

INTERIM DEAL BETWEEN 5+1 AND IRAN: LEGAL ANALYSIS

Introduction

One of the most complicated fields of law is the law of sanctions. It would be almost impossible to handle the legal issues related to the sanctions imposed on Iran without understanding the existing and the invented interactions between the international law, the EU law, the US law, and the law of Iran. We have tried to look at few aspects of these interactions in this News & Analysis.

Our study is just an introduction to the law of sanctions of Iran because this law is:

- a) *Very complex*: It comprises international agreements, executive orders, statutes and regulations, bylaws, court decisions and many other legal sources.
- b) *Policy-oriented*: The law of sanctions is formed and developed in the context of policies adopted by different legal systems. Consequently, in practice the legal concepts and rules may be bent to adapt themselves to practical needs, both at the national and the international level.
- c) *Beyond the ambit of one legal system*: The interactions between the legal systems of the EU, the US, and Iran with the international law sometimes result in unpredictable consequences. For example, the rules and practices adopted by the Iranian banking system are usually tested by the banking law and practice of other countries. So, a banking operation must go through an approval process in different countries before resulting in transfer of money or credit that is a prerequisite of an international transaction. During this testing and controlling processes, we learn about the limits of our very limited knowledge and experience.
- d) *Not yet developed by the legal system of Iran*: Despite almost 35 years of dealing with the international and US sanctions, the legal system of Iran remains reluctant to deal with this vital and serious issue. The only serious work in this field, perhaps, concerns the Resistance Economic Policies recently devised and publicly announced to encourage different Ministries of the Government of Iran to prepare and adopt their plans and strategies for implementation of those policies.

In this News & Analysis we have tried to limit the scope of our study by focusing on practical issues of concern. That is why we will just look at the Joint Plan of Action (JPOA) between 5+1 and Iran in order to analyze its legal consequences. If the current negotiations between the parties result in a final deal, our next News & Analysis that is to be posted on July 22 will analyze the legal and economic consequences of lifting or relaxing the recent sanctions imposed on Iran, especially those with excruciating impacts on economy of the country. The “elements of the final step of a comprehensive solution” as explained in the JPOA will be discussed in its proper time.

Gist of the News

According to *Steptoe.com* on January 20, 2014:

On January 20, 2014, the United States and the European Union relaxed certain economic sanctions against Iran in order to implement the Joint Plan of Action (JPOA) agreement reached between Iran and the “P5+1” countries (consisting of the United States, the United Kingdom, France, China, Russia, and Germany) on November 24, 2013. We have previously advised on the key provisions of the JPOA and its expected impact on existing sanctions.

The United States formally relaxed certain sanctions through the publication of guidance issued by the Department of Treasury, Office of Foreign Assets Control (OFAC). The OFAC materials consist of guidance announcing the temporary relaxation of sanctions (OFAC Guidance); Frequently Asked Questions addressing certain interpretational issues (FAQs); and a Statement of Licensing Policy regarding safety-related activities in support of Iran’s civil aviation industry. As expected, the OFAC Guidance provides that for a period of six months, the United States will not impose certain sanctions relating to Iran’s export of petrochemical products; Iran’s auto industry; the supply to Iran of gold and other precious metals; the supply to Iran of spare parts in support of the safe operation of Iran’s civil aircraft; Iran’s export of crude oil to certain countries; and Trade Sanctions Reform and Export Enhancement Act (TSRA)-related trade activities. The relaxation of sanctions will remain in effect from January 20, 2014 through July 20, 2014.

The European Union formally relaxed certain sanctions through the adoption of *Council Regulation 2014/42/EU and of Council Decision 2014/21/CFSP*, which are both dated January 20, 2014. The amendment of existing legislation was necessary in order to give effect to the relaxation and to have it uniformly implemented by all the Member States. However, the European Union does not contemplate any additional form of guidance to facilitate its implementation. The new EU rules provide that for a period of six months, the European Union will suspend the prohibitions of (i) the provision of insurance and reinsurance and transport of Iranian crude oil; (ii) the import, purchase, or transport of Iranian petrochemical products and on the provision of related services; and (iii) the trade in gold and precious metals. Furthermore, the European Union is increasing the authorization thresholds in relation to the transfers of funds to and from Iran (*emphasis added*).

In this News & Analysis, we will focus on the six subjects underlined above. Comparative nature of the law of sanctions requires that our study cover the US law, the EU law, the International law, and the law of Iran. The explanations related to the US law are mostly taken from the ‘Guidance Relating to the Provision of Certain Temporary Sanctions Relief in order to Implement the Joint Plan of Action’ issued by the US Department of Treasury (“the Guidance”).

1. Pause efforts to further reduce Iran’s oil sales

A. The US law

The Guidance

The website of *knowyourcountry.com* reports that:

U.S. persons may not trade in Iranian oil or petroleum products refined in Iran, nor may they finance such trading. Similarly, U.S. persons may not perform services, including financing services, or supply goods or technology that would benefit the Iranian oil industry.

According to *visualofac.com*:

Under the Iran sanctions, U.S. companies may not be involved with petroleum development in Iran. This includes investment and trade in petroleum products from Iran and Iranian oil and gas companies, plus all petroleum and petrochemical companies identified by the U.S. Department of Treasury as being under Iranian government control.

B. The EU law

Article 11 of the Council Regulation EU 267/2012) states that:

1. It shall be prohibited:

(a) to import crude oil or petroleum products into the Union if they:

(i) originate in Iran; or

(ii) have been exported from Iran;

(b) to purchase crude oil or petroleum products which are located in or which originated in Iran;

(c) to transport crude oil or petroleum products if they originate in Iran, or are being exported from Iran to any other country; and

(d) to provide, directly or indirectly, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance related to the import, purchase or transport of crude oil and petroleum products of Iranian origin or that have been imported from Iran.

2. Crude oil and petroleum products means the products listed in Annex IV.

Council Regulation of 20 January 2014 amending Council Regulation EU No 267/2012 suspended the prohibitions laid down in points (c) and (d) of paragraph 1 as regards the products listed in Annex XI of the latter Council Regulation. In this respect, *Mondaq.com* reported that:

The 20 January Regulation partly suspends Article 11(1)(c) of the Regulation which prohibits the transportation of crude oil or petroleum products if they originate in Iran or are being exported from Iran to any other country. The suspension applies specifically to the products listed in Annex XI to the Regulation, namely, it permits the transportation of "Petroleum oils and oils obtained from bituminous minerals, crude" with HS Code 2709 00, which therefore includes crude oil (hereafter "Petroleum and Crude Oils"). The 20 January Regulation also partly suspends the prohibition at Article 11(1)(d) of the Regulation which prohibits the direct or indirect provision of financing or financial assistance, including financial derivatives and insurance or re-insurance related to the import, purchase or transport of Iranian Petroleum and Crude Oils....

C. The law of Iran

According to a decree of the Supreme Leader of Iran issued on February 19, 2014, the policies concerning the resistance economy shall have the following objectives, as reported by *almonitor.com*:

1. Reduce vulnerability of oil and gas exports through the selection of strategic buyers and involving the private sector in diversifying sales channels;
2. Increase oil and gas value-added exports;
3. Increase oil and gas strategic reserves and production to have an impact on international markets ...; and
4. Increase the share of the National Development Fund from oil and gas export revenues.

The Ministry of Petroleum of Iran has devised the following plans and projects to meet the above objectives:

- a. Plan for increasing the capacity of producing oil and liquefied gas with an emphasis on using joint oil fields;
- b. Projects for increasing production of oil from the joint oil fields of west of Karun to the amount of at least 700 thousand barrels per day;
- c. Improving the structure of the oil contracts of Iran with the objective of attracting technology and enhancing management of national technology especially for successful execution of projects to increase the percentage of recovery of oil.

Objective: Increase of production of oil and liquefied gas to 7.5 million barrels per day till March 21, 2017.

2. Partial repatriation of frozen Iranian assets from oil sales

1. The EU law

Under Article 23(1) of the Council Regulation EU 267/2012:

1. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex VIII shall be frozen. Annex VIII includes the persons, entities and bodies designated by the United Nations Security Council or by the Sanctions Committee in accordance with paragraph 12 of UNSCR 1737 (2006), paragraph 7 of UNSCR 1803 (2008) or paragraph 11, 12 or 19 of UNSCR 1929 (2010).

Article 1 of the Council Regulations 2014 provided a temporary relaxation to the above sanction:

The following Article 28b is inserted:

Article 28b

1. By way of derogation from Article 23(2) and (3), the competent authorities may authorize, under such conditions as they deem appropriate, the release of economic resources or the making available of funds or economic resources, directly or indirectly, to the Ministry of Petroleum as listed in Annex IX, after having determined that those funds or economic resources are necessary for the execution of contracts for the import or purchase of the petrochemical products listed in Annex V, that originate in Iran or have been imported from Iran.
2. The Member States concerned shall inform the other Member States and the Commission, within 4 weeks, of authorizations granted under this Article."

3. Suspension of U.S. and EU sanctions on petrochemical exports

1. The EU law

According to *Mondaq.com* in its report concerning the EU sanctions on petrochemical exports:

EU Council Regulation of 20 January 2014 (the "20 January Regulation") amends the main sanctions restrictions against Iran contained in Regulation 267/2012 (the "Regulation"), with those amendments to be effective until 19 July 2014...

Petrochemical products: Article 1(2) of the 20 January Regulation suspends the prohibitions under Article 13(1) of the Regulation meaning that the purchase, transportation and importation into the EU of petrochemical products from Iran or which originated in Iran is permissible, as is the provision of related financing and (re)insurance."

2. The US law

The Guidance states that the US government (USG) will take the following steps to allow for the export of petrochemical products from Iran:

a. The USG will not impose correspondent or payable-through account sanctions on foreign financial institutions that conduct or facilitate transactions that are initiated and completed entirely within the JPOA Period by non-U.S. persons not otherwise subject to the ITSR for exports of petrochemical products from Iran that are initiated and completed entirely within the JPOA Period.

b. The USG will not impose blocking sanctions under section 2(a)(i)-(ii) of E.O. 13645 with respect to persons that, exclusively during the JPOA Period, materially assist, sponsor, or provide financial, material, or technological support for goods or services to or in support of, the petrochemical companies listed in the Annex to the Guidance.

c. The USG will not impose sanctions under section 2(a)(ii) of E.O. 13622 (as amended by section 16(d) of E.O. 13645) on non-U.S. persons not otherwise subject to the ITSR who engage in transactions exclusively during the JPOA Period for exports of petrochemical products from Iran that are initiated and completed entirely within the JPOA Period.

3. The law of Iran

According to the plan prepared by the Ministry of Petroleum of Iran in accordance with the Resistance Economy Policies, the Ministry shall undertake the following actions or shall carry out the following programs:

a) The Second Leap Program to Increase production and export of petrochemical products;

- b) Timely execution of the projects concerning provision of raw materials for new petrochemical plants (including the project of production and retrieval of natural gas liquids (NGL));
- c) Marketing and exportation of petrochemical products for new markets;
- d) Providing support for development of downstream petrochemical units including through development of technical chemistry-cities; and
- e) Using new technologies for development of petrochemical industry.

4. Suspension of U.S. and EU sanctions on gold and precious metals

1. The EU law

Under Article 15(a) of the Council Regulation 267/2012, it was prohibited:

“to sell, supply, transfer or export, directly or indirectly, gold, precious metals and diamonds, as listed in Annex VII, whether or not originating in the Union, to the Government of Iran, its public bodies, corporations and agencies, any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them”.

As reported by *mondaq.com*, Article 1(3) of the 20 January Regulation suspends the prohibition on the direct or indirect sale, supply, transfer or export of gold, precious metals and diamonds to or from the Government of Iran, its public bodies, corporations and agencies or any person, entity or body acting on their behalf or at their direction and/or controlled by them. The provision of related insurance and/or re-insurance is also suspended.

2. The US law

According to *bipartisanpolicy.org*, National Defense Authorization Act of 2013 Sections 1244 and 1245 (2013) provide that:

- a. Sanctions will be placed on persons who sell, supply, or transfer precious metals or materials used in connection with the energy, shipping or shipbuilding sectors or connected to the nuclear, military or ballistic missile programs of Iran.
- b. The President may waive sanctions for a period of up to 180 days with the requirement that he certifies to the appropriate congressional committees that such a waiver is vital to the national security interests of the United States.

3. International law

According to *Latham and Watkins News Flash* dated November 27, 2013:

The Joint Plan of Action outlines a suspension of existing US and EU sanctions on Iran's exports of petrochemicals, gold, and precious metals. This suspension will extend to sanctions on “associated services,” defined to include insurance, transportation, and financial dealings required to facilitate now-authorized transactions – although it is understood that this definition does not contemplate any relaxation of the prohibitions regarding US person conduct.

4. The law of Iran

Article 4 of the Bylaw on Importation, Exportation and Transactions of Gold, Platinum and Silver (2001) states that importation of gold, platinum and silver in bullion to Iran by natural or legal persons in order to be used for commercial needs and transactions is permissible without any limits. Therefore, persons who own gold workshops and merchants are allowed to import, free from any limits, bullion of gold, platinum and silver into Iran. It is evident that this importation shall be subject to payment of customs fees and duties under the laws of Iran. The paid amounts shall be added to the price of gold, platinum and silver in Iran and shall eventually imposed on end-users. Article one of the same Bylaw authorizes the Central Bank of Iran (CBI) to import or export gold, silver and platinum either directly or through other Iranian banks in order to regulate the market. The CBI shall be kept informed about all the gold, platinum and silver that enter the country through the information to be prepared by the Customs Office of Iran and to be shared with the CBI.

5. Suspension of U.S. sanctions on Iran's auto industry

1. The US law

Section 5 of the Executive Order 13645 authorized the USG to impose sanctions on any person that:

- (a) on or after the effective date of this order, knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran;
- (b) is a successor entity to a person determined by the Secretary of State in accordance with this section to meet the criteria in subsection (a) of this section;
- (c) owns or controls a person determined by the Secretary of State in accordance with this section to meet the criteria in subsection (a) of this section, and had knowledge that the person engaged in the activities referred to in that subsection; or
- (d) is owned or controlled by, or under common ownership or control with, a person determined by the Secretary of State in accordance with this section to meet the criteria in subsection (a) of this section, and knowingly participated in the activities referred to in that subsection.

It is reported by *Presstv.com* that PSA Peugeot Citroen, has posted the largest annual revenue loss in its history, partly caused by the West's sanctions against Iran because PSA Peugeot Citroen stopped its trade with Iran after the enforcement of U.S-led financial sanctions against Iran.

According to *E-Alert of Covington and Burling* dated January 22, 2014, the Administration will not impose any of the "menu-based" retaliatory sanctions under section 6 of Executive Order 13645 on non-U.S. persons for engaging in such transactions during the temporary suspension of sanctions as of January 20, 2014. As a result, according to the report of *Telegraph.co.uk* on January 29, 2014:

Renault has resumed shipments of car parts to Iran Khodro, Iran's domestic auto company, after a limited number of US-led sanctions against Tehran were lifted following the interim nuclear deal in Geneva in November.

6. To license the Supply and installation of spare parts for Iranian civil airplanes, including repairs and safety inspections

The sanctions imposed on Iran prohibited supply and installation of spare parts for Iranian civil airplanes, including repair and safety inspection. According to the Statement of Licensing Policy on Activities related to the Safety of Iran's Civil Aviation Industry:

Specific licenses may be issued on a case-by-case basis to authorize persons to engage in transactions intended to ensure the safe operation of Iranian commercial passenger aircraft that are otherwise prohibited by the Iranian Transactions and Sanctions Regulations, 31 C.F.R. Part 560, and the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. Part 544. The activities that may be licensed include, but are not limited to, the exportation and re-exportation of: services related to the inspection of commercial aircraft and parts in Iran or a third country; services related to the repair or servicing of commercial aircraft in Iran or a third country; and goods or technology, including spare parts, to Iran or a third country.

According to the same Statement:

Applications for specific licenses pursuant to this Statement of Licensing Policy may be submitted online at: <http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx>, or alternatively by mail or courier pursuant to section 501.801 of the Reporting, Procedures and Penalties Regulations, 31 C.F.R. Part 501, to the Office of Foreign Assets Control, U.S. Department of the Treasury, Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220, Attn: Iran Civil Aviation.

According to the *World Service News* on July 11, 2014, the first batch of airplane spare parts have entered into Iran few days ago. *Iran.ahk.de* also reported on April 5, 2014 that Boeing had succeeded in obtaining a license from the US Department of the Treasury to export civil airplane spare parts to Iran.

Two subsidiary issues: Shipping lines, and use of Exchange Houses and Trading Companies

OFAC has issued three advisories to the public on important issues related to the Iran sanctions. A brief study of the following three advisories completes our study of the subject:

1. Global Advisory to the Maritime Industry Regarding the Islamic Republic of Iran Shipping Lines;
2. Advisory on the Presentation of Fraudulent Shipping Documents; and
3. Advisory on the Use of Exchange Houses and Trading Companies to Evade U.S. Economic Sanctions Against Iran.

Islamic Republic of Iran shipping lines (IRISL)

The first advisory issued on July 19, 2012 informs the public about an alleged practice of the IRISL:

The Office of Foreign Assets Control (“OFAC”) is issuing this Advisory to alert the maritime industry that IRISL has recently been operating vessels despite their flags having been revoked. International sanctions, and IRISL’s efforts to evade them through deceptive practices, have led to increased vigilance by the maritime industry and prompted an increasing number of countries to revoke or refuse to issue a flag to vessels in which IRISL or its affiliates have an interest (“IRISL vessels”). For example, Sierra Leone is the latest country to take such action. On June 25, 2012, Sierra Leone took action to revoke its flag for the Irano-Hind vessel AMIN (*emphasis added*).

The second advisory on Presentation of Fraudulent Shipping Documents dated March 31, 2011 warns the public about another alleged practice of the IRISL:

The Office of Foreign Assets Control (“OFAC”) is issuing this Advisory to alert shippers, importers/exporters and freight forwarders to practices used by the Islamic Republic of Iran Shipping Lines (“IRISL”) and companies acting on its behalf to evade U.S. and international economic sanctions. These practices, which hide the involvement of IRISL in shipping transactions, include

- (1) using container prefixes registered to another carrier;
- (2) omitting or listing invalid, incomplete or false container prefixes in shipping container numbers; and/or
- (3) naming non-existent ocean vessels in shipping documents.

Examples of container prefixes that have been used by IRISL and either belong to another carrier or are fabricated include “IRSU” (belongs to another carrier), “XBIU” (belongs to another carrier) and “ALXU” (fabricated).

Examples of container prefixes that are registered to designated entities affiliated with IRISL include “SBAU” and “HDXU.” Documents making use of these practices can be used to facilitate IRISL’s shipping business and the financing of transactions involving merchandise shipped on vessels that have been identified as blocked, including through letters of credit and other trade finance facilities.

Exchange houses and trading companies

The third advisory issued on January 10, 2013 is about the alleged ‘practices used to circumvent U.S. and international economic sanctions concerning Iran. The practices involve the use of third-country exchange houses or trading companies that are acting as money transmitters to process funds transfers through the United States in support of business with Iran that is not exempt or otherwise authorized by OFAC’. Three examples of the alleged practice are explained by the advisory:

1. A trading company attempts to send a payment through the United States on behalf of Company Z with an address in Iran. The payment is stopped for review by the U.S. financial institution's filter due to the Iranian address on the payment, and is ultimately blocked or rejected in accordance with U.S. sanctions. The trading company later resends the funds in a payment of identical or similar value on behalf of Company Z, only this time the company's address has been altered to reflect a non-sanctioned jurisdiction.
2. A specific exchange house or trading company repeatedly attempts to send payments through the United States in apparent violation of U.S. sanctions against Iran, and/or repeatedly conceals or obscures the involvement of individuals or companies located in Iran or U.S.-designated persons in payments routed to or through the United States.
3. The volume or frequency of payments involving an individual exchange house or trading company indicates an uncharacteristic spike in activity, or is inconsistent with the type of business and/or anticipated volume of sales the exchange house or trading company generally conducts.

CONCLUSION

The legal system of Iran, especially its international trade law, has been affected by sanctions imposed on Iran either internationally, or by the USA and the EU. These sanctions have forced or encouraged the legislator, the courts, and the legal doctrine of Iran to adopt specific legislative measures, to interpret them 'flexibly', and to devise a system of legal concepts and rules that could help the economic system of the country to deal with these sanctions 'swiftly'.

International trade experts who are familiar with the international law, the US law, and the EU law need to learn about the law of sanctions of Iran if they are dealing with the sanctions imposed on Iran. It is clear that the sanctions imposed on Iran are just half of the story. The other half is the means and ways found or invented by the Iranian lawyers to cope or to deal with these sanctions. In this News and Analysis, we tried to briefly explain some of the policies and the laws that are controlling and guiding the actions and reactions of the Iranian legal system. Our objective is to provide our readers with deeper analysis of this important issue in our future numbers of the News & Analysis.

The next N&A to be posted on July 22, 2014, i.e. two days after the deadline set for the six months period of the JPOA, is planned to look at the legal questions raised about the JPOA by some of the Iranian lawyers. It will also delve into the legal ramifications of the negotiations, agreements and disagreements of the two parties in order to talk about the possible actions and reactions of the international trade law of Iran.

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