

IRANIAN SANCTIONS 2018

THE YEAR IT ALL CHANGED?

Introduction

For years international business with Iran has been marred by political wrangling and compliance hurdles.

The divided international community has been unable to establish a consistent and stable approach to trade with Iran.

This has resulted in uncertainty for business in relation to opportunities in oil-rich Iran. The question for most businesses is:-

Even if current law permits trade with Iran, will that continue to be the case?

This year has seen a plethora of significant developments on trade with Iran.

This handy guide is intended to provide you with a brief summary of what's happened and why, together with links to key resources providing more detailed information.

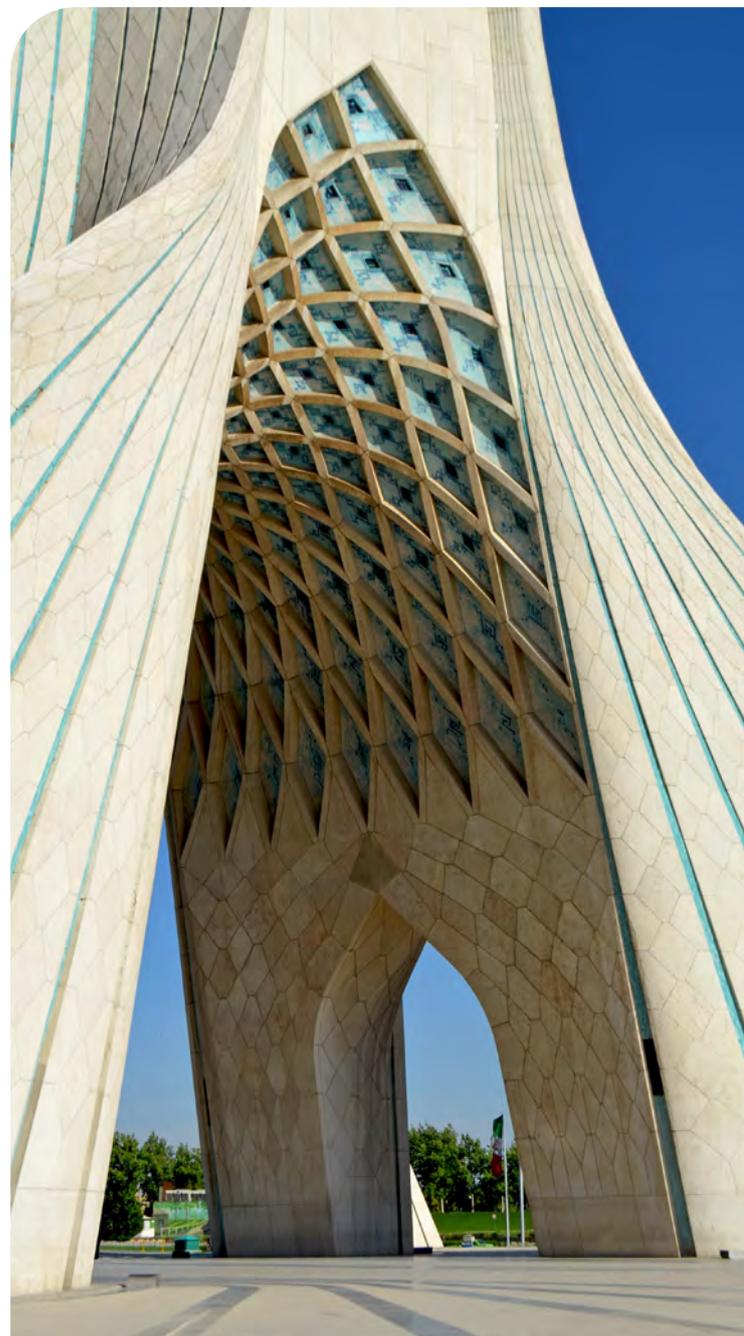
A brief history of sanctions on Iran

In the years that followed the Tehran embassy crisis, the US imposed waves of increasingly severe trade sanctions (trade restrictions) on Iran.

Relations between the United Kingdom (“UK”) and Iran have also been troubled throughout this period.

Due to rising international concerns about Iran's nuclear programme, between 2006 and 2012 the United Nations (“UN”) imposed increasingly broad trade sanctions on Iran and the US and the UK targeted the Iranian energy sector as a key source of funding for the Iranian regime's nuclear weapons programme.

Comprehensive US and UK sanctions on the Iranian banking, shipping and insurance industries made it difficult for other industries to trade with Iran, even those which were not directly subject to sanctions.



Azadi Tower, Tehran. The most important monument in Iran, also known as 'Statue of Liberty', it is a place for military reviews and protests.

The Iran deal

What is the “Iran Deal”?

On 14 July 2015, the “Iran Deal” was agreed between Iran, the P5+1 (the five permanent members of the United Nations Security Council – China, France, Russia, the United Kingdom and the United States + Germany) and the European Union (“EU”).

The Iran Deal (more formally known as the Joint Comprehensive Plan of Action, “JCPOA”) is an agreement between the parties to alleviate sanctions on Iran in exchange for Iran’s winding down of certain elements of its nuclear programme.

What did Iran agree to?

Under the Iran Deal, Iran agreed to eliminate or restrict certain types of its enriched uranium stockpiles, reduce the number of its gas centrifuges and limit its uranium enrichment and heavy water facilities by the destruction of certain types of equipment (among other measures).

These commitments last for periods of 10-15 years.

As independent verification of the implementation of Iran’s commitments, it was agreed that the International Atomic Energy Agency (“IAEA”) would be provided with access to all of Iran’s nuclear facilities.



What sanctions relief was provided under the Iran Deal?

In January 2016, the IAEA confirmed that Iran had fulfilled its commitments and the agreed US, EU and UN sanctions relief came into effect.

1. US Sanctions Relief

The US primary sanctions on Iran remained in place during the US participation in the Iran Deal. These sanctions create a comprehensive embargo which effectively prohibits all trade by US persons with Iran (with few exceptions), whether directly or indirectly.

US sanctions relief under the deal was limited only to nuclear-related secondary sanctions. US secondary sanctions are extra-territorial in nature (i.e. they apply worldwide, not just to US persons or within the US), targeting any non-US persons who engage in specified activities involving Iran which are contrary to US trade policy. These sanctions threaten non-US persons with a series of penalties which could be applied to non-US persons if they engage in the sanctioned activity (the menu of options available to the US regulator can be found on page 4, section a) to g) of **Executive Order 13846 Reimposing Iranian Sanctions**). These penalties can have the effect of cutting the offender off from the US and its financial system and are intended to deter non-US persons from trading with Iran. The lifting of these sanctions meant that non-US entities could now pursue opportunities in Iran without fear of facing these US penalties.

In addition, under the Iran Deal, persons who are owned or controlled by US persons (such as non-US subsidiaries with a US parent company) could apply to the US Office of Foreign Assets Control (“OFAC”), under what was known as General Licence H, to conduct trade with Iran which would previously have been caught by US secondary sanctions. Certain conditions applied to any such trade - including restrictions on involvement of the US parent company, US origin items, involvement of certain persons and use of the US financial system - but the waiver was significant for facilitating non-US persons’ trade with Iran and many EU entities have engaged in Iranian trade under General Licence H.

The US also agreed to remove the Specially Designated National (“SDN”) listing from various parties, importantly removing this classification from some key entities involved in the Iranian banking, petrochemical and shipping industries.

US sanctions targeting Iran’s human rights violations remained in place as they are not nuclear-related sanctions.



2. EU / UK Sanctions Relief

A much broader approach to sanctions relief was taken by the EU under the deal. As a result, sanctions relating to the Iranian energy, banking and insurance sectors (among others) have been lifted. (A full list of EU sanctions which have been lifted under the Iran Deal, is available in Section A of Annex II of the **JCPOA**). This meant that EU entities which were previously prohibited by these sanctions from trading with Iran were free to pursue opportunities in Iran.

The remaining obstacles faced by EU entities in trading with Iran largely arose due to:

1. Due diligence difficulties experienced in complying with financial sanctions rules (restrictions targeting specified persons);
2. Ensuring their supply chain was clear of US involvement (goods, patents, personnel etc.); and
3. Finding a bank which would process funds relating to Iranian trade.

As the US primary sanctions remained in place, many EU banks have been unable to deal with transactions involving Iran due to their connections with the US financial system, even with the lifting of US secondary sanctions.

This significant obstacle undoubtedly deterred EU entities from trading with Iran.

The EU sanctions relating to Iranian human rights violations remain in place. They do not have a broad impact on general trade with Iran as they target items which could be used in torture and internal repression.



For more information
on sanctions

[click here](#)
(OFAC FAQs)



Street View of Tehran with Milad Tower and Alborz Mountains

The United States' Exit from the Iran Deal

On 8 May 2018, President Trump announced his intention to remove the US from the Iran Deal and re-impose the US sanctions waived under the deal over a phased 90- and 180-day “wind-down period”.

The US secondary sanctions being re-imposed on the Iranian energy sector, which apply even to non-US persons with no link to the US, target the following activities and persons (this is not an exhaustive list):

- Individuals or entities determined to be part of the energy sector of Iran or those providing significant goods or services used in connection with the Iranian energy sector;
- Dealings with the National Iranian Oil Company (“NIOC”), the National Iranian Tanker Company (“NITC”) or the Naftiran Intertrade Company (“NICO”) and many other Iranian shipping sector organisations;
- Dealings involving goods, services or technology above certain thresholds (\$1 million for a single transaction or \$5 million in a 12 month period) that could directly and significantly contribute to Iran’s ability to develop petroleum resources located in Iran or its domestic production of refined petroleum products;
- Participating in joint ventures or investing above certain thresholds in activities which contribute to Iran’s ability to develop petroleum resources.”

For more information on the sanctions which were re-imposed, additional sanctions being imposed, and transactions permitted during and after the wind-down periods, please [click here \(OFAC FAQs\)](#) and [here \(a helpful summary of US secondary sanctions – which have now been re-imposed – produced by the US State Department in 2014\)](#).



President Trump has previously expressed his opinion on the Iran Deal, calling it “disastrous”.

Heralded as a “significant achievement” of the Obama Administration, President Trump vowed to dismantle the deal.

On Monday 5th November 2018, the final tranche of US sanctions which had been waived under the Iran Deal were re-imposed, significantly restricting the ability of EU entities to do business with Iran.

The EU's response

The EU has launched, or is launching, protective measures designed to assist EU entities in trade with Iran if they wish to do so: the Blocking Regulations and a Special Purpose Vehicle designed to facilitate payments with Iranian entities.

The Blocking Regulations

The EU has historically objected to the US's attempts to enforce its trade policy on EU entities.

In 1996 the EU introduced a regulation known as the "Blocking Regulation" seeking to limit the impact of US extra-territorial sanctions on EU entities.

The Regulation, as extended in June 2018 to include specified US secondary sanctions on Iran, can be [found here](#).

A detailed list of US Iranian sanctions covered by the blocking measure can be found on page 7 onwards of the Regulation.

In essence, the blocking measures set out the following key elements:

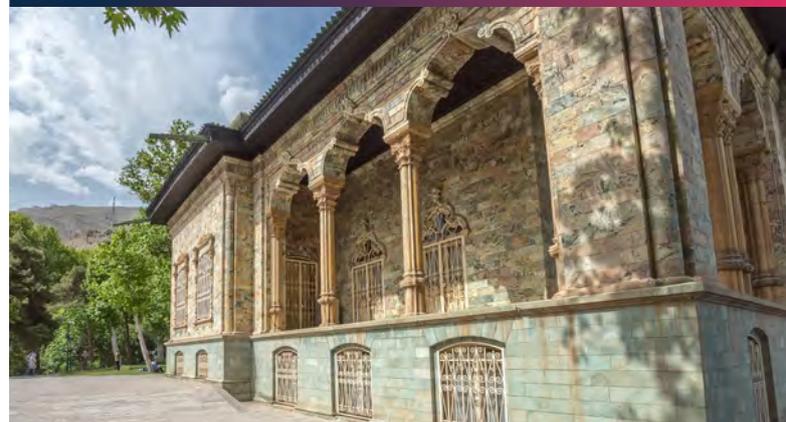
- 1. No compliance with US secondary sanctions is permitted:** EU entities are prohibited from complying with the US extraterritorial sanctions or any decision, ruling or award based thereon.
- 2. Reporting obligation re. effects on economic/financial interests:** EU entities must inform the European Commission within 30 days of any events arising from the US extra-territorial sanctions, or actions based thereon, which directly or indirectly affect their economic or financial interests.
- 3. Nullification of secondary sanctions in EU law:** The US secondary sanctions are considered as null and void within the EU. This means that no decision, whether administrative, judicial, arbitral or of any other nature, taken by a third country authority and based on the secondary sanctions will be recognised in the EU. The EU will not permit the enforcement of any penalty or decision within the EU which is based on the US secondary sanctions.
- 4. Recovery of damages arising from application of secondary sanctions:** EU entities may recover damages arising from application of the US secondary sanctions from the natural or legal persons or entities causing the losses.
- 5. Authorisation to comply available in limited circumstances:** EU entities are permitted to seek authorisation from the EU Commission to comply with US extra-territorial sanctions if not doing so would cause serious harm to their interests or the interests of the EU.

A full list of the criteria the EU Commission will consider when deciding whether to grant authorisation to comply with the blocked US sanctions can be found in Article 4 of the Commission's [Assessment Criteria](#). Notable criteria include:

- the adverse effect on the conduct of economic activity, in particular whether the applicant would face significant economic losses, which could for example threaten its viability or pose a serious risk of bankruptcy;
- whether the applicant's activity would be rendered excessively difficult due to a loss of essential inputs or resources which cannot be reasonably replaced;
- whether there is a threat to safety, security, the protection of human life and health and the protection of the environment; and
- the security of supply of strategic goods or services within or to the EU or a Member State and the impact of any shortage or disruption therein.

It will be interesting to see how authorisation requests are dealt with by the EU Commission and whether any Member State authorities pursue enforcement action for breach of the blocking regulations, which historically has been extremely rare.

The blocking regulation puts EU entities in a difficult position in which they must effectively choose whether to comply with the extraterritorial US sanctions or with EU law. Equally, EU member states must choose whether to pursue their own corporate entities for breach of the blocking measures and risk finding themselves subject to criticism by the US for penalising entities for compliance with US law.



Old Saadabad Palace built by the Pahlavi dynasty of Iran in the Shemiran area of Tehran as official residence of the President of Iran.

The Special Purpose Vehicle

Another way in which the EU is hoping to shield EU corporate entities from the extraterritorial US sanctions is by setting up a special purpose vehicle (or an “SPV”).

An SPV is a separate legal entity created for a limited purpose and, in this case, the purpose of the SPV will be to process Iran’s import and export payments.

The SPV will act as a type of exchange whereby Iran will be able to buy products from EU companies using credits. These credits will be obtained from selling its products to EU Companies and means no money passes from EU companies directly to Iran, bypassing the extraterritorial US sanctions.

The SPV will be established and operate outside the international banking system and is expected to trade in Euros. This aspect will be particularly welcome, considering that SWIFT (The Society for Worldwide Interbank Financial Telecommunication) has now suspended some Iranian banks from its network to comply with the extraterritorial US sanctions.

The incorporation of an SPV was announced by the EU’s foreign policy chief, Federica Mogherini, who was hopeful that it would be in place **“before November”**.

Unfortunately, no EU country has agreed to house the SPV as yet. It is likely that this is because no EU member state wants to risk the US’s reaction to an EU state enabling trade with Iran in direct contravention of secondary US sanctions.

If the SPV is eventually successfully launched, it will be interesting to see whether EU entities make use of it, braving the potential reaction of the US authorities.

On the other hand, realistically the US is unlikely to pursue each and every “breach” of its secondary sanctions.

We are maintaining a watching brief on these developments and will issue further publications to keep you updated on any developments.

In the meantime, if your business is affected by any of the issues outlined in this Handy Guide and you would like to discuss your options, please contact Fran Hutchison, Paul Marshall or your usual Brodies contact, we would be delighted to assist.



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Key contacts



Fran Hutchison
ASSOCIATE
+44 (0) 1224 392 680
+44 (0) 7712556989
fran.hutchison@brodies.com



Paul Marshall
PARTNER
+44 (0) 131 656 0062
+44 (0) 7581 064 801
paul.marshall@brodies.com