

IRAN SANCTIONS - GUIDANCE ON DOING BUSINESS WITH IRAN AS IMPLEMENTATION DAY APPROACHES (UK SANCTIONS UPDATE)

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Legal Briefings

Since the announcement of the Joint Comprehensive Plan of Action ("JCPOA") in July 2015, companies have been preparing for the relaxation of sanctions that will allow them to re-enter Iran. As Implementation Day (the point at which some sanctions will be relaxed) approaches, the UK's Foreign & Commonwealth Office (the "FCO") has updated its guidance on doing business with Iran to assist British companies looking to take advantage of this new opportunity. The updated document includes guidance, among other things, on entry into MOUs or conditional contracts relating to currently prohibited activity prior to Implementation Day.

As set out in our [previous briefing](#), the JCPOA's "Implementation Day" will mark the point at which the International Atomic Energy Agency verifies that Iran has implemented key nuclear-related measures described in the JCPOA. At that point, the JCPOA provides for the suspension of certain UN, US and EU sanctions currently in force against Iran. Initial indications were that Implementation Day would occur at some point during the spring of 2016, but recent press reports suggest that it may arrive sooner. Press reports this week quoted Behrouz Kamalvandi, the spokesperson for Iran's atomic energy agency, as saying that Iran's implementation of its commitments would be complete "in the next seven days". EU High Representative Federica Mogherini was reported to have said on 11 January that no date had been set for Implementation Day but that "my expectation is that this day could come rather soon. The implementation of the agreements is proceeding well."

One of the key questions facing companies looking to (re)enter the Iranian market is the extent to which they are able to take preparatory steps before the planned relaxation of sanctions. Steps that could be envisaged range from seeking advice on ways to enter the Iranian market, through to local fact-finding visits and, potentially, negotiating and signing preliminary agreements or MOUs conditional on the planned relaxation of sanctions on Implementation Day.

One key source of information to which companies should have regard is relevant guidance issued by sanctions authorities. Our [previous briefing](#) contains details of the US guidance issued by the Office of Foreign Assets Control covering pre-Implementation Day engagement with Iran. This guidance states that the entry into contracts contingent on the introduction of sanctions relief **can be sanctionable** and that US persons remain prohibited from entering into contracts (contingent or otherwise) involving Iran or its government.

On 30 December 2015, the FCO updated its existing [guidance](#) on doing business with Iran (the "FAQs") to deal (among other things) with pre-Implementation Day engagement with Iran. The December 2015 update to the FAQs introduces a response to a new query: "can UK firms sign MoUs/conditional contracts before Implementation Day (in sanctioned areas and non-sanctioned areas) if they will only be executed after Implementation Day?" The FCO has confirmed that such contingent contracts covering activities which will be permitted under the JCPOA **might** be permitted and that "[Her Majesty's Government] is of the view that it may not necessarily be prohibited for UK economic operators to enter into contracts covering currently prohibited activity where no obligation under the contracts arises until after Implementation Day". However, they note that the permissibility of such a contract "would depend on the exact conditions stipulated in the contract and the activities covered".

The FAQs also note that companies should ensure that the entry into a conditional contract does not otherwise breach any existing EU sanctions provisions. In particular, UK companies should have regard to two specific elements of the current EU regime.

1. The targeted financial sanctions provisions prohibit directly or indirectly making funds or economic resources available to designated persons. Companies should therefore consider whether any contingent contract could be used by a designated person to obtain funds, for example by being used as collateral for a loan or traded with a third party.
2. Trade sanctions on brokering related to certain listed goods and equipment. "Brokering" is defined to include: "the negotiation or arrangement of transactions for the purchase, sale and supply of goods and technology, or of financial and technical services..." The scope of this definition could therefore capture the negotiation of contracts even where those contracts are contingent on the Implementation Day relaxations. The FAQs state that "more general activity such as general discussions, information sharing, promotions and general marketing, may not be caught by the prohibition on 'brokering'".

More generally, the updates to the FAQs demonstrate the UK government's positive attitude towards trade with Iran, noting that the government is supportive, provided Iran adheres to its commitments under the JCPOA. The FCO notes that the government is considering a range of measures to support business in trading with and investing in Iran once sanctions are lifted and that it will focus on unblocking short term obstacles to trade so that business can begin quickly after Implementation Day.

The FCO's guidance therefore offers a generally positive view for UK companies wishing to explore the new opportunities arising in Iran following Implementation Day. Any companies considering new ventures in Iran should, however, seek specific legal advice to ensure that any steps they take are in compliance with existing sanctions and, as far as possible, protect the company in the event of future changes to the sanctions position. In particular, companies would be well-advised to do the following:

- Monitor the sanctions position closely to ensure they are aware of any additional guidance and/or updates on the timing of Implementation Day.
- Ensure that any steps taken prior to Implementation Day are compliant with existing EU and US sanctions as applicable.
- When entering into Iran-related contracts (whether these are contingent contracts signed pre-Implementation Day or contracts entered into once sanctions have been relaxed) include appropriate provisions to deal with the possibility of "snap-back" (the re-introduction of sanctions in the event of significant non-performance by Iran of its JCPOA obligations).
- Companies should also be aware that US primary sanctions, as well as certain EU sanctions, will remain in force even after Implementation Day.

Further guidance is expected to be issued by OFAC and by the EU prior to Implementation Day.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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