



FINANCIAL INTEGRITY  
NETWORK

**FIN Policy Alert**  
**Post-Implementation Day Risks of Doing Business in Iran**

On January 16, 2016, the United States, the European Union, the United Nations, and other countries unwound a substantial number of sanctions on the Islamic Republic of Iran as part of their obligations under the Joint Comprehensive Plan of Action (JCPOA). Most notably, many EU and UN sanctions, as well as many U.S. “secondary” sanctions, will no longer remain in force. “Primary” U.S. sanctions programs barring almost all U.S. persons from doing Iran-linked business remain.<sup>1</sup>

In the wake of Implementation Day and with remaining sanctions and financial crime concerns, important questions exist regarding what doing business in or with Iran now means and how to evaluate and manage such risk. This Financial Integrity Network (FIN) Policy Alert delineates key risk factors that remain.

**Bottom Line:**

*As Iran attempts to reintegrate into the world economy following Implementation Day, many challenges remain for companies considering doing business in the Islamic Republic, with Iranian counterparties, or supporting customers operating in Iran. Dealing with the spectrum of risk — financial crime, regulatory, reputational, and policy — in the Islamic Republic will require that U.S., European, Asian, Middle Eastern, and other firms clearly understand the patchwork of sanctions that will remain in place on the country, as well as many of the systemic issues impacting various Iranian business sectors, such as corruption. Companies must also factor the risk that sanctions may “snap back” in the medium or long term into their business decisions.*

While Iranian markets may appear attractive, companies considering transacting with persons in Iran or doing business in Iran should proceed with caution. Any firm or company needs to consider the real, regulatory, reputational, and policy risks attendant to doing business in or with Iran. This FIN Policy Alert, drawing on FIN’s deep expertise in issues related to sanctions, anti-

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<sup>1</sup> Primary sanctions are those that apply directly to (1) the activities of U.S. persons (including persons located in the United States), (2) non-U.S. persons who cause U.S. persons to violate U.S. sanctions regulations, (3) activities taking place within the United States, and (4) transfers of U.S.-regulated goods, services, and technologies. Secondary sanctions apply to non-U.S. persons where the United States lacks jurisdiction to impose primary sanctions. Such sanctions often include privileging a company’s access to U.S. markets on compliance with U.S. sanctions regulations.

money laundering, illicit finance, conducting business in high-risk jurisdictions, and overall financial crime and sanctions risk management, outlines what FIN experts see as the core challenges related to doing business in Iran and with Iranian persons in the current environment. This Policy Alert is not intended to be an exhaustive legal review of the sanctions-related changes since Implementation Day.

### **Sanctions and Related Risks of Doing Business in Iran:**

FIN experts believe that companies considering doing business in Iran or with Iranian persons will face at least eight sanctions and financial crimes-related risks:

1. ***Primary U.S. Sanctions.*** Most U.S. primary sanctions, which broadly prohibit U.S. persons from conducting transactions in Iran, with persons resident in Iran, or with the Government of Iran, will remain in force. These U.S. primary sanctions pose significant risks for any multinational company considering doing business in Iran. U.S. jurisdiction is broad and U.S. regulators can use it to target transactions that may not initially appear to touch U.S. markets or involve U.S. persons.

U.S. jurisdiction applies to all U.S. individuals (including U.S. citizens and permanent resident aliens, wherever located, as well as persons located in the United States) and entities (including any entity located or operating in the United States, organized under the laws of the United States, as well as foreign branches of U.S. entities). Further, the United States may impose penalties (civil or criminal) on any foreign person who *causes* a U.S. person to violate sanctions regulations.<sup>2</sup>

For example, if a Middle Eastern, European, or Asian financial institution conducts transactions on behalf of an Iranian company and the transaction involves a U.S. bank or a correspondent account located in the United States, U.S. regulators will likely have jurisdiction over the transaction and can impose *penalties* on the non-U.S. financial institution. Similarly, if a Middle Eastern exporting company with U.S. offices relies on those offices for back office functions for transactions related to Iran or with an Iranian, the U.S. offices providing back office support will be engaged in the prohibited exportation of services to Iran (and can be subject to OFAC penalties). Where the Middle Eastern entity caused the U.S. offices to provide the services without knowledge of the Iranian nexus, U.S. regulators could impose fines on that Middle Eastern entity for causing the U.S. offices to violate the sanctions.

Even those U.S. companies taking advantage of the new General License H—which permits foreign subsidiaries of U.S. companies to engage in certain activities in Iran—will face significant sanctions-related risks. While these subsidiaries may be allowed to conduct those activities, if the U.S. parent company is involved in any Iran-related business or transactions, it will likely be exposed to U.S. primary sanctions.<sup>3</sup>

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<sup>2</sup> See 50 U.S.C. § 1705.

<sup>3</sup> Note that U.S. parent companies are permitted to establish policies and procedures that allow these foreign subsidiaries to conduct business in Iran and with Iranian persons, though after the initial decision to re-engage in Iran-related business and the establishment of procedures for doing so, U.S. persons cannot be involved in the

Multinational companies must build a firewall between U.S. parents and any foreign subsidiary doing business with Iranian persons or in Iran, which may be difficult to effectively do in practice

Because the breadth of U.S. jurisdiction is expansive, companies based in Europe and Asia must be aware that any engagement with Iran may still expose them to remaining U.S. sanctions. Companies, particularly ones operating across borders, should pay careful attention to whether they may be subject to U.S. jurisdiction, which might pose one of the most pressing regulatory risks that any company considering entering Iranian markets will face.

2. ***Remaining U.S. Secondary Sanctions.*** Foreign businesses considering doing business in Iran will continue to face the risk of violating remaining “secondary sanctions”, on Iran, which prohibit foreign financial institutions and other non-U.S. headquartered companies from doing certain business with Iran. While many of the secondary sanctions imposed since 2010 have been unwound,<sup>4</sup> non-U.S. persons are still at risk for violating remaining U.S. secondary sanctions if they engage in transactions with any one of more than 200 people and entities listed as Specially Designated Nationals (SDNs) including the Islamic Revolutionary Guard Corps (IRGC) and its affiliates.

These restrictions pose additional and significant risks because under U.S. law, entities owned or controlled 50% or more by designated persons—so-called “shadow SDNs”—are by law also considered SDNs. For example, if a foreign financial institution processes transactions on behalf of an entity that is owned or controlled by the IRGC (whether or not that entity is listed on national or international lists of designated parties) it could be subject to U.S. secondary sanctions. This creates significant risk for financial institutions and other companies wishing to do business in Iran, given that the IRGC controls a significant portion of the economy.<sup>5</sup> This risk will be further exacerbated by Iranian attempts to create a “gold rush” psychology in the marketplace and muddy the waters regarding what restrictions may apply to specific transactions. For example, FIN experts expect Iranian customers and counterparties to alter ownership interests, names of entities, and ownership structures in an attempt to hide links to designated parties.

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activities of their foreign subsidiaries relating to transactions with Iranian persons or in Iran. Similarly, U.S. companies can make their automated computing, accounting, and communications systems available for their subsidiaries conducting permitted activities in Iran. In effect, this permits foreign subsidiaries doing permitted business in Iran to continue to use the same computer systems as their parent companies. Note however that provision does not allow U.S. parents to otherwise be involved in those activities in any way.

<sup>4</sup> Following Implementation Day, non-U.S. entities can now conduct certain transactions with:

- The financial and banking industry in Iran, including maintaining correspondent accounts for non OFAC-designated Iranian financial institutions, the provision of financial messaging services, dealing in the rial and in Iranian sovereign debt, and issuing credit cards for Iranians;
- Insurance-related activities consistent with the JCPOA, including payment of claims to non-U.S. persons;
- The energy industry;
- Shipping, shipbuilding, and port operations;
- Precious and raw/semi-finished metals dealers; and
- The automotive industry, insofar as non-U.S. goods, technology, and services are involved.

<sup>5</sup> Estimates vary on how much of the Iranian economy is controlled by the IRGC, with many analysts suggesting the IGRC controls as much as 35%.

Determining whether a customer, partner, or counterparty is owned or controlled by a designated person will be a challenging task, further complicated by the fact that the Office of Foreign Assets Control (OFAC) at the United States Department of the Treasury has provided limited guidance on how companies looking to do business in Iran can determine whether they are inadvertently doing business with the IRGC. OFAC recommends only that “a person considering business in Iran or with Iranian persons conduct due diligence sufficient to ensure that it is not knowingly engaging in transactions with the IRGC or other Iranian or Iran-related persons on the SDN List and keep records documenting that due diligence.” Businesses looking to enter the Iranian market must make their own determinations about what constitutes “sufficient” due diligence without more precise guidance and while the structure of civil and criminal penalties for sanctions violations remains in place.

Further, non-U.S. persons still need to be aware of remaining U.S. export controls: for example, restrictions still apply regarding the facilitation of Iranian acquisition or development of weapons of mass destruction. In addition, transfers of certain potential dual-use materials must be approved via the procurement channel established by the JCPOA. U.S. origin goods, technology, and services also are subject to the Export Administration Regulations, which retain prohibitions on exports and re-exports to Iran.

3. ***Remaining EU and UN Sanctions.*** While most EU and UN sanctions on Iran have been unwound, a number of important restrictions remain in place.<sup>6</sup> Under EU law, trade restrictions on the sale, export, provision, or servicing of goods deemed to be “internal repression equipment,” or used for “telecommunications surveillance and interception,” remain in place. Likewise, the EU will continue to impose asset freezes and prohibitions on business and trade with individuals and entities designated for committing human rights abuses and restrictions on the trade of certain items related to nuclear proliferation.

Similarly, UN Security Council Resolutions that imposed sanctions on Iran for its nuclear program were terminated on Implementation Day. Thus, the United Nations no longer imposes limits on providing insurance and reinsurance products to Iranian entities, and no

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<sup>6</sup> Under EU law, several engagements previously prohibited, including associated services, are now allowed so long as they avoid dealing with listed Iranian persons:

- Financial, banking, and insurance measures involving Iranian entities—including the provision of insurance to Iranian oil and gas shipments—are now permitted by EU law and do not require prior authorization;
- The import, purchase, swap, and transport crude oil and petroleum products, gas, and petrochemical products from Iran, and the export of equipment to Iran for use in the energy industry are now permitted;
- Engagements with the Iranian shipping, shipbuilding, and transport sectors are no longer restricted;
- Trade with Iran involving gold, other precious metals, banknotes, and coinage is now permissible;
- While the sale or transfer of certain graphite and raw/semi-finished metals to any Iranian entity is no longer prohibited, such activity is subject to an authorization regime; and
- While the sale or transfer of Enterprise Resource Planning software to any Iranian entity for use in activities consistent with the JCPOA is no longer prohibited, such activity is subject to an authorization regime.

Like the United States, the EU has also delisted certain entities that are thus no longer subject to its asset freeze, prohibition to make funds available, and visa ban. However, certain financial institutions such as Ansar Bank, Bank Saderat Iran, Bank Saderat PLC, Bank Sepah, Bank Sepah International, and Mehr Bank remain listed by the EU.

longer prohibits the opening of new Iranian bank branches or subsidiaries outside Iran (nor is there a mirrored prohibition on entities from UN member states doing the same within Iran). However, a UN arms embargo and UN sanctions on Iran's ballistic missile program remain in place. Further, individuals designated by the UN for participating in nuclear and ballistic missile programs will remain designated.<sup>7</sup>

4. ***Likely Additional Sanctions.*** Businesses interested in entering Iran should be aware that additional designations and sanctions are likely as the United States Congress continues to focus on illicit Iranian behavior and as Iran continues with activities such as ballistic missile testing and the provision of support to terrorist groups. Congress is currently developing additional sanctions legislation, in particular related to more stringent sanctions tied to the IRGC and its ownership and control interests. Though the administration will resist actions that appear to re-impose lifted sanctions, both the House of Representatives and the Senate are crafting various pieces of legislation that directly or indirectly impact Iran, including the recent legislation imposing additional sanctions on Hizbollah.

Similarly, the administration will want to demonstrate its willingness to sanction non-nuclear Iranian behavior, both to stave off additional congressional action and address Iranian threats to U.S. interests. Since Implementation Day, the Treasury Department has designated 11 entities and individuals involved in procurement on behalf of Iran's ballistic missile program. As Iran continues its destabilizing activities in the Middle East, companies should be aware that additional Iranian individuals, companies, and related networks could be designated as SDNs, effectively requiring an end to any financial or commercial relationship.

FIN's assessment is that Iran will likely continue engaging in activities that spur additional U.S. and possibly EU sanctions. The Iranians have continued to show a degree of defiance on a number of issues, including asserting that they will continue developing their ballistic missile capabilities. Likewise, they have increased support for Syrian President Bashar al-Assad, the Houthi rebels in Yemen, and they are engaging in an increasingly open and hostile conflict with Saudi Arabia and other Sunni Arab states. Finally, Iran's link with North Korea, and in particular its cooperation on proliferation and ballistic missile-related issues, increases the likelihood that the United States and the European Union will impose additional sanctions on the Islamic Republic. For example, in late January, France requested the European Union considering imposing additional sanctions on Iran for its continued ballistic missiles activities. Combined with Iran's human rights abuses and authoritarian domestic actions, the risk of additional sanctions on the country beyond the nuclear context remains high. The recent parliamentary elections in Iran have not altered this analysis or trajectory fundamentally.

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<sup>7</sup> Pursuant to the terms of United Nations Security Council Resolution (UNSCR) 2231 (2015) (which endorsed the JCPOA), all prior United Nations Security Council Resolutions mandating sanctions on Iran — namely, UNSCR 1696 (2006), 1737 (2007), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010), and 2224 (2015) — were formally terminated upon receipt of the IAEA's report verifying that Iran has met its nuclear-related obligations under the JCPOA. Through UNSCR 2231, the UN continues to impose certain restrictions on nuclear, conventional arms, and ballistic missile-related activities involving Iran.

5. ***Iran's Potential Cheating on the JCPOA.*** If the United States or other members of the P5+1 conclude that Iran is cheating on its obligations under the JCPOA, they can snap back many of the sanctions into place. In the context of any potential snapback, OFAC has made clear that there will be no “grandfather” clause for pending transactions, meaning foreign companies doing business in Iran would need to very quickly wind down their operations, potentially at a significant loss. While the Obama Administration will be unlikely to push for a comprehensive snapback of sanctions unless there is a serious, material breach of the JCPOA, Treasury Department officials have made clear that they have developed more limited snap back mechanisms in the case that Iran will push the envelope and engage in activities that violate its obligations. Similarly, depending on the outcome of the U.S. presidential election in November 2016, a number of candidates have expressed a desire to re-impose sanctions on Iran. Such action could pose serious risks for foreign companies doing business in the Islamic Republic.
6. ***Sanctions Violations Enforcement Posture.*** The United States Department of the Treasury has indicated it will continue to aggressively enforce regulations remaining in place. For example, acting Under Secretary of the Treasury for Terrorism and Financial Intelligence Adam Szubin noted, following Implementation Day, that “[w]e have consistently made clear that the United States will vigorously press sanctions against Iranian activities outside of the Joint Comprehensive Plan of Action -- including those related to Iran’s support for terrorism, regional destabilization, human rights abuses, and ballistic missile program.” Indeed, the day after JCPOA Implementation Day, the U.S. government imposed sanctions on 11 entities and individuals in the Middle East and Asia for supporting Iran’s ballistic missile program. Such sanctions will be used to help demonstrate to Iran and U.S. allies that the United States remains prepared to use economic measures to enforce existing sanctions.
7. ***Regulatory Risk from Multiple Enforcement Agencies.*** From a regulatory and enforcement perspective, it is important to note that the Treasury Department and OFAC are not the only arbiters of sanctions violations and requirements. The United States Department of Justice, the Securities and Exchange Commission, state prosecutors, and various New York authorities, such as the Department of Financial Services, will all play a significant role in how existing sanctions regulations and related laws are enforced. Local authorities may elect to take a more aggressive enforcement posture with respect to sanctions violations, which would fall outside of the federal government’s control. Any companies considering doing business in Iran or with Iranian individuals or entities should pay close attention to the regulatory and enforcement postures taken by these other government agencies.
8. ***Financial Crimes Risks in Iran.*** Though the recent business attention on Iran has understandably focused on sanctions-related issues, clients must remember that other financial crimes concerns in the Islamic Republic remain pervasive. In particular, the nature of the Iranian economy and the role of the government within the economy present serious risks related to bribery and corruption, money laundering, and illicit financing.

Iran ranked 130 of 175 countries in Transparency International's Corruption Perceptions Index as of 2015.

In 2011, the U.S. identified Iran as a state of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act. The Financial Action Task Force (FATF) first raised concerns over Iran's lack of a comprehensive AML/CFT framework in 2007, and it still urges Iran to meaningfully address AML/CFT deficiencies and will consider urging stronger counter-measures later this year. OFAC also has made clear that activity inconsistent with a wide range of Executive Orders imposing sanctions on Iran (including for providing support to terrorism, undermining the stability of Yemen, and other behaviors) could still subject U.S. and non-U.S. persons to sanctions. Now, the Iranian government has indicated that it will begin to target "financial corruption," and has just sentenced Iranian billionaire Babak Zanjani, who helped the regime evade oil-related sanctions, and two others to death for past corruption. Attention on the issue of corruption will now grow, as Iran attempts to do business with the world. Any companies looking to do business in Iran must be acutely aware of serious financial integrity risks beyond those posed by remaining sanctions.

FIN clients and friends should be prepared to work through many of these issues with their own customer bases. As some of the sanctions on Iran are unwound, many European, Asian, and Middle Eastern companies understandably want to re-engage in the Iranian economy. The risk appetites of companies will likely vary by sector, with large oil, aerospace, auto, infrastructure, and equipment companies likely more willing to enter Iranian markets more quickly and with a higher tolerance for risk. For example, Airbus has already agreed to sell Iran 114 airplanes, and Boeing has obtained a license from OFAC to begin commercial discussions with Iranian airlines.

In contrast, other sectors will have a more conservative risk approach. Shipping insurers have already recommended a greater degree of caution. For example, the London Protection and Indemnity Club, a member of the International Group of Protection and Indemnity Clubs, the main association of global tanker insurers, has recommended shipping insurers not enter contracts or fixtures involving previously sanctioned Iranian trade or entities without performing extensive due diligence. Similarly, financial institutions will be more reluctant to re-enter Iranian markets, given recent enforcement actions targeting their activities and the stricter financial crime compliance environment globally.

A significant challenge will be how such financial institutions respond to pressure from clients with greater risk appetites to provide financial services for activities in Iran. Iran has already complained that European banks have remained reluctant to engage in commercial activity with Iran, now asking the IMF to help assuage such concerns with a report slated for release in 2018. The desire in and from Tehran to see the fruits of the nuclear negotiations, especially with more banking activity with the West, will add pressure to those institutions that remain cautious. For example, some financial institutions, including at least one major Japanese bank, have begun processing non-dollarized transactions for clients operating in the Islamic Republic. Importantly, it appears the Iranians realize that in order to do business legitimately with the West, they must meet the standards demanded in the Western banking world for transparency and accountability. FIN clients and friends, particularly financial institutions, should determine how they will

approach Iran-related business, including being prepared to address these issues with their clients, many of whom will be interested in doing business in the Islamic Republic.

### **Conclusion:**

The signing of the JCPOA and the partial unwinding of the U.S., EU, and UN sanctions programs represent a significant landmark in the relationship between Iran and the international community. While many are excited about the business opportunities presented by these developments, the sanctions environment remains complicated and tangled and the financial crime compliance risks associated with doing business with Iran remain high and may be increasing. Each client must evaluate this risk as it surveys potential opportunities in this landscape. FIN remains ready to assist.

For more background and analysis from the FIN experts, see the following recent testimonies and published pieces regarding the Iranian nuclear deal and its implications:

1. Juan Zarate and Chip Poncy, [“Using Financial Sticks to Control Iran,”](#) *The Washington Post*, Aug. 27, 2015.
2. Omar Bashir and Eric Lorber, [“Unfreezing Iran, and Doing it the Right Way,”](#) *Foreign Affairs*, Mar. 1, 2016.
3. Juan Zarate, [“The Implications of Sanctions Relief Under the Iran Agreement,”](#) *Testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs*, Aug. 5, 2015.
4. Juan Zarate, [“Sanctions and the JCPOA,”](#) *Testimony before the United States Senate Foreign Relations Committee*, July 30, 2015.
5. Eric Lorber and Elizabeth Rosenberg, [“Dollar Diplomacy in Tehran,”](#) *Foreign Affairs*, July 15, 2015.
6. Eric Lorber and Peter Feaver, [“Long View on Iran: Real Work Will Start After the Nuclear Deal is Signed,”](#) *Foreign Affairs*, Nov. 25, 2014.
7. Eric Lorber, [“The Iran Nuclear Deal and U.S. Victims of Iranian Terrorism,”](#) *Testimony before the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights, and Federal Courts*, Nov. 4, 2015.