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## Changes to Sanctions on Iran

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**What are the prospects for business with Iran after the June 30 deadline to complete negotiations over Iran's nuclear program? In exchange for limitations on Iran's ability to develop nuclear weapons, the European Union ("EU"), the United Nations ("UN"), and the United States ("US") would lift certain nuclear-related sanctions on Iran. Even with a positive outcome to the next round of discussions on the June 30 deadline, there are several key considerations:**

- US secondary sanctions may continue to restrict Iran's participation in international markets
- Lifting multilateral sanctions on Iran will require coordination and time
- Differences in EU, US, and UN sanctions programs make staggered lifting of sanctions a possibility
- Options for international dispute resolution with Iran are limited

### Is Iran a Prime Untapped Market?

Iran is an attractive potential market with 80.8 million people and a young, highly educated population. Iran's stock exchange, which is valued at \$100 billion, is also drawing interest from investors. The 300 companies on the Tehran exchange make up 28% of Iran's gross domestic product, and some experts expect that number to grow with investment given Iran's infrastructure.

Despite the various sanctions regimes, Iran has the 19th largest economy in the world with a GDP of \$406.3 billion in 2014, and the 2nd largest economy in the Middle East and North Africa region after Saudi Arabia. Countries with similar sized economies are Australia and Turkey. However, in 2012 Australia's exports to the US totaled \$32 billion, and Turkey's exports to the United States totaled \$6.32 billion, while Iran's exports to the United States totaled a mere \$0.02 billion. Similarly, in 2012, US exports to Australia

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totalled \$48 billion, and to Turkey totaled \$12.1 billion, while US exports to Iran totaled only \$0.25 billion.

Iran's largest trading partners in 2013 for imports were the United Arab Emirates, China, India, and South Korea. Imports include industrial supplies, capital goods, food and consumer goods and technical services. Likewise, Iran's largest trading partners in 2013 for exports were China, Turkey, India, Japan and South Korea.

With the second largest natural gas reserves in the world and fourth largest proven crude oil reserves, petroleum accounts for 80% of Iran's exports. The state-owned National Iranian Oil Company is the world's third largest oil company after Saudi Arabia's Aramco and Russia's Gazprom.

### US Secondary Sanctions May Continue to Restrict Trade with Iran

Despite having a readily exportable product – petroleum – since 2010, Iran's oil industry has been restricted by multilateral sanctions from the US, the EU, the UN and other countries, such as Canada and Japan. These sanctions have targeted Iran's petroleum industry by prohibiting the sale, supply, or transfer of Iranian oil or related products or services and the payments related to these transactions. Importantly, these sanctions, particularly the US Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"), in conjunction with the US National Defense Authorization Act (the "NDAA"), subject non-US financial institutions to mandatory sanctions if they conduct significant transactions with specific Iranian institutions, such as the Central Bank of Iran or any OFAC-designated Iranian banks. These sanctions have significantly restricted Iranian oil sales because the global oil industry is largely settled in the US dollar. In 2012, Iran experienced a 27.4% decrease in oil exports from 2011 to 1.5 million barrels a day.

### Effective Lifting of Multilateral Sanctions Requires Coordination

The multilateral nature of current sanctions on Iran is particularly notable because unilateral US sanctions, which existed through the early 2010s, were not fully effective against Iran. Sanctions on Iran became more effective in 2012 when the EU and the US jointly instituted sanctions on payment mechanisms of transactions related to Iran, which isolated Iran from the international banking system. Though the spirit of this collective approach toward Iran appears to have translated into the P5+1 collective negotiations, the question is now whether there will be a coordinated and unified program to lifting some or of all of the sanctions on Iran. The coordination (or lack thereof) of such a program would require consideration of the web of sanctions in place, particularly the US statutory sanctions on Iran, and the various conditions required to lift such sanctions.

In mid-May, Congress passed a bill that gives members of Congress 30 days to review any final deal between Iran and P5+1 and establishes a mechanism for Congress to vote in support or opposition of any deal. Though a subsequent US Supreme Court ruling in

an unrelated passport case points to the president's independence and authority in foreign affairs, under the new legislation, the president would be unable to exercise existing statutory waivers under any US sanctions on Iran, even those under CISADA and the NDAA, while Congress reviews the P5+1 deal. After the 30 day period, if Congress disapproves of an agreement with Iran, the president may ultimately veto Congress's disapproval. However, the president may not waive, suspend, or limit any sanction on Iran for 10 days after such a veto. Afterwards, the president may choose to pursue changes to sanctions under OFAC regulations, such as amending OFAC regulations on Iran or removing certain parties listed on SDN lists.

Even if Congress approves the P5+1 agreement with Iran, the underlying US sanctions regime requires that the president take additional steps that are related to Iran's status as a sponsor of terrorism to lift certain sanctions. Under CISADA, the president can lift the majority of the statutory economic sanctions if the president certifies to Congress that (1) Iran has stopped supporting terrorism and is no longer a state sponsor of terrorism and that (2) Iran is no longer attempting to develop and has dismantled its nuclear, biological and chemical weapons and missiles. To remove Iran's designation as a state sponsor of terrorism, the president must submit to Congress a finding that there has been a fundamental change in the policies of the government, that the government is not supporting acts of terrorism, and that the government has provided assurances that it will not support acts of terrorism in the future. As with the recent removal of Cuba from the list of state sponsors of terrorism, taking Iran off of the state sponsors of international terrorism list will likely take several months at the very least. Similarly, while the president does not need approval from Congress to release frozen assets, OFAC will likely unwind Iranian frozen assets in a similar manner as other sanctions programs, in most other cases returning the assets to the originator after extended review.

CISADA also allows the president to waive sanctions if he decides that "such a waiver is in the national interest of the United States." While CISADA provides little guidance on what constitutes "national interest," the president must send a report justifying a waiver to Congress, and the president would likely feel the need to provide some findings to support a waiver. Waivers can generally be renewed multiple times. However, no president has issued a waiver with respect to Iranian sanctions since 1998, when President Clinton waived sanctions for a \$2 billion contract for Total S.A. of France and its partners to build a gas field in Iran. Similarly, because OFAC's counter terrorism sanctions on Iranian entities are aimed at blocking property and prohibiting transactions with "persons who commit, threaten to commit, or support terrorism," lifting these sanctions seems linked to the question around "state sponsors of terrorism."

### Differences in EU, US, and UN Sanctions Complicate Coordinated Lifting of Sanctions

While the discussions between P5+1 and Iran have been described to involve "nuclear" sanctions, the various sanctions programs on Iran complicate the scope and the timing of the lifting of any or all sanctions on Iran. The UN sanctions may present the easiest program to remove, as the P5, or the permanent members of the UN Security Council, can pass resolutions to remove UN sanctions, which are largely nuclear-focused. The EU sanctions are also narrowly focused compared to the US sanctions but also have payment components to the sanctions program. In contrast, the US Department of Treasury Office of Foreign Assets ("OFAC") has implemented three kinds of sanctions on Iran: (1) non-proliferations sanctions; (2) counter terrorism sanctions; and (3) comprehensive country sanctions, which prohibit almost all US persons' transactions with Iran. The previously noted CISADA and NDAA are secondary sanctions codified by Congress with the goal of discouraging non-US persons' transactions with Iran.

Though news outlets have reported that the UN Security Council will delay lifting nuclear sanctions for at least a month to allow the US Congress to act in the first instance, differences in structures of the sanctions programs complicate effective coordination between the P5+1 for unified lifting of sanctions. One possibility is that the EU or UN sanctions – or both –

are lifted before US sanctions are completely lifted. In such cases, European companies would be able to invest in companies on the Iranian stock exchange or enter into oil-related transactions, while US companies would continue to be restricted by US sanctions. However, as long as CISADA and the NDAA continue to be in place, non-US companies' transactions with Iranian parties would continue to be subject to restrictions under those statutes. Another possibility would be for OFAC to issue general licenses with respect to certain exports to Iran, which often raise interpretive questions on the scope of those licenses. With respect to specific licenses, OFAC is typically slow and unpredictable in granting specific licenses for transaction and therefore should not be relied upon as a quick resolution in lieu of general licenses or amendments to sanctions regulations. As a result, multinational companies and others concerned with more than one jurisdiction will need to take great care with permitted activity under each sanctions program.

### Obstacles for International Dispute Resolution with Iran

While the loosening of sanctions on Iran may eventually lure investments into Iran, the mechanisms for dispute resolution with Iran may be limited. Currently, Iran has entered into over 60 bilateral treaties with other countries. Of the P5+1 countries – China, France, Russia, the United Kingdom, the United States and Germany – China, France, Germany and Russia have bilateral treaties with Iran. Investors seeking to enforce an award against Iran can look to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”), which provides for a mechanism to enforce foreign awards; Iran has been a signatory since 2001. However, Iran is not a member state of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID Convention”), a major international arbitration convention sponsored by the World Bank intended to facilitate legal disputes between international investors and foreign states. Thus investors seeking to resolve disputes with Iran would not be able to use the procedural rules provided under the ICSID Convention. Rather, investors would have to use the ICSID Additional Facility Rules, which govern disputes involving a country not party to the ICSID Convention. As a result, these investors who bring proceedings according to the ICSID Additional Facility rules would not be able to rely on the ICSID Convention, which provides that member-state courts must recognize foreign arbitral awards. Because joining ICSID requires a signature by Iran's head of state and ratification of the ICSID Convention, Iran's membership will depend on the country's internal politics as well as the global political landscape.

### Conclusion

Given that sanctions on Iran will likely be lifted slowly, if at all, after the June 30 deadline, those who wish to do business in Iran should continue to be cautious when engaging with Iranian parties. While the sanctions programs do not prohibit communication with Iranians, US sanctions in particular prohibit a multitude of conduct involving Iran, and practical steps, such as accurate recordkeeping, should be taken to ensure that regulators do not misinterpret permissible contact with Iranian counterparties. In the coming weeks and months, businesses with an interest in Iran should remain apprised of the P5+1 negotiations' progress, as the June 30 deadline will likely be only the beginning of changes to come.

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