA would ease the following categories of secondary sanctions and restrictions, effective Implementation Day:

³⁶ August 7 Joint Guidance, 1; *id.*, note 1. See also August 7 FAQs, Question 12.

³⁷ See JCPOA, Annex II § 4 *et seq.*; Annex V § 17. Annex V § 17.2 states that the application of certain of these sanctions provisions (as specified in Annex II § 4.6) is to be ceased only in connection with “activities consistent with [the] JCPOA,” including trade with individuals and entities listed in an attachment to Annex II.

³⁸ JCPOA, Annex II §§ 4-4.7, 6. See also JCPOA § 24; Annex V §§ 11, 17.1-17.4.

- *Financial and banking measures*: sanctions on transactions with specified Iranian financial institutions and certain designated individuals, including the Central Bank of Iran, the National Iranian Oil Company, and other specified designees;³⁹ sanctions on the Iranian Rial;⁴⁰ sanctions on the provision of U.S. banknotes to the Government of Iran (“GOI”);⁴¹ bilateral trade limitations on Iranian revenues held abroad;⁴² sanctions on the purchase of Iranian sovereign debt;⁴³ and sanctions on associated services for each of the foregoing;⁴⁴
- *Insurance measures*: sanctions on the provision of underwriting services, insurance, or reinsurance in connection with activities consistent with the JCPOA;⁴⁵
- *Energy and petrochemical sectors*: sanctions relating to the sale and purchase of Iranian crude oil;⁴⁶ sanctions on investment in Iran’s oil, gas, and petrochemical sectors;⁴⁷ sanctions on certain transactions involving Iranian petroleum, petrochemical products, and natural gas;⁴⁸ sanctions on transactions with Iran’s energy sector;⁴⁹ and associated services;⁵⁰
- *Shipping, shipbuilding, and port sectors*: sanctions on transactions with Iran’s shipping and shipbuilding sectors and port operators,⁵¹ and associated services;⁵²
- *Gold and precious metals*: sanctions on Iran’s trade in gold and other precious metals,⁵³ and associated services;⁵⁴
- *Software and metals*: sanctions on trade with Iran in graphite and other raw or semi-finished metals and software for integrating industrial processes, in connection with activities consistent with the JCPOA;⁵⁵ and associated services for each of the foregoing;⁵⁶ and
- *Automotive sector*: sanctions on the sale, supply, or transfer of goods and services used in connection with Iran’s automotive sector,⁵⁷ and associated services.⁵⁸

As noted, U.S. persons will not be permitted to engage in these activities. The United States has only committed not to penalize non-U.S. persons (excluding subsidiaries of U.S. persons)⁵⁹ who engage in such transactions (so long as such transactions are not conducted in U.S. dollars, as U.S. dollar clearing transactions involving Iran remain prohibited).

³⁹ JCPOA, Annex II § 4.1.1.

⁴⁰ *Id.* § 4.1.2.

⁴¹ *Id.* § 4.1.3.

⁴² *Id.* § 4.1.4. It is expected that significant Iranian revenues blocked in banks outside the United States will be released, for activities permitted by the JCPOA.

⁴³ *Id.* § 4.1.5.

⁴⁴ *Id.* § 4.1.7. “Associated services” is defined as “any service—including technical assistance, training insurance, re-insurance, brokering, transportation or financial service—necessary and ordinarily incident to the underlying activity for which sanctions have been lifted pursuant to this JCPOA.” *Id.*, n.3.

⁴⁵ *Id.* § 4.2.1.

⁴⁶ *Id.* § 4.3.1.

⁴⁷ *Id.* § 4.3.2.

⁴⁸ *Id.* § 4.3.3.

⁴⁹ *Id.* § 4.3.5.

⁵⁰ *Id.* § 4.3.6.

⁵¹ *Id.* § 4.4.1.

⁵² *Id.* § 4.4.2.

⁵³ *Id.* § 4.5.1.

⁵⁴ *Id.* § 4.5.2.

⁵⁵ *Id.* § 4.6.1. See *supra*, note 37.

⁵⁶ *Id.* § 4.6.2.

⁵⁷ *Id.* § 4.7.1.

⁵⁸ *Id.* § 4.7.2.

⁵⁹ But note that, as discussed below, the United States has committed to license such entities to engage in activities with Iran that are consistent with the JCPOA.

Designations and nuclear proliferation-related measures. In addition to the above areas, the United States has committed to remove, as of Implementation Day, specified individuals and entities from the SDN List, the Foreign Sanctions Evaders List, and the Non-SDN Iran Sanctions Act List.⁶⁰ The United States has also committed to remove additional individuals and entities from these lists effective Transition Day.⁶¹ Some of the parties that will be removed from these lists are Iranian financial institutions or persons identified by OFAC as being part of the GOI (as identified with an asterisk in Annex II, Attachment 3); accordingly, U.S. persons and entities owned or controlled by U.S. persons⁶² will continue to be prohibited from dealing with them, even after their names are removed from the SDN List.

Licensing certain activities of U.S.-controlled foreign subsidiaries, and certain other activities. The JCPOA commits the United States to license (on Implementation Day), generally or specifically, certain categories of currently prohibited activities, including the licensing of U.S.-owned or -controlled foreign subsidiaries to engage in “activities with Iran” that are “consistent with [the] JCPOA.”⁶³ This is notable because non-U.S. subsidiaries have, since October 2012, been required to comply with direct sanctions against Iran. (U.S. sanctions against all other countries targeted by U.S. sanctions programs, except Cuba, do not apply to non-U.S. subsidiaries of U.S. companies.) The scope of what “activities with Iran” are “consistent with [the] JCPOA,” the extent of coverage by any such licenses, and whether such licenses issued by OFAC will be general or specific are not addressed in the JCPOA, but these topics are likely to be covered in the detailed guidance that OFAC plans to issue before Implementation Day.

The United States also commits to issue licenses to permit: (i) the sale of commercial passenger aircraft and related parts and services to Iran under certain conditions;⁶⁴ and (ii) the importation into the United States of Iranian carpets and foodstuffs.⁶⁵

B. Measures for Implementing Relief

The United States commits to provide the relief described above through a combination of measures (e.g., using executive branch authorities embedded in sanctions legislation to waive or cease the application of certain statutory sanctions, terminating E.O.s, removing designees from sanctions lists, and issuing licenses for specified categories of activities). The JCPOA states that the “U.S. Administration, acting consistent with the respective roles of the President and the Congress,” will refrain from re-introducing or re-imposing the sanctions detailed above, or imposing new nuclear-related sanctions.⁶⁶ The JCPOA further states, “The United States will make best efforts in good faith to sustain this JCPOA and to prevent interference with the realisation of the full benefit by Iran of the sanctions lifting specified in Annex II.”⁶⁷ However, the United States retains the right to re-introduce or re-impose nuclear-related sanctions if it determines that Iran has not met its commitments under the JCPOA (as further described in the Dispute Resolution section below). The JCPOA notes that “Iran has stated that it will treat . . . a re-introduction or re-imposition of the sanctions specified in Annex II, or . . . an imposition of new nuclear-related sanctions, as grounds to cease performing

⁶⁰ *Id.* § 4.8.1.

⁶¹ Further, the United States also commits to ease sanctions as of Transition Day (i) under the Iran, North Korea, and Syria Nonproliferation Act on the acquisition of nuclear-related commodities and services for activities contemplated in the JCPOA; (ii) on joint ventures related to the mining, production, or transportation of uranium; and (iii) related to the exclusion of Iranian citizens from higher education coursework related to careers in nuclear science, nuclear engineering, or the energy sector.

⁶² See footnote 59.

⁶³ JCPOA, Annex II §§ 5.1.1.-5.1.3.

⁶⁴ On August 7, 2015, OFAC issued a [Third Amended Statement of Licensing Policy on Activities Related to the Safety of Iran's Civil Aviation Industry](#), re-extending OFAC's January 2014 favorable licensing policy on activities related to Iran's civil aviation industry. The JCPOA makes clear that “[s]hould the United States determine that licensed aircraft, goods, or services have been used for purposes other than exclusively civil aviation end-use, or have been re-sold or re-transferred to persons on the SDN List, the United States would view this as grounds to cease performing its commitments under [this section].” JCPOA, Annex II, n.12.

⁶⁵ Note that until September 2010, imports into the United States of Iranian carpets and foodstuffs were permitted by general license. See Iranian Transactions Regulations, 75 Fed. Reg. 59, 611-13 (Sept. 28, 2010).

⁶⁶ JCPOA § 26. This reference marks one of the few instances in the JCPOA where the present U.S. Administration or its senior officials, rather than “the United States” itself, is described as committing to undertake, or refrain from taking, a certain action.

⁶⁷ *Id.*

its commitments under [the] JCPOA in whole or in part.”⁶⁸

Additionally, the JCPOA provides that “the United States will take appropriate steps, taking into account all available authorities,” to achieve implementation of U.S. sanctions relief if state or local laws impede the implementation of such relief, including by “actively encourag[ing] officials at the state or local level to take into account the changes in the U.S. policy” under the JCPOA.⁶⁹

Although the agreement includes broad language noting that the United States will, on Transition Day, “[s]eek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of” certain sanctions, the JCPOA does not contain any concrete commitments to modify or repeal any underlying statutes sanctioning Iran.⁷⁰ Only Congress has this power. Notwithstanding the commitment to “seek” legislative action “as may be appropriate” on Transition Day, specific U.S. sanctions relief, as envisioned in the JCPOA, could be accomplished exclusively through executive action.

EU Sanctions Relief

EU sanctions relief under the JCPOA is much broader than U.S. sanctions relief and is expected to result in various opportunities for European individuals and entities to conduct business in and with Iran. The EU and its member states commit to lift “all provisions of the EU Regulation [i.e., Council Regulation No 267/2012 and corresponding provisions of Council Decision 2010/413/CFSP] . . . implementing all nuclear-related economic and financial sanctions.”⁷¹ EU relief permits EU persons to engage in a broader range of commercial activities in Iran and/or with Iranian companies than U.S. persons.⁷² EU sanctions relief slated to take effect on Implementation Day includes the termination of certain EU legal instruments and national implementing legislation imposing the following sanctions or restrictive measures:

- *Financial, banking, and insurance measures*: prohibitions on financial transfers to and from Iran, sanctions on banking activities, sanctions on insurance, sanctions on financial messaging services (including the Society for Worldwide Interbank Financial Telecommunication (SWIFT)), sanctions on financial support for trade with Iran (such as export guarantees), sanctions on grants, financial assistance, and concessional loans, sanctions on GOI public-guaranteed bonds, and associated services for each of the foregoing;⁷³
- *Oil, gas, and petrochemical sectors*: sanctions on the import of oil and gas from Iran, sanctions on the import of Iranian petrochemical products, sanctions on the export of key equipment for and investment in the oil, gas, and petrochemical sectors, and associated services;⁷⁴
- *Shipping, shipbuilding, and transport sectors*: sanctions related to shipping and shipbuilding, the transport sector, and associated services;⁷⁵
- *Gold, other precious metals, banknotes, and coinage*: sanctions on gold, precious metals and diamonds, banknotes, coinage, and associated services;⁷⁶
- *Metals*: sanctions on metals and associated services;⁷⁷
- *Software*: sanctions on software and associated services,⁷⁸ and

⁶⁸ *Id.* See also *id.* § 37.

⁶⁹ *Id.* § 25.

⁷⁰ *Id.*, Annex V § 21.1. The language describing American commitments effective on Implementation Day states that the United States will “[c]ease the *application* of” specified sanctions, with no reference to “seeking” legislative action “as may be appropriate.” *Id.* § 17.1 (emphasis added). See also JCPOA § 23 (noting that, upon Transition Day, “the United States will seek such legislative action as may be appropriate” to terminate sanctions on the acquisition of nuclear-related commodities and services).

⁷¹ JCPOA § 19.

⁷² The JCPOA, for example, would permit “[t]ransfers of funds between EU persons, entities or bodies, including EU financial and credit institutions, and Iranian persons, entities or bodies, including Iranian financial and credit institutions.” *Id.*, Annex II § 3.2.1.

⁷³ *Id.* §§ 1.1.1-1.1.8.

⁷⁴ *Id.* §§ 1.2.1-1.2.5.

⁷⁵ *Id.* §§ 1.3.1-1.3.3.

⁷⁶ *Id.* §§ 1.4.1-1.4.2.

⁷⁷ *Id.* §§ 1.6.1-1.6.2.

- *Listing of persons, entities, and bodies*: asset freeze and visa ban measures applicable to listed Iranian banks and financial institutions, and listed persons, entities, and bodies related to the oil, gas, and petrochemical sectors, among others.⁷⁹

In addition, the EU commits to provide relief from the following sanctions or restrictive measures effective on Transition Day:

- *Nuclear proliferation-related measures*: sanctions related to proliferation-sensitive nuclear activities and associated services;⁸⁰ and
- *Arms*: sanctions on arms and associated services.⁸¹

To implement these forms of relief, the JCPOA calls for a phased suspension and/or termination of specified EU Council Regulations, Council Decisions, and national implementing legislation. On Transition Day, for example, the EU would terminate specified provisions of Council Regulation No. 267/2012 and suspend the corresponding provisions of Council Decision 2010/413/CFSP. Also on Transition Day, the provisions of Council Decision 2010/413/CFSP suspended on Implementation Day, which include import and export restrictions, restrictions on financial support for trade with Iran, and restrictions on Iran's financial sector, would be terminated. In contrast to the U.S. commitment to "[s]eek such legislative action as may be appropriate" to effectuate statutory sanctions relief, the JCPOA states that "EU Member States will terminate or amend national implementing legislation as required," to take effect Implementation Day.⁸²

UNSC RESOLUTION

As noted above, the UNSC passed Resolution 2231 on July 20, 2015, triggering the 90-day period leading up to Adoption Day, which is likely to occur on October 18, 2015. Among other things, Resolution 2231 terminates, effective on Implementation Day, UNSC Resolutions 1696 (2006),⁸³ 1737 (2006),⁸⁴ 1747 (2007),⁸⁵ 1803 (2008),⁸⁶ 1835 (2008),⁸⁷ 1929 (2010),⁸⁸ and 2224 (2015)⁸⁹ (the "**terminated UNSC Resolutions**"), by which the UNSC has imposed sanctions on Iran. Resolution 2231 "decides" that, simultaneous with the termination of these previous UNSC Resolutions, "[a]ll States shall comply" with specified provisions of a "Statement" appended as Annex B to Resolution 2231 (the "**Annex B Statement**"). The specified provisions of the Annex B Statement stipulate, among other things, that:

⁷⁸ *Id.* §§ 1.7.2-1.7.2.

⁷⁹ *Id.* § 1.9.1.

⁸⁰ *Id.* §§ 1.5.1-1.5.2.

⁸¹ *Id.* §§ 1.8.1-1.8.2.

⁸² JCPOA, Annex V § 16.1.

⁸³ UNSC Resolution 1696, passed on July 31, 2006, demanded that Iran suspend all nuclear enrichment and reprocessing activities or face sanctions.

⁸⁴ UNSC Resolution 1737, passed on December 13, 2006 in response to Iran's failure to comply with UNSC Resolution 1696 and IAEA requirements, required that Iran suspend enrichment and reprocessing activities and cooperate with the IAEA, banned the supply of nuclear-related materials and technology to Iran, and froze the assets of key individuals and companies related to Iran's nuclear program.

⁸⁵ UNSC Resolution 1747, passed on March 24, 2007, imposed an arms embargo on Iran and expanded freezing of Iranian assets.

⁸⁶ UNSC Resolution 1803, passed on March 3, 2008, extended asset freezing on Iran and called on states to monitor the activities of Iranian banks, inspect Iranian ships and aircraft, and monitor individuals involved with Iran's nuclear program.

⁸⁷ UNSC Resolution 1835, passed on September 27, 2008, found Iran to be in defiance of previous UNSC Resolutions and to be making significant progress on developing centrifuges.

⁸⁸ UNSC Resolution 1929, passed on June 9, 2010, banned Iran from participating in activities related to ballistic missiles, tightened the arms embargo on Iran, tightened travel bans on individuals involved with Iran's nuclear program, froze the funds and assets of Iran's Revolutionary Guard, and recommended that states inspect Iranian cargo, prohibit the servicing of Iranian vessels involved in prohibited activities, prevent the provision of financial services used for nuclear activities, prohibit the opening of Iranian banks in their territory, prevent Iranian banks from entering into relationships with their banks if doing so may contribute to Iran's nuclear program, and prevent their financial institutions from opening offices and accounts in Iran.

⁸⁹ UNSC Resolution 2224, passed on June 9, 2015, extended the mandate of the Panel of Experts that assists the Iran Sanctions Committee (created by Resolution 1737), which monitors Iran's nuclear sanctions.

- For eight years after Adoption Day (or upon the IAEA submitting a report confirming the Broader Conclusion, whichever is earlier), all states are to continue to freeze the funds, other financial assets and economic resources owned or controlled by the individuals and entities specified on the list established and maintained pursuant to Resolution 1737, except specified individuals and entities enumerated on an attachment to the Annex B Statement and any others that may be “de-listed” by the UNSC. During this time period all states are also to freeze the funds, other financial assets and economic resources of individuals and entities that may be designated by the Security Council for involvement in proliferation-sensitive nuclear activities undertaken contrary to Iran’s JCPOA commitments or the development of nuclear weapon delivery systems, or for having assisted, acted on behalf of, or been owned or controlled by designated individuals.⁹⁰
- For five years from Adoption Day (or upon the IAEA submitting a report confirming the Broader Conclusion, whichever is earlier), all states are to take the necessary measures to prevent the entry into or transit through their territories of any of the individuals described above.⁹¹
- Until ten years after Adoption Day (or upon the IAEA submitting a report confirming the Broader Conclusion, whichever is earlier), specified cooperative nuclear-related activities with Iran require advance approval on a case-by-case basis by the Security Council.⁹²
- Until eight years after Adoption Day (or upon the IAEA submitting a report confirming the Broader Conclusion, whichever is earlier), the supply, sale or transfer to or from Iran of goods or technology that “could contribute to the development of nuclear weapon delivery systems” or that are related to the development of ballistic missiles requires advance approval on a case-by-case basis by the Security Council.”⁹³
- Until five years after Adoption Day (or upon the IAEA submitting a report confirming the Broader Conclusion, whichever is earlier), the supply, sale or transfer to Iran of specified conventional arms and military hardware requires advance approval on a case-by-case basis by the Security Council.⁹⁴

UNSC Resolution 2231 expires ten years after Adoption Day—October 18, 2025—unless the terminated UNSC Resolutions are re-imposed pursuant to the JCPOA dispute resolution procedures described below.⁹⁵ Terminated UNSC Resolutions will not be re-imposed against Iran at the expiration of Resolution 2231.⁹⁶

Resolution 2231 affirms that the UNSC will adhere to the procedures for re-imposing UNSC sanctions set out in the JCPOA (as described in further detail below): if the UNSC receives notice of significant non-performance under the JCPOA, the UNSC will reinstate UNSC Resolutions 1696, 1737, 1747, 1803, 1835, and 1929 provided that the UNSC “does not adopt a resolution . . . to continue in effect the terminations” of sanctions within 30 days of such notice of significant non-performance, the relevant issue is not resolved during that time, and the UNSC does not “decide[] otherwise.”⁹⁷

⁹⁰ UNSC Resolution 2231, Annex B § 6(c).

⁹¹ *Id.* § 6(e).

⁹² *Id.* § 2.

⁹³ *Id.* § 4. Annex B also states, in a separate section, “Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missiles, until the date eight years after the JCPOA Adoption Day or until the date on which the IAEA submits a report confirming the Broader Conclusion, whichever is earlier.” *Id.* § 3.

⁹⁴ *Id.* § 5.

⁹⁵ UNSC Resolution 2231 § 8.

⁹⁶ *Id.*

⁹⁷ *Id.* §§ 11-12. Neither the JCPOA nor UNSC Resolution 2231 defines the mechanisms or procedures by which the UNSC would “decide[] otherwise” in such a case.

IRAN'S NUCLEAR COMMITMENTS

According to the Preface and the Preamble and General Provisions of the JCPOA, “Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.”⁹⁸ The JCPOA’s Preface further states that “the initial mutually determined limitations described in this JCPOA will be followed by a gradual evolution, at a reasonable pace, of Iran’s peaceful nuclear programme, including its enrichment activities, to a commercial programme for exclusively peaceful purposes, consistent with international non-proliferation norms.”⁹⁹

The JCPOA sets out a series of Iranian commitments, or “voluntary nuclear-related measures,”¹⁰⁰ whose full implementation, the JCPOA’s Preamble and General Provisions states, “will ensure the exclusively peaceful nature of Iran’s nuclear programme.”¹⁰¹ These nuclear-related commitments include (with all time periods calculated starting from Adoption Day):

- For 10 years, Iran will keep the uranium enrichment capacity of its Natanz enrichment facility at or below a specified level,¹⁰² and will limit its research, development, and installation of advanced centrifuges capable of more rapid enrichment.¹⁰³
- For 15 years, Iran will not “produce, seek, or acquire” separated plutonium or highly enriched uranium except for specified research purposes. During this 15-year period, also subject to certain exceptions, Iran “will maintain a total enriched uranium stockpile of no more than 300 kg of up to 3.67% enriched uranium hexafluoride (or the equivalent in different chemical forms).”¹⁰⁴
- Iran will convert its Fordow facility into a “nuclear, physics and technology centre.”¹⁰⁵
- Iran will “redesign and rebuild a heavy water research reactor” in Arak, and this redesigned and rebuilt Arak reactor “will not produce weapons grade plutonium.” There will be “no additional heavy water reactors or accumulation of heavy water in Iran for 15 years” and “[a]ll spent fuel from the redesigned Arak reactor, regardless of its origin, for the lifetime of the reactor, will be shipped out of Iran.”¹⁰⁶
- Iran “will not” engage in spent fuel reprocessing for 15 years, and “does not intend to thereafter.”¹⁰⁷
- On Implementation Day, Iran will provisionally apply the Additional Protocol.¹⁰⁸ On Transition Day, Iran will “seek, consistent with the Constitutional roles of the President and Parliament, ratification of the Additional Protocol.”¹⁰⁹

The IAEA “will be requested to monitor” Iran’s performance of these and other nuclear-related measures, and to provide regular updates to the IAEA Board of Governors and to the UNSC, and Iran “will permit” the IAEA to carry out monitoring tasks specified in the JCPOA.¹¹⁰ Some IAEA monitoring provisions extend beyond

⁹⁸ JCPOA, Preface; Preamble and General Provisions, iii. However, neither the JCPOA nor UNSC Resolution 2231 appears to contain a mechanism for enforcing any commitments beyond UNSCR Termination Day.

⁹⁹ *Id.*, Preface.

¹⁰⁰ *Id.*, Preamble and General Provisions, x; *see also id.*, Annex I (outlining nuclear-related commitments).

¹⁰¹ JCPOA, Preamble and General Provisions, ii.

¹⁰² This level is described as being equal to the enrichment capacity of 5060 centrifuges of the “IR-1” variety (Iran’s less advanced model of centrifuge). Under the JCPOA Iran will also store at Natanz, though in an uninstalled condition, a larger quantity of heretofore-installed centrifuges and related infrastructure. *See id.* §§ 2, 5; Annex I §§ 27, 29.

¹⁰³ JCPOA §§ 3-4; Annex I §§ 29, 32, 38, 40-43, 47-50, 61-63, 70, 80.

¹⁰⁴ *Id.* §§ 25, 28, 56-60. Section 7 of the JCPOA refers to Iran keeping this stockpile “under 300 kg.” The JCPOA does not specifically define what constitutes an “equivalent in different chemical forms.”

¹⁰⁵ JCPOA § 6; Annex I §§ 44-46, 49, 51.

¹⁰⁶ JCPOA §§ 8-10; Annex I §§ 2-11, 14, 56.

¹⁰⁷ JCPOA § 12; Annex I § 18-19.

¹⁰⁸ JCPOA, Annex II § 64; Annex V § 8.

¹⁰⁹ JCPOA § 34.iv; Annex II § 64; Annex V § 22.1.

¹¹⁰ JCPOA, Preamble and General Provisions, x; Annex I §§ 6, 9, 10, 12, 15, 29, 30, 33, 34, 39, 41, 46, 47.2, 48.2, 52, 59, 63-71, 75, 79, 80.

the core 15-year period of the JCPOA.¹¹¹ The JCPOA also sets out a process by which the IAEA can raise concerns it may have regarding undeclared materials or activities, or activities inconsistent with the JCPOA, and, if Iran's explanations do not resolve the IAEA's concerns, the IAEA may request access to specified locations of concern in Iran. Should the matter fail to be resolved, it would then proceed to review by the Joint Commission described below.¹¹²

DISPUTE RESOLUTION AND UNSC “SNAPBACK” PROVISIONS

“[S]ignificant non-performance” by a JCPOA participant constitutes grounds for an aggrieved JCPOA participant to “cease performing its commitments under [the] JCPOA in whole or in part.”¹¹³ The JCPOA does not expressly define “significant non-performance” or specify which commitments will cease in the event of non-performance, leaving each to be determined by the country bringing accusations (“**complaining participant**”) against an alleged non-performer. Although the complaining participant must exhaust JCPOA dispute resolution procedures before ceasing performance of its JCPOA obligations, the JCPOA leaves the final decision as to whether dispute resolution is ultimately successful to the complaining participant.

The JCPOA establishes a “Joint Commission” composed of representatives from each of the parties to the JCPOA, coordinated by the EU High Representative for Foreign Affairs and Security Policy or the High Representative’s designated representative.¹¹⁴ The Joint Commission is to meet quarterly and within one week (or within three days, for matters deemed urgent) of a complaining participant’s request. Among the Joint Commission’s responsibilities are to “[p]rovide consultation, and advise on the necessary means in the context of access” in the event of IAEA concerns not resolved by Iranian explanations, and to “[r]eview, with a view to resolving, any issue that a JCPOA participant believes constitutes nonperformance by another JCPOA participant” of its JCPOA commitments.¹¹⁵

There are multiple steps (in which Iran will participate) involved in the JCPOA dispute resolution process, which, once the Joint Commission has convened at the request of a complaining participant, can take from 15 days (if the dispute is resolved) to 35 days (if the dispute is not resolved).¹¹⁶ If the dispute resolution process does not resolve the issue to the satisfaction of the complaining participant, and the complaining participant believes the issue constitutes significant non-performance, the complaining participant may treat the unresolved issue as grounds to cease performing its commitments under the JCPOA “and/or notify the UN Security Council that it believes the issue constitutes significant non-performance.”¹¹⁷

The JCPOA states that UNSC sanctions will be “re-imposed” or (as this re-imposition has sometimes been described) “snapped back” 30 days after the UNSC receives notice of significant non-performance from a complaining participant that has exhausted the JCPOA dispute resolution process, unless the UNSC passes a resolution “to continue the sanctions lifting,” the dispute is resolved within the 30-day period following the notice of significant non-performance, or the UNSC “decides otherwise.”¹¹⁸

In the event of such “snapback,” re-imposed UNSC sanctions would not apply retroactively to “contracts signed” by Iranian and non-Iranian parties prior to the date of re-imposition, “provided that the activities contemplated under and execution of such contracts are consistent with [the] JCPOA and the previous and

¹¹¹ See, e.g., JCPOA § 15; Annex I § 63.

¹¹² JCPOA, Annex I §§ 74-78.

¹¹³ JCPOA § 36.

¹¹⁴ *Id.*, Annex IV §§ 1.1-1.4.

¹¹⁵ *Id.* §§ 2.1.10, 2.1.14.

¹¹⁶ See JCPOA §§ 36-37; Annex IV §§ 2.1.10, 2.1.14, 3.1-3.4, 4.1-4.5.

¹¹⁷ JCPOA § 36.

¹¹⁸ See JCPOA §§ 36-37; UNSC Resolution 2231 §§ 7, 11, 12.

current UN Security Council resolutions.”¹¹⁹ Re-imposed UNSC sanctions may apply prospectively, upon “snapback,” to any activities still occurring or contemplated under contracts signed before the date of re-imposition (as well as under any contracts signed after that date).¹²⁰ Therefore, parties considering business in Iran or with Iranian counterparts will need either to accept the risk that UNSC sanctions (as well as U.S. sanctions, as noted above, and, potentially, EU sanctions) could be re-imposed, or account for and apportion that risk in their contracts.

The UNSC “snapback” mechanism will remain until ten years after Adoption Day, which will mark the “conclusion of consideration of the Iran nuclear issue by the UN Security Council.”¹²¹

CONCLUSION

For the U.S. private sector, implementation of the JCPOA would return the global sanctions regime against Iran to roughly its pre-2010 posture. The United States will stand alone in generally prohibiting its nationals from transacting with Iran. Although most U.S. secondary sanctions on Iran will be lifted, some will remain, further complicating international trade transactions, even where no U.S. persons, funds, or goods are involved. Moreover, transactions between non-U.S. persons and Iranian counterparties that are conducted in U.S. dollars will continue to be subject to U.S. sanctions, as U.S. persons generally may not clear U.S. dollar denominated transactions that involve Iran. Many Iranian banks will be removed from the SDN List, but, for those that are GOI entities, their assets within the United States or in the possession of U.S. persons, and related transactions, will continue to be blocked. Non-U.S. persons dealing with Iran would be well advised to ensure that their Iran-linked transactions have no U.S. nexus, and they should be prepared to certify to their U.S. counterparties or correspondents that their U.S.-linked transactions are devoid of Iranian involvement or interest. For at least the intermediate future, companies doing business under the JCPOA-modified sanctions regime can expect many uncertainties, exacerbated by an enforcement environment in which penalties for U.S. sanctions violations have twice crossed the billion-dollar threshold.

¹¹⁹ See JCPOA § 37; UNSC Resolution 2231 § 14.

¹²⁰ See UNSC Resolution 2231 §§ 14-15.

¹²¹ See JCPOA, Preamble and General Provisions, xiv; UNSC Resolution 2231 § 8.

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