

# Switzerland responds to the JCPOA



Revised regulations controlling Swiss exports to, and investment in, Iran came into force in January. Peter Henschel and Dr. Andreas Glarner examine the new Iran Ordinance and its impact for Swiss businesses.

Switzerland began following international developments supporting the resolution of the nuclear dispute with Iran back in January 2014. Consequently, Switzerland initially suspended and then lifted elements of the Iran-related sanctions on 13 August 2015. In October 2015, the decision was taken by the Federal Council to lift Iran sanctions in line with developments under the JCPOA (Joint Comprehensive Plan of Action, agreed between China, France, Germany, Russia, the UK and the U.S., the Representatives of the EU and Iran – commonly known as the ‘Iran deal’).

In November 2015, the Swiss Federal Council requested a full revision of the Swiss Ordinance on Measures against Islamic Republic of Iran (‘Iran Ordinance’). In this new version of the Iran Ordinance, Switzerland lifted most of the Swiss sanctions, enacting the legislation on 17 January to coincide with the JCPOA implementation day.

The remaining Swiss measures are based on the corresponding UN and EU sanctions. The new Iran Ordinance comprises several prohibitions and licence requirements for activities involving arms, delivery systems, equipment for repression and surveillance, as well as activities relating to nuclear goods or services, and Iranian cargo aircraft. Switzerland also maintains financial and travel sanctions on certain Iranian individuals, companies and organisations.

The new Iran Ordinance, enacted on 17 January, is not limited in time and has no automatic snap-back mechanism. However, in the case of Iran’s non-compliance with the JCPOA, the Swiss Federal Council may amend the ordinance.

## Key changes

There are a number of key changes in

the new Iran Ordinance (compared with the previous version of 19 January 2011). The following prohibitions/requirements have been lifted:

- Trade with goods and services for oil-, gas and petrochemical industry;
- Notification requirements for trade with oil and related products as well as financing or participations in this areas;
- Diamond trade;
- Notification requirements for trade

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- with bank notes and coins;
- Export risk guarantee restriction;
- Participation in Iranian businesses;
- Money transfer restrictions;
- Banking services/duties of care regarding business with Iranian banks;
- Iranian government bonds and insurance services

## Overview of new Iran Ordinance

Of note in the new Iran Ordinance enacted on 17 January 2016 are the following restrictions/requirements:

### *Articles 2-5: trade-related restrictions*

- 2 Prohibition of sale, delivery, export or transit of goods, technology or software (listed in Annex 1) for carrier systems, arms or nuclear products;
- 3 Licence requirements for any transaction including nuclear and dual-use goods, technology or

software of Annex 2, as well as any kind of related services including financial services;

- 4 Prohibition of any transaction involving arms or internal repression technology;
- 5: Prohibition of any transaction involving surveillance technology.

### *Article 6: Restrictions regarding Financing and Shareholding*

- 6: Licence requirements for investment/participation in companies active in uranium industry; nuclear industry; goods, technology or software listed in Annex 2 part 1 of GCO (Goods Control Ordinance); goods, technology or software listed in Annex 2-2. There is also a licence requirement for companies in this industry if there is intention to accept a loan or credit facility from Iranian entities or persons.

### *Articles 7 and 8: Asset freeze and prohibition to supply funds or financial information*

- 7 Asset freeze for funds and economic resources owned or controlled by individuals, entities and organisations listed in annexes 5–7, as well as to provide funds or financial information directly or indirectly.
- 8 Notification duty for held or managed frozen assets or economic resources.

### *Articles 9-11: others*

- 9 Prohibition of services on cargo aircraft with known or suspected shipment of prohibited goods.
- 10 Persons listed in annexes 5 and 6 are restricted from travelling to or through Switzerland.
- 11 Prohibition regarding claims from Iranian individuals or organisations, or those acting on behalf of aforementioned, based on contracts which are or were

prohibited or limited by the previous Iran ordinances.

### What should Swiss companies also consider?

Any Swiss companies that are considering activity in Iran should take the following steps:

- Ensure compliance with Swiss regulations;
- Review any other possible regulatory restrictions (e.g. the Swiss Goods Control Ordinance) as well as any potential third-country (e.g. U.S.) regulations imposing restrictions on goods, services, software, technical information etc;
- Review all involved business partners to ensure that none of the parties is listed on any of the national and international sanction lists;
- Exclude any U.S. person (U.S. passport, green card or resident in the U.S.) to avoid exposure to U.S. primary sanctions – or alternatively apply for the necessary U.S. licences;
- Review potential U.S. content in products/software;
- Clarify upfront that banks are willing to support any planned activity;
- Note that transactions should not be executed in U.S. dollars; and
- Ensure contractual set-ups envisage the possibility of a potential immediate change of regulatory framework (snap-back).

### Conclusion

The new Iran Ordinance opens doors for most Swiss companies wanting to enter the Iranian market. However, companies still have to carefully evaluate the regulatory environment. The planned activities may fall under existing Swiss restrictions or third-country regulations with extraterritorial character.

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