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Caution Here: The New Iran Nuclear Accord and the Temporary Easing of Sanctions Do Not (Yet) Mean that Sunny Relations Lie Ahead

BY SCOTT M. FLICKER & DEVON E. WINKLES

The "first step" agreement reached in Geneva on November 24 between Iran and the "P5+1" (the United States, United Kingdom, Germany, France, Russia and China) appears to be a historic breakthrough in the continuing diplomatic effort to prevent Iran from obtaining nuclear weapons capability. In exchange for Iran's agreement to scale back some enrichment activities and permit international oversight of its nuclear program, the P5+1 are providing what the United States characterizes as "limited, temporary, targeted and reversible relief" from sanctions.[1] During the six-month term of the agreement, negotiators will pursue a more comprehensive and longer-lasting set of terms intended to secure a nuclear-free Iran. Whether that goal ultimately can be reached remains to be seen, and the path along the way will be freighted with uncertainty. All of this adds up to a large flag of caution for those companies, particularly outside the United States, trying to understand whether their current and planned dealings with Iran will benefit from the first thaw in relations between Iran and the United States in more than thirty years.

The first round of sanctions relief has been valued at approximately $7 billion.[2] Approximately $4.2 billion of that will result from unfreezing oil revenue held at foreign banks. The remainder will come from "pausing" sanctions, primarily emanating from the U.S., relating to automobiles, petrochemicals, aviation and precious metals. The European Union will lift its ban on insuring tankers carrying Iranian crude oil. In addition, the U.S. and EU are pledging (to the extent permitted within their political systems) not to impose new sanctions while the interim agreement is in place.

U.S. companies remain subject to the full spectrum of sanctions prohibiting almost all direct and indirect dealings with Iran, and it will be some time before relations between the two countries permit resumption of direct economic ties. The critical burden in reading the "tea leaves" for continued easing of sanctions thus falls on those non-U.S. companies engaging in, financing or insuring trade in those sectors that have been targeted by more recent UN, EU and U.S. sanctions programs directed to the oil, petrochemicals, shipping, energy and automotive sectors.

These companies must proceed carefully, even in areas subject to easing under the new accord, with full understanding that those sanctions programs remain in place and renewed enforcement could proceed rapidly if the current pause fails to yield a more lasting agreement with Iran. Moreover, in the aftermath of such a failure, these companies might find themselves in a far more aggressive

sanctions environment than existed prior to the "first-step" agreement. But for now, these companies may benefit from two principal categories of sanctions reductions.

Pausing Further "Significant Reductions"

In addition to permitting Iran to repatriate an agreed amount of oil sales revenue held abroad, one of the primary levers being used to ease the current sanctions exists under the "significant reduction" exception Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 ("NDAA").[3] This exception provides for waivers from certain U.S. sanctions to those firms and financial institutions of countries engaged in the purchase of petroleum from Iran found by the State Department to have significantly reduced their consumption of Iranian crude oil over the previous six-month period. Since the provision became effective in 2012, twenty countries have used the "significant reduction" exception to engage in petroleum trade with Iran free from the threat of sanctions. To continue to qualify, these countries (and their participating firms) would have been required to show additional declines in consumption. Under the terms of the Geneva agreement, the U.S. will permit those countries to maintain protected status even if their purchases of Iranian oil remain at current levels.

Specific Sanctions Temporarily Suspended

The U.S. and EU will also temporarily suspend sanctions on Iran's petrochemical exports, as well as sanctions on gold and precious metals.[4] The P5+1 will permit the supply and installation in Iran of spare parts, safety inspections and repairs to ensure safety of civil aviation operations. And the U.S. will temporarily suspend sanctions on the automotive industry in Iran, which were implemented by Executive Order in July of 2013. Sanctions will also be eased on "associated services," including insurance, transportation, financing and other services, required to facilitate these types of transactions.[5]

Agreement is Not a Green Light for Iran Trade

As noted, while the "first step" accord represents the first reversal in an inexorable trend of increasing sanctions, it by no means signals a dismantling of the Iran sanctions program. Over the past several years, the U.S. Congress has greatly expanded the list of targeted activities and provided increased authority to sanction entities and individuals. More Iran sanctions legislation remains under active consideration in the Congress, a factor that may have contributed to Iran's willingness to strike a deal at this time. The U.S. will continue to monitor trade with Iran and may even step up enforcement under the unaffected portions of its sanctions program, including prohibitions on trading in blocked property, engaging certain petroleum transactions and supporting Iran's energy sector. These remaining sanctions can be used to assure nervous allies that the U.S. will maintain pressure on Iran.

In this complex environment, those non-U.S. companies seeking to engage in transactions involving the purchase of petrochemicals from Iran, supply or transfer of gold or precious metals to Iran, or supply of goods or services to the automotive sector of Iran should carefully assess whether the proposed transactions fall under the suspension and whether any other sanctions would might still apply.

And in the end, if Iran does not abide by its promises or if the parties otherwise fail to reach a comprehensive agreement, the overall relationship might enter an even darker, stormier phase, in which continued economic engagement becomes nearly impossible.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington, D.C. lawyers:

Scott M. Flicker
1.202.551.1726
scottflicker@paulhastings.com

Devon E. Winkles
1.202.551.1851
devonwinkles@paulhastings.com

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[1] "Fact Sheet: First Step Understandings Regarding the Islamic Republic of Iran's Nuclear Program," (Nov. 23, 2013), available at http://www.whitehouse.gov.

[2] *Id.*

[3] National Defense Authorization Act for Fiscal Year 2012, Pub. L. No.112–81, § 1245 (Dec. 31, 2011).

[4] E3/EU+3 and Iran: Joint Plan of Action (Nov. 24, 2013) available at http://eeas.europa.eu/.

[5] *Id.*