



FINANCIAL INTEGRITY  
NETWORK

**The Honorable Juan C. Zarate**

Chairman and Co-Founder  
Financial Integrity Network

Former Deputy Assistant to the President and  
Deputy National Security Advisor for Combatting Terrorism

Former Assistant Secretary of the Treasury  
for Terrorist Financing and Financial Crimes

Testimony before the  
**Senate Committee on Banking, Housing, and  
Urban Affairs**

**Understanding the Role of Sanctions Under the  
Iran Deal**

May 24, 2016

Chairman Shelby, Ranking Member Brown, and distinguished members of the Senate Committee on Banking, Housing, and Urban Affairs, I am honored to be with you today to discuss the role and significance of sanctions in the Iran nuclear deal, the Joint Comprehensive Plan of Action (JCPOA). The JCPOA is an ongoing and unfolding agreement, with significant implications for how the United States continues to leverage its economic and financial influence to affect Iranian behavior and counter its nefarious activity. This is an important moment for the United States to examine Iranian activity around the globe soberly and determine how best to proceed with the agreement and against the Iranian threat.

When the JCPOA was being debated, I expressed deep concerns and reservations about its structure, demands, and effects on U.S. interests, especially in anticipation of increased Iranian belligerence and adventurism. In detailed testimony before both this Committee and the Senate on Foreign Relations Committee, I explained that the JCPOA was fundamentally flawed, in part because it would empower and enrich the regime and ultimately constrain our ability to use the most effective financial and economic tools of isolation to counter dangerous Iranian behavior.

With strategic patience, Iran can march toward a weaponized program with greater capabilities, breakout capacity, and more economic resources, resilience, and connectivity to the global oil markets and commercial system. Even if Iran complies with all elements of this deal, Tehran will end up with an unfettered opportunity to break out and weaponize its nuclear program, overtly or covertly, along with an ability to arm itself and its allies more openly and aggressively. The end state of the agreement takes us far afield from the declared goal of successive administrations at the start of negotiations.

The structure, processes, and nature of this agreement give Iran the benefit of the doubt that it is pursuing a peaceful program, when the onus should remain on Iran to prove the peaceful nature of its program, as constructed in the prior, relevant UN Security Council Resolutions (UNSCRs).

Ultimately, what we negotiated and promised was Iran's reintegration into the global economic system. The JCPOA sacrifices the ability of the United States to use its financial and economic power and influence to isolate and attack dangerous and problematic Iranian activity – beyond the nuclear program. Beyond simple sanctions relief, we negotiated away one of our most important tools of statecraft – the very financial and economic coercion that helped bring the Iranian regime to the table. Though “non-nuclear” sanctions were supposedly off the table, the spirit and letter of the agreement neuters Washington's ability to leverage one of its most powerful tools – its ability to exclude rogue Iranian actors and activities from the global financial and commercial system.

As I explained last year, promising Iranian reintegration into the global system was not possible unless we were willing to defang our sanctions regime and ignore Iranian behavior; rehabilitate the perception of the Iranian regime ourselves; and take the most effective tools of financial isolation off the table.

This is a critical point as Iran continues the range of dangerous activities that have been the subject of sanctions and international opprobrium. In the wake of the JCPOA implementation, these activities have included the following:



1. Iran has conducted repeated ballistic missile tests in violation of UN resolutions, including earlier this month according to Iranian news reports, and promises further tests. The launch in March also coincided with Vice President Biden's visit to Israel.
2. Qassem Soleimani, the head of the Iranian Revolutionary Guard Corps' (IRGC) Qods Force, traveled twice to Moscow in contravention of international travel bans to coordinate military cooperation with the Russian government, to include the delivery of the S-300 system to Iran and defense of the Assad regime in Syria.
3. Iran remains the leading state sponsor of terror and has continued its direct support to terrorist proxies throughout the region, to include Hizballah's activities in Lebanon and Syria, as well as Iraqi Shi'ite militias who were responsible for the deaths of hundreds of Americans in Iraq and are now deployed in Syria to fight for the Assad regime. Iran's support of terrorist proxies is intended to destabilize regional governments allied with the United States, and the Gulf States have uncovered and interdicted Iranian arms shipments to militias. In recent months, international naval forces have interdicted Iranian arms shipments likely headed to Houthi rebels in Yemen.
4. Iran has deployed troops – regular and from the IRGC – to Syria to fight for and defend the Assad regime, with reports of thousands on the ground. Qassem Soleimani continues to appear at key battlefronts throughout Syria, and the Iranians help funnel Iraqi, Afghani, and Pakistani Shi'ite militias into the battlefield.
5. Iran has continued to engage in human rights abuses and the restriction of democratic norms. In the run up to recent parliamentary elections, Iran disqualified thousands of individuals from running<sup>1</sup> and continues to hold the leaders of the Green Movement under house arrest.
6. Iran detained two Iranian-American citizens, a father and son, in October 2015 and February 2016, and continues to hold them. In addition, Robert Levinson remains missing after disappearing on Kish Island on March 9, 2007.
7. On January 12, 2016, Iranian naval forces arrested American sailors at gunpoint, broadcasting the video of their detention, and subsequently mocking the sailors through a reenactment at a rally commemorating the anniversary of the Iranian Revolution. The Iranians detained the American sailors days before the implementation of the JCPOA, and hours before the President's State of the Union address.
8. Iran continues to develop its cyber capabilities and has engaged in malicious cyberattacks against U.S. government sites, the U.S. private sector, and specific individuals. In March 2016, the Department of Justice indicted seven individuals who worked for the IRGC and

---

<sup>1</sup> Sam Wilkin, "Iran excludes most candidates in elite assembly election," January 26, 2016. (<http://www.reuters.com/article/us-iran-election-candidates-idUSKCN0V419V>)



carried out attacks on forty-six (46) American banks (including JPMorgan Chase, Bank of America, Capital One, and PNC Bank), the New York Stock Exchange, AT&T, and the Bowman Dam in a suburb of New York. In February 2014, Iran launched a cyberattack against the Las Vegas Sands Corporation.

Much of this activity is not a surprise, but it cannot be dismissed as simply the bad behavior of a recalcitrant IRGC or extremists within the Iranian system. In the Iranian system, these actions are blessed by the Supreme Leader, designed to promote the interests of the regime, and calculated to test the will of the West.

Importantly, the nature of the regime, its control of the economy, and its willingness to use the financial system to pursue all its goals internally and externally has not changed. The Iranian system is corrupt, lacks transparency at all levels, and is centrally controlled by the regime. This – along with the uncertainty of how the JCPOA will unfold – ultimately creates enormous risk for legitimate international actors and companies considering doing business in or with Iran. This explains why there has not been a wave of Western businesses investing aggressively or operating directly in Iran. It further explains why the Iranian leadership continues to complain that the United States has not satisfied its side of the bargain.

### **Exposing the Risky Nature of the Iranian Regime**

The risks are real for the international business and banking communities, given the nature of the regime, the opacity of its economy, its continued dangerous and threatening activities, and remaining sanctions.

The constriction campaign that brought Iran to the negotiating table was premised on the suspicion of Iran's behavior and use of its financial and commercial system for illicit and dangerous purposes. The U.S. Treasury targeted Iran's banks by using Iran's own conduct – its proliferation activity, support for terrorist groups and Shi'ite militias, and lack of anti-money-laundering controls, as well as the secretive and corrupt nature of the regime itself – as the cornerstone of the campaign. Iran's suite of suspect activities and attempts to avoid international scrutiny spurred the private sector to stop doing business with Iran. No reputable bank has wanted to be caught facilitating Iran's nuclear program or helping it make payments to Hizballah terrorist cells around the world. If they did, they would be caught and sanctioned, with enormous reputational and business consequences. These concerns continue.

This produced a virtuous cycle of isolation that reduced Iranian access to the international financial system more and more over time. The more the Iranians tried to hide their identities or evade sanctions, the more suspect their transactions would appear and the riskier it would become for banks and other financial institutions to deal with them. Over time, bank accounts, lines of credit, and correspondent accounts were shut down. Iran's own actions to avoid scrutiny and obfuscate transactions led to greater financial constriction.

The Iranians deepened their greatest vulnerability. They blended legitimate business transactions with illicit ones by funneling them through similar conduits. The Iranian regime often tried to hide the nature of its transactions and the identities of the government entities



involved. They used front companies, cut-outs, and businessmen to acquire items and goods abroad that were hard to purchase, sanctioned, or tied to their nuclear ambitions or their weapons programs.

At the same time, the Iranian military was taking greater control of the nation's economy. Importantly, the predominant economic player was Iran's IRGC, the elite military and security unit founded in 1979. The IRGC has gained more power and influence over time as the protector and exporter of the revolution and reports directly to the Supreme Leader, Ayatollah Ali Khamenei.

The IRGC is an economic juggernaut, with responsibilities related to the development of weapons of mass destruction, missile systems, and overseas operations. It is deeply involved in the Iranian nuclear program, and its international arm, the Qods Force (IRGC-QF), is responsible for providing support to terrorist proxies and exporting the Iranian Revolution. Between them, the IRGC and its Qods Force are responsible for all the activities – weapons proliferation, terrorist support, and militant activity – for which Iran was sanctioned in the past.

The IRGC – with its vast network – has embedded itself into more industries within Iran, ultimately building what has been called a veritable business empire.<sup>2</sup> The regime and the IRGC's control of "charitable" foundations – known as *bonyads* – with access to billions of dollars of assets in the form of mortgages and business interests for veterans of the Iranian military – served as the baseline of its economic power, along with its ability to construct infrastructure through a corps of engineers. The reach of the IRGC's economic empire now extends to majority stakes in infrastructure companies, shipping and transport, beverage companies, and food and agriculture companies.<sup>3</sup>

In 2006, the IRGC acquired control of the Iranian telecommunications sector, and it began to control more elements of the nation's energy sector, including the development of pipelines and the valuable South Pars oil field. This allowed the IRGC to exclude competition and make it more difficult for legitimate international businesses to operate. Some estimates note that the IRGC controls between 25 and 40 percent of Iran's gross domestic product (GDP).<sup>4</sup> The IRGC is deeply involved in building Iran's infrastructure, pursuing projects such as deep-water ports and underground facilities important to Iran's defense and economy. These projects and industries give the IRGC political power and access to profits and capital.

The IRGC intervenes in Iran's economy through three principal channels: The IRGC Cooperative Foundation (its investment arm), the Basij Cooperative Foundation, and Khatam al-Anbiya Construction Headquarters. The Khatam al-Anbiya (KAA), a massive IRGC conglomerate, was designated by the United States as a proliferator of weapons of mass

---

<sup>2</sup> Frederic Wehrey, Jerrold D. Green, Brian Nichiporuk, Alireza Nader, Lydia Hansell, Rasool Nafisi, & S. R. Bohandy, *The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corps* (Washington, DC: RAND Corporation, 2009).

<sup>3</sup> Emanuele Ottolenghi, *The Pasdaran: Inside Iran's Islamic Revolutionary Guard Corps* (Washington, DC: Foundation for Defense of Democracies, 2011), pages 44–45.

<sup>4</sup> *Ibid*, page 43.



destruction.<sup>5</sup> It is Iran's biggest construction firm and, according to some estimates, "may be its largest company outright, with 135,000 employees and 5,000 subcontracting firms."<sup>6</sup> The value of its current contracts is estimated to be nearly \$50 billion, or about 12% of Iran's gross domestic product.<sup>7</sup> KAA has hundreds of subsidiaries in numerous sectors of Iran's economy including its nuclear and defense programs, energy, construction, and engineering. The company is also involved in "road-building projects, offshore construction, oil and gas pipelines and water systems."<sup>8</sup> EU sanctions against the company will be lifted after eight years, whether or not the IAEA concludes that Iran's nuclear program is peaceful.

These three companies are direct shareholders of almost three hundred known businesses. My colleagues at the Foundation for Defense of Democracies have created a database of these companies and board members and provided it to the U.S. government.<sup>9</sup> As a result of the IRGC's control of the economy – control that has grown over time – together with sanctions relief, the risk of regime control over the economy will grow. In addition, the reality and risks of Iranian sanctions evasion, money laundering, the lack of transparency, and other financial crimes – the subject of international concern and U.S. regulatory action against Iran under the USA PATRIOT Act Section 311 – will increase, not decrease over time.

With the IRGC in control of an increasing share of the Iranian economy, including its infrastructure, telecommunications, and oil sector, risks of doing business in and with Iran will increase. The regime will continue to use its control of the economy not only to further enrich itself but also to suppress internal opposition brutally and ensconce its rule. The concerns over human rights abuses and regime kleptocracy will grow.

As I have noted in the past, sanctions relief will increase risks over time, and Iran's foreign policy will continue to challenge and threaten U.S. interests.

From the U.S. perspective, the blend of IRGC and regime activities created the ultimate vulnerability, particularly the blurred lines between legitimate industry and support for Iran's nuclear program and terrorist groups. Wire transfers to terrorist groups and front companies flooding money into the coffers of the Revolutionary Guard were actions seen to threaten not only international security but also the integrity of the financial system. The nefarious nature of

---

<sup>5</sup> Department of State, Office of the Spokesman, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (<http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm>)

<sup>6</sup> Parisa Hafezi & Louis Charbonneau, "Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer," *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>); Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

<sup>7</sup> Benoît Faucon & Asa Fitch, "Iran's Guards Cloud Western Firms' Entry After Nuclear Deal," *The Wall Street Journal*, July 21, 2015. (<http://www.wsj.com/articles/irans-guards-cloud-western-firms-entry-after-nuclear-deal-1437510830>)

<sup>8</sup> *Ibid.*

<sup>9</sup> Iranian Official Journal, accessed July 20, 2015. (<http://www.gazette.ir/>)



the activities, tied with the IRGC's attempts to hide its hand in many of its economic dealings and operations, made Iran's financial activity inherently suspect. This has not changed.

As part of past efforts to exclude Iran from the financial system, the U.S. Treasury made the argument directly to banks and companies around the world that it was too risky to do business with Iran, since no one really knew who was lurking behind corporate veils, pulling the strings, and accessing bank accounts and funding in Tehran. Would banks be willing to risk their reputations by doing business, even inadvertently, with the IRGC or the Qods Force? Could their compliance officers guarantee that they knew who was behind their Iranian customers and transactions? Was trade with Iran worth the risk of access to American markets and banks?

All of this was amplified by parallel national legislation, UNSCRs, greater scrutiny from authorities around the world, and enforcement actions, led by the United States. The United States created a layered sanctions regime, with overlapping Executive Orders, designations, and eventually legislation, focused on the key elements of the Iranian regime and economy facilitating illicit and dangerous behavior. Each U.S. action spurred private sector and allied responses. The effects of this suspicion and isolation – driven by the private sector's risk calculus and government actions – had a real world impact.

Iranian banks, including its central bank, could no longer access the international financial system; its shipping lines could not traverse ports easily or obtain insurance to operate; and – thanks to congressional and international action – its oil sales and revenues were suspended. Iran had to create workarounds, evasion schemes, and bartering arrangements to continue to do business.

The Central Bank of Iran (CBI) itself has been designated in part because of broader sanctions evasion facilitation on behalf of the Iranian banking system. Treasury issued a finding in November 2011, under Section 311 of the USA PATRIOT Act that Iran, as well as its entire financial sector including the CBI, is a “jurisdiction of primary money laundering concern.”<sup>10</sup> Treasury cited Iran's “support for terrorism,” “pursuit of weapons of mass destruction,” including its financing of nuclear and ballistic missile programs, and the use of “deceptive financial practices to facilitate illicit conduct and evade sanctions.”<sup>11</sup> The country's entire financial system posed “illicit finance risks for the global financial system.”<sup>12</sup> Those concerns persist and are not alleviated by the JCPOA or any Iranian nuclear commitments or actions.

The concerns about the integrity of the Iranian financial system are international in nature. The Financial Action Task Force (FATF), the global standard setting and assessment body for anti-money laundering, counter-terrorist financing, and counter-proliferation financing, has labeled Iran – along with North Korea – “a high risk and non-cooperative jurisdiction.” FATF has

---

<sup>10</sup> U.S. Department of the Treasury, Press Release, “Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern,” November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf>)

<sup>11</sup> Ibid.

<sup>12</sup> U.S. Department of the Treasury, Press Release, “Fact Sheet: New Sanctions on Iran,” November 21, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)



called on its members to “apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran.”<sup>13</sup>

As recently as February 19, 2016, FATF issued a statement warning that Iran’s “failure to address the risk of terrorist financing” poses a “serious threat ... to the integrity of the international financial system.”<sup>14</sup> The international community recognizes that Iran – regardless of the status of its nuclear program – poses a real and serious threat to the integrity of the global financial system.

This financial and economic isolation was premised on the actions and nature of the Iranian regime itself. Since the announcement of the JCPOA, neither has changed. On the contrary, Iran has demonstrated its desire to continue its aggressive activities and support to causes and groups directly antithetical to U.S. interests.

The risks from Iran are real and will increase in an environment of sanctions unwinding under the JCPOA for a variety of reasons.

In the first instance, the unfettered return of funds to the Iranian regime will allow Tehran the flexibility to fund its allies and proxies and flex its muscles in the region. Regardless of amounts available to the regime or percentage used to support terrorist proxies, there will be an infusion of terrorist financing into the global system. The administration has acknowledged that some of the unfrozen funds will go to support terrorist and militant groups, like Hizballah, HAMAS, Iraqi Shi’ite militias, and the Houthis in Yemen. This is certainly the expectation of Iran’s allies. Iran could even use its capital to support the Taleban and al Qaida, with which Iran has maintained a relationship and provided support in the past.

With Iran expanding its reach and presence throughout the Middle East, and IRGC commanders and proxies positioned from the Golan to Yemen, there will be more concern about Iran’s misuse of the economy, the benefits of sanctions relief, and the international financial and commercial system for dangerous and illicit activities. The infusion of cash as a result of sanction relief will relieve budgetary constraints for a country that had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013<sup>15</sup> but was spending at least \$6 billion annually to support Assad.<sup>16</sup>

The regime itself, and its core institutions like the Ministry of Intelligence and the IRGC, will benefit most immediately and deeply. Iran is a theocratic regime that controls the key elements of the economy. The mullahs have used their control of the economy – through *bonyads* and the

---

<sup>13</sup> The Financial Action Task Force, Public Statement, “FATF Public Statement 19 February 2016,” February 19, 2016. (<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html>)

<sup>14</sup> Ibid.

<sup>15</sup> Mark Dubowitz & Rachel Ziemba, “When Will Iran Run Out of Money?,” *Foundation for Defense of Democracies & Roubini Global Economics*, October 2, 2013.

<sup>16</sup> Eli Lake, “Iran Spends Billions to Prop Up Assad,” *Bloomberg*, June 9, 2015. (<http://www.bloombergview.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>)





Supreme Leader's vast financial network, known as Setad or EIKO, and which is worth tens of billions of dollars, to enrich themselves and exert more control over the country.

Despite the notion that the JCPOA resolves all "nuclear-related" concerns, it does not address real concerns over continued Iranian proliferation, to include missile and arms trade. With the allowance for an Iranian nuclear program, infrastructure, and research, the deal will likely increase (not decrease) the risk of proliferation – with potential Iranian trade and exchange with rogue third countries like North Korea.

The dangers, challenges, and risks from Iran on a regional and global scale will only increase over time. In the wake of the JCPOA, Secretary of State Kerry stated that we will need to "push back" against Iran's provocative and dangerous policies and tactics. CIA Director John Brennan said that the United States will "keep pressure on Iran" and "make sure that it is not able to continue to destabilize a number of the countries in the region."<sup>17</sup>

Indeed, the United States will need to push back, especially against increasing risks and threats from Iran. This has been evident in the wake of the JCPOA Implementation Day. To do this, the United States will want to use its financial and economic tools and strategies to make it harder, costlier, and riskier for Iran to threaten the U.S. and our allies. This will mean devising and deploying aggressive strategies to exclude key elements of the Iranian regime and the IRGC, Qods Force, and Ministry of Intelligence from the global financial and commercial system.

### **The Risks of Doing Business in Iran**

On January 16, 2016, the United States, the European Union, the United Nations, and other countries unwound a substantial number of sanctions on the Islamic Republic of Iran as part of their obligations under the JCPOA. Most notably, many EU and UN sanctions, as well as many U.S. "secondary" sanctions, will no longer remain in force. "Primary" U.S. sanctions programs barring almost all U.S. persons from doing Iran-linked business remain.<sup>18</sup>

In the wake of Implementation Day and with remaining sanctions and financial crime concerns, important questions exist regarding what doing business in or with Iran now means and how to evaluate and manage such risk.

As Iran attempts to reintegrate into the world economy, many challenges remain for companies considering doing business in the Islamic Republic, with Iranian counterparties, or supporting customers operating in Iran. Dealing with the spectrum of risk – financial crime, regulatory,

---

<sup>17</sup> "CIA Director Says US Will Keep Pressure on Iran over Nuclear Capabilities No Matter Outcome of Ongoing Talks," *Fox News*, March 23, 2015. (<http://www.foxnews.com/politics/2015/03/23/cia--director---says---us---will---keep---pressure---on---iran---over---nuclear---capabilities/>)

<sup>18</sup> Primary sanctions are those that apply directly to (1) the activities of U.S. persons (including persons located in the United States), (2) non-U.S. persons who cause U.S. persons to violate U.S. sanctions regulations, (3) activities taking place within the United States, and (4) transfers of U.S.-regulated goods, services, and technologies. Secondary sanctions apply to non-U.S. persons where the United States lacks jurisdiction to impose primary sanctions. Such sanctions often include privileging a company's access to U.S. markets on compliance with U.S. sanctions regulations.



reputational, and policy – in the Islamic Republic will require that U.S., European, Asian, Middle Eastern, and other firms clearly understand the patchwork of sanctions that will remain in place on the country, as well as many of the systemic issues, such as corruption, impacting various Iranian business sectors. Companies must also factor into their business decisions the risk that sanctions may “snap back” in the medium or long term.

The risks are amplified by Iran’s long history of sanctions evasion, illicit finance and corruption, and opaque financial and commercial practices. In 2015, Emanuele Ottolenghi produced a report<sup>19</sup> for the Center on Sanctions and Illicit Finance at the Foundation for Defense of Democracies detailing the various illicit and suspicious methods used by the Iranian regime to operate in the global financial and commercial system – including the establishment of sophisticated procurement networks and use of gatekeepers to facilitate financing.

This complicated risk environment has dissuaded most legitimate companies from re-entering and investing in the Iranian economy. While Iranian markets may appear attractive, companies considering transacting with persons in Iran or doing business in Iran are proceeding with caution. The recent parliamentary elections in Iran have not altered this analysis or trajectory fundamentally. Companies considering doing business in Iran or with Iranian persons must contend with at least eight sanctions and financial crimes-related risks:

1. **Primary U.S. Sanctions.** Most U.S. primary sanctions, which broadly prohibit U.S. persons from conducting transactions in Iran, with persons resident in Iran, or with the Government of Iran, will remain in force. These U.S. primary sanctions pose significant risks for any multinational company considering doing business in Iran. U.S. jurisdiction is broad and U.S. regulators can use it to target transactions that may not initially appear to touch U.S. markets or involve U.S. persons.

U.S. jurisdiction applies to all U.S. individuals (including U.S. citizens and permanent resident aliens, wherever located, as well as persons located in the United States) and entities (including any entity located or operating in the United States, organized under the laws of the United States, as well as foreign branches of U.S. entities). Further, the United States may impose penalties (civil or criminal) on any foreign person who *causes* a U.S. person to violate sanctions regulations.<sup>20</sup>

For example, if a Middle Eastern, European, or Asian financial institution conducts transactions on behalf of an Iranian company and the transaction involves a U.S. bank or a correspondent account located in the United States, U.S. regulators will likely have jurisdiction over the transaction and can impose *penalties* on the non-U.S. financial institution. Similarly, if a Middle Eastern exporting company with U.S. offices relies on those offices for back office functions for transactions related to Iran or with an Iranian, the U.S. offices providing back office support will be engaged in the prohibited exportation of services to Iran (and can be subject to OFAC penalties). Where the Middle

---

<sup>19</sup> Report available upon request.

<sup>20</sup> See 50 U.S.C. § 1705.



Eastern entity caused the U.S. offices to provide the services without knowledge of the Iranian nexus, U.S. regulators could impose fines on that Middle Eastern entity for causing the U.S. offices to violate the sanctions.

Even those U.S. companies taking advantage of the new General License H – which permits foreign subsidiaries of U.S. companies to engage in certain activities in Iran – will face significant sanctions-related risks. While these subsidiaries may be allowed to conduct those activities, if the U.S. parent company is involved in any Iran-related business or transactions, it will likely be exposed to U.S. primary sanctions.<sup>21</sup> Multinational companies must build a firewall between U.S. parents and any foreign subsidiary doing business with Iranian persons or in Iran, which may be difficult to effectively do in practice

Because the breadth of U.S. jurisdiction is expansive, companies based in Europe and Asia must be aware that any engagement with Iran may still expose them to remaining U.S. sanctions. Companies, particularly ones operating across borders, have to pay careful attention to whether they may be subject to U.S. jurisdiction, which might pose one of the most pressing regulatory risks that any company considering entering Iranian markets will face.

2. ***Remaining U.S. Secondary Sanctions.*** Foreign businesses considering doing business in Iran will continue to face the risk of violating remaining “secondary sanctions” on Iran, which prohibit foreign financial institutions and other non-U.S. headquartered companies from doing certain business with Iran. While many of the secondary sanctions imposed since 2010 have been unwound,<sup>22</sup> non-U.S. persons are still at risk for violating remaining U.S. secondary sanctions if they engage in transactions with any one of more than 200 people and entities listed as Specially Designated Nationals (SDNs) including the IRGC and its affiliates.

---

<sup>21</sup> Note that U.S. parent companies are permitted to establish policies and procedures that allow these foreign subsidiaries to conduct business in Iran and with Iranian persons, though after the initial decision to re-engage in Iran-related business and the establishment of procedures for doing so, U.S. persons cannot be involved in the activities of their foreign subsidiaries relating to transactions with Iranian persons or in Iran. Similarly, U.S. companies can make their automated computing, accounting, and communications systems available for their subsidiaries conducting permitted activities in Iran. In effect, this permits foreign subsidiaries doing permitted business in Iran to continue to use the same computer systems as their parent companies. Note however that provision does not allow U.S. parents to otherwise be involved in those activities in any way.

<sup>22</sup> Following Implementation Day, non-U.S. entities can now conduct certain transactions with:

- The financial and banking industry in Iran, including maintaining correspondent accounts for non OFAC-designated Iranian financial institutions, the provision of financial messaging services, dealing in the rial and in Iranian sovereign debt, and issuing credit cards for Iranians;
- Insurance-related activities consistent with the JCPOA, including payment of claims to non-U.S. persons;
- The energy industry;
- Shipping, shipbuilding, and port operations;
- Precious and raw/semi-finished metals dealers; and
- The automotive industry, insofar as non-U.S. goods, technology, and services are involved.



These restrictions pose additional and significant risks because under U.S. law, entities owned or controlled 50% or more by designated persons – so-called “shadow SDNs” – are by law also considered SDNs. For example, if a foreign financial institution processes transactions on behalf of an entity that is owned or controlled by the IRGC (whether or not that entity is listed on national or international lists of designated parties), it could be subject to U.S. secondary sanctions. This creates significant risk for financial institutions and other companies wishing to do business in Iran, given that the IRGC controls a significant portion of the economy.<sup>23</sup> This risk is further exacerbated by Iranian attempts to create a “gold rush” psychology in the marketplace and to muddy the waters regarding what restrictions may apply to specific transactions. We should expect Iranian customers and counterparties to alter ownership interests, names of entities, and ownership structures in an attempt to hide links to designated parties. This would match past practices of sanctions evasion and obfuscation of financial transactions in the past.

Determining whether a customer, partner, or counterparty is owned or controlled by a designated person will be a challenging task, further complicated by the fact that the Office of Foreign Assets Control (OFAC) at the United States Department of the Treasury has provided limited guidance on how companies looking to do business in Iran can determine whether they are inadvertently doing business with the IRGC. OFAC recommends only that “a person considering business in Iran or with Iranian persons conduct due diligence sufficient to ensure that it is not knowingly engaging in transactions with the IRGC or other Iranian or Iran-related persons on the SDN List and keep records documenting that due diligence.” Businesses looking to enter the Iranian market must make their own determinations about what constitutes “sufficient” due diligence without more precise guidance and while the structure of civil and criminal penalties for sanctions violations remains in place.

Further, non-U.S. persons still need to be aware of remaining U.S. export controls. For example, restrictions still apply regarding the facilitation of Iranian acquisition or development of weapons of mass destruction. In addition, transfers of certain potential dual-use materials must be approved via the procurement channel established by the JCPOA. U.S. origin goods, technology, and services also are subject to the Export Administration Regulations, which retain prohibitions on exports and re-exports to Iran.

3. ***Remaining EU and UN Sanctions.*** While most EU and UN sanctions on Iran have been unwound, a number of important restrictions remain in place.<sup>24</sup> Under EU law, trade

---

<sup>23</sup> Estimates vary on how much of the Iranian economy is controlled by the IRGC, with many analysts suggesting the IRGC controls as much as 35%.

<sup>24</sup> Under EU law, several engagements previously prohibited, including associated services, are now allowed so long as they avoid dealing with listed Iranian persons:

- Financial, banking, and insurance measures involving Iranian entities—including the provision of insurance to Iranian oil and gas shipments—are now permitted by EU law and do not require prior authorization;
- The import, purchase, swap, and transport crude oil and petroleum products, gas, and petrochemical products from Iran, and the export of equipment to Iran for use in the energy industry are now permitted;
- Engagements with the Iranian shipping, shipbuilding, and transport sectors are no longer restricted;
- Trade with Iran involving gold, other precious metals, banknotes, and coinage is now permissible;



restrictions on the sale, export, provision, or servicing of goods deemed to be “internal repression equipment,” or used for “telecommunications surveillance and interception,” remain in place. Likewise, the EU will continue to impose asset freezes and prohibitions on business and trade with individuals and entities designated for committing human rights abuses and restrictions on the trade of certain items related to nuclear proliferation.

UN Security Council Resolutions that imposed sanctions on Iran for its nuclear program were terminated on Implementation Day. Thus, the United Nations no longer imposes limits on providing insurance and reinsurance products to Iranian entities, and no longer prohibits the opening of new Iranian bank branches or subsidiaries outside Iran (nor is there a mirrored prohibition on entities from UN member states doing the same within Iran). However, a UN arms embargo and UN sanctions on Iran’s ballistic missile program remain in place. Further, some individuals designated by the UN for participating in nuclear and ballistic missile programs remain designated.<sup>25</sup> The recent missile tests and Iranian promises for more simply exacerbate the risk that additional sanctions will be applied.

4. ***Likely Additional Sanctions.*** Businesses interested in entering Iran should be aware that additional designations and sanctions are likely as the United States Congress continues to focus on illicit Iranian behavior and as Iran continues with activities such as ballistic missile testing and the provision of support to terrorist groups. Congress has explored additional sanctions legislation, in particular related to more stringent sanctions tied to the IRGC and its ownership and control interests. Though the administration will resist actions that appear to re-impose lifted sanctions, both the House of Representatives and the Senate appear interested in pursuing legislation that directly or indirectly impacts Iran, including the recent legislation imposing additional sanctions on Hizballah.

The administration has wanted to demonstrate its willingness to sanction non-nuclear Iranian behavior, both to stave off additional congressional action and address Iranian threats to U.S. interests. It has not wanted, however, to impose sanctions or financial measures that would allow Iran to claim that the United States had violated the terms of the JCPOA. Since Implementation Day, the Treasury Department has twice used ballistic

- 
- While the sale or transfer of certain graphite and raw/semi-finished metals to any Iranian entity is no longer prohibited, such activity is subject to an authorization regime; and
  - While the sale or transfer of Enterprise Resource Planning software to any Iranian entity for use in activities consistent with the JCPOA is no longer prohibited, such activity is subject to an authorization regime.

Like the United States, the EU has also delisted certain entities that are thus no longer subject to its asset freeze, prohibition to make funds available, and visa ban. However, certain financial institutions such as Ansar Bank, Bank Saderat Iran, Bank Saderat PLC, and Mehr Bank remain listed by the EU.

<sup>25</sup> Pursuant to the terms of United Nations Security Council Resolution (UNSCR) 2231 (2015) (which endorsed the JCPOA), all prior United Nations Security Council Resolutions mandating sanctions on Iran — namely, UNSCR 1696 (2006), 1737 (2007), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010), and 2224 (2015) — were formally terminated upon receipt of the IAEA’s report verifying that Iran has met its nuclear-related obligations under the JCPOA. Through UNSCR 2231, the UN continues to impose certain restrictions on nuclear, conventional arms, and ballistic missile-related activities involving Iran.



missile-related designations – in January 2016, designating 11 entities and individuals involved in procurement on behalf of Iran’s ballistic missile program, and then again in March 2016, designating additional parties tied to the missile program. Companies are aware that additional Iranian individuals, companies, and related networks could be designated, effectively requiring an end to any financial or commercial relationship.

This risk increases as Iran engages in activities that spur additional U.S. and possibly EU sanctions. In addition to its support to terrorist groups and the Assad regime, its ballistic missile program, and human rights abuses, there are other risks attendant to doing business with Iran. Iran’s link with North Korea, and in particular its cooperation on proliferation and ballistic missile-related issues, increases the likelihood that the United States and the European Union will impose additional sanctions on the Islamic Republic. For example, in late January, France requested the European Union consider imposing additional sanctions on Iran for its continued ballistic missiles activities.

5. ***Iran’s Potential Cheating on the JCPOA.*** If the United States or other members of the P5+1 conclude that Iran is cheating on its obligations under the JCPOA, they can snap back many of the sanctions into place. In the context of any potential snapback, OFAC has made clear that there will be no “grandfather” clause for pending transactions, meaning foreign companies doing business in Iran would need to very quickly wind down their operations, potentially at a significant loss. While the Obama Administration will be unlikely to push for a comprehensive snapback of sanctions unless there is a serious, material breach of the JCPOA, Treasury Department officials have made it clear that they have developed more limited snap back mechanisms in the case that Iran pushes the envelope and engages in activities that violate its obligations. Similarly, depending on the outcome of the U.S. presidential election in November 2016, candidates have expressed a desire to re-impose sanctions on Iran. Such action could pose serious risks for foreign companies doing business in the Islamic Republic.
6. ***Sanctions Violations Enforcement Posture.*** The United States Department of the Treasury has indicated it will continue to aggressively enforce regulations remaining in place. For example, acting Under Secretary of the Treasury for Terrorism and Financial Intelligence Adam Szubin noted, following Implementation Day, that “[w]e have consistently made clear that the United States will vigorously press sanctions against Iranian activities outside of the Joint Comprehensive Plan of Action – including those related to Iran’s support for terrorism, regional destabilization, human rights abuses, and ballistic missile program.” Indeed, the day after JCPOA Implementation Day, the U.S. government imposed sanctions on entities and individuals in the Middle East and Asia for supporting Iran’s ballistic missile program. These types of sanctions will be used to help demonstrate to Iran and U.S. allies that Washington remains prepared to use economic measures to enforce existing sanctions. In addition, Iran’s history of using a variety of financial and commercial measures to hide its hand to evade sanctions and the scrutiny of the international community adds additional risk that sanctions may be applied.
7. ***Regulatory Risk from Multiple Enforcement Agencies.*** From a regulatory and enforcement perspective, it is important to note that the Treasury Department and OFAC



are not the only arbiters of sanctions violations and requirements. The United States Department of Justice, the Securities and Exchange Commission, state prosecutors, and various New York authorities, such as the Department of Financial Services, will all play a significant role in how existing sanctions regulations and related laws are enforced. Local authorities may elect to take a more aggressive enforcement posture with respect to sanctions violations, which would fall outside of the federal government's control. Any company considering doing business in Iran or with Iranian individuals or entities will need to pay close attention to the regulatory and enforcement postures taken by these other government agencies.

8. ***Financial Crimes Risks in Iran.*** Though the recent business attention on Iran has understandably focused on sanctions-related issues, banks and businesses must remember that other financial crimes concerns in the Islamic Republic remain pervasive. In particular, the nature of the Iranian economy and the role of the government within the economy present serious risks related to bribery and corruption, money laundering, and illicit financing. Iran ranked 130 of 175 countries in Transparency International's Corruption Perceptions Index as of 2015.

In 2011, the U.S. identified Iran as a jurisdiction of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act. The FATF first raised concerns over Iran's lack of a comprehensive anti-money laundering/countering the financing of terrorism (AML/CFT) framework in 2007, and it still urges Iran to meaningfully address AML/CFT deficiencies and will consider urging stronger counter-measures later this year. OFAC also has made it clear that activity inconsistent with a wide range of Executive Orders imposing sanctions on Iran (including for providing support to terrorism, undermining the stability of Yemen, and other behaviors) could still subject U.S. and non-U.S. persons to sanctions. Now, the Iranian government has indicated that it will begin to target "financial corruption," and has sentenced Iranian billionaire Babak Zanjani, who helped the regime evade oil-related sanctions, and two others to death for corruption. Attention on the issue of corruption will now grow, as Iran attempts to do business with the world. Any companies looking to do business in Iran must be acutely aware of serious financial integrity risks beyond those posed by remaining sanctions.

As some of the sanctions on Iran are unwound, many European, Asian, and Middle Eastern companies understandably want to re-engage in the Iranian economy. The risk appetites of companies will likely vary by sector, with large oil, aerospace, auto, infrastructure, and equipment companies likely more willing to enter Iranian markets more quickly and with a higher tolerance for risk. For example, Airbus has already agreed to sell Iran 114 airplanes, and Boeing has obtained a license from OFAC to begin commercial discussions with Iranian airlines.

In contrast, other sectors will have a more conservative risk approach. Shipping insurers have already recommended a greater degree of caution. For example, the London Protection and Indemnity Club, a member of the International Group of Protection and Indemnity Clubs, the main association of global tanker insurers, has recommended shipping insurers not enter contracts or fixtures involving previously sanctioned Iranian trade or entities without performing extensive due diligence. Similarly, financial institutions will be more reluctant to re-enter Iranian



markets, given recent enforcement actions targeting their activities and the stricter financial crime compliance environment globally.

A significant challenge will be how financial institutions wary of the risks of doing business in Iran respond to pressure from clients with greater risk appetites to provide financial services for activities in Iran. Iran has already complained that European banks have remained reluctant to engage in commercial activity with Iran, and is now asking the IMF to help assuage such concerns with a report slated for release in 2018. Additional pressure and statements from Iranian leadership, including the Iranian Central Bank Governor, are echoing the charge that the United States is not fulfilling its obligations under the “spirit and letter” of the nuclear deal. The Iranian charge is that the U.S. sanctions and narrative of Iranian risk are still scaring away investment and financial dealings.

The desire in and from Tehran to see the fruits of the nuclear negotiations, especially with more banking activity with the West, will add pressure to those institutions that remain cautious. For example, some financial institutions, including at least one major Japanese bank, have begun processing non-dollarized transactions for clients operating in the Islamic Republic. Others have begun to flirt with the Iranian market, with South Korean commercial bank, Woori Bank, indicating it wants to turn its Tehran presence into a branch office, and Austrian Raiffeisen Bank International (RBI) signing a memorandum of understanding with Iran’s Department of Environment. Importantly, it appears that the Iranians realize that in order to do business legitimately with the West, they must meet the standards demanded in the Western banking world for transparency and accountability. But the Iranians are intent to force the United States and Europe to resolve this issue for them and to mark this as an essential part of JCPOA implementation.

### **Keeping the Burden of Persuasion and Reform on Iran**

In implementing the deal, the United States should not fall into the trap of helping Iran rehabilitate itself. Throughout this deal, the onus should remain solely on Iran to alleviate concerns about its activities, lack of transparency, and failure to meet heightened global standards of financial integrity in the banking and commercial worlds. Iran should not get a free pass on the reforms, modernization, and accountability necessary for acceptance as a legitimate actor in the world – diplomatically and economically. This posture should force the Iranians to turn inward to determine how they can meet international expectations, instead of trying to compel the United States and Europe to alter their standards or dictate to the private sector where and with whom they should do business.

Unfortunately in the desire to appear to be complying with the deal, some U.S. actions have created the impression that the United States and European governments have assumed the burden of reintegration of the Iranian economy into the global system. There are some examples worth noting:

1. There have been reports that the United States might offer Iran the ability to access offshore dollar-clearing facilities, to allow for dollar-denominated transactions and ease Iran’s ability to trade internationally. Though such a maneuver would not allow Iran





direct access to dollar clearing in the United States, it could be structured in a manner to create the same effect. Iranian trade would then be facilitated in a way not contemplated in the JCPOA. The United States should not be offering special exemptions or measures to assist Iran with access to dollars while Iran remains a leading state sponsor of terror, subject to serious sanctions, and designated as a “primary money laundering concern.”

In addition, if the United States were to provide Iran with access to U.S. dollars for offshore transactions, then the United States would lose the ability to threaten this access in response to a range of Iranian provocations in the future. In effect, by couching access to the Western financial system and the U.S. dollar as part of the nuclear deal, the United States would no longer be able to cut Iran off from this benefit if it significantly increased its support for terrorism, as Iran would claim that such an attempt at coercion would violate the letter of the nuclear agreement. This would further give away coercive financial leverage without any bargained-for concession by Iran. Iran’s underlying conduct outside of the nuclear issue was not on the table during negotiations. The United States and the international community should not open the door to broad benefits of relief from financial exclusion that the Iranians neither negotiated nor deserve.

2. The U.S. government has been sending delegations around the globe to clarify existing sanctions and obligations and apparently to explain how business may be undertaken with the Iranian regime. Though regulatory clarity is important, the United States should not be launching road shows attempting to dampen concerns about the risks of doing business in or with Iran, especially when those risks are increasing. The burden instead should fall on Iran to demonstrate to governments, the private sector, and the markets that its activities, policies, and use of its financial and commercial system are legitimate, transparent, and meet international standards. Iran should be concentrating on necessary reforms, hard policy decisions, and its own road shows to prove that it can be trusted as a responsible international player. Until then, Iran will be seen as a risky jurisdiction in which to invest and do business. It should not be the responsibility of the United States or Europe to prod businesses and banks to enter the Iranian market.
3. The United States has announced that it plans to buy heavy water from the Iranian nuclear system, thus enabling Iran to produce more heavy water than it needs and facilitating the economic uses of a nuclear program built in violation of previous international sanctions. This also legitimates Iran’s nuclear program in a way that is not obligated in the JCPOA and promotes Iran’s expanded nuclear program. Aside from not encouraging and promoting the Iranian nuclear program beyond what is required in the JCPOA, the United States should not be serving as Iran’s market safety valve for the sale of heavy water, displacing existing supplies to the United States from legitimate suppliers like Canada and Argentina. As with any Iranian economic activity, Iran should be forced to deal with the international markets on its own, meeting relevant market and regulatory demands directly. The United States should not usher Iran into the global economy artificially, especially not in the nuclear markets, and allow Iran benefits that were not negotiated in the JCPOA and for which the international community has not received consideration.



4. It has been important that the U.S. Treasury and other U.S. government officials have reiterated the commitment to enforcing existing sanctions vigorously and maintaining the ability to use the tools of financial coercion to affect Iranian behavior. These commitments, however, are undercut when the United States modifies its messaging to suggest that our sanctions regime should not constrain or affect the risk calculus of the private sector. Though intended to demonstrate that the United States is upholding its end of the JCPOA bargain, softened language appears to suggest that the United States is already backing away from its willingness to use existing sanctions against Iran. Recently, Secretary Kerry met with European banks and noted that European businesses should not use the United States as an excuse not to invest in Iran. European businesses should be encouraged to listen to and account for U.S. regulatory, enforcement, and policy concerns – not ignore longstanding and legitimate concerns.

The United States cannot alter this commitment to enforce sanctions, weaken its call for heightened global standards for financial integrity, or jump every time Iran complains about its inability to access the global financial system. The United States cannot mute itself or its willingness to use some of our most effective financial and economic tools against dangerous Iranian activity. Unfortunately, the United States has quieted its voice too often in the face of Iranian aggression and violations in the hopes of a nuclear deal – from the deafening silence as the Green Movement was crushed brutally to current vacillation on whether recent ballistic missile tests violate the letter and spirit of the JCPOA and the related UN Security Council Resolution 2231.

The United States cannot be in the position of rehabilitating the Iranian economy and image. This proves highly problematic and undermines U.S. credibility and power internationally if this is done without concern for the underlying issues and conduct that drove its isolation in the first place – proliferation, support for terrorism, human rights violations, and development of weaponry and programs of concern controlled by the IRGC. It is the threat to the international financial system of the illicit and suspect flows of money that is the baseline for Iran's isolation. Iran should be forced to deal with these risks directly.

### **The Strategic Use of Sanctions Moving Forward and Targeted Unwinding**

The United States should treat the JCPOA and its implementation as an ongoing process, where sanctions and sanctions unwinding form a strategic part of U.S. and international efforts to enforce the deal, maintain economic and financial leverage, push back on dangerous Iranian activity, and force the Iranians to make hard decisions about their role in the world. Sanctions and financial measures in this regard are not just tools that were used to get Iran to the table, but are essential levers of influence moving forward. Indeed, how sanctions are deployed and unwound could affect the internal dynamics of Iran in furtherance of U.S. and allied interests.

In the first instance, the United States should not shy away from the use of sanctions against Iranian behavior and underlying conduct that is already subject to sanctions. The U.S. government has the authority and ability to apply sanctions for the full suite of nefarious Iranian behavior – to include human rights violations and malicious cyber activity. This includes



enforcement of existing sanctions and application of new measures to constrain Iranian behavior and discipline the international system. The United States retains the power and credibility to do this. The effects of U.S. actions are global and set the international norms for acceptable behavior. Absent U.S. action, attention, and enforcement, Iranian provocations will likely not be met with credible international push-back. If U.S. financial and economic measures are based on facts and can be explained credibly as furthering U.S. legal requirements and international norms, the impact will remain global and the effect real.

In addition, the United States should not diminish its ability to use targeted unwinding tools to force Iran to make hard choices about its behavior in the international system. If implementation of the JCPOA is viewed as an ongoing and long-term process, then the United States should be thinking creatively about how to use these targeted unwinding measures to effectuate its strategic goals.

The JCPOA attempts to unwind sanctions tied to the nuclear file, but the unwinding is difficult and complicated given the interconnected nature and effects of such sanctions. In some instances, the unwinding can be managed. In many other cases, the unwinding schedule and some of the scheduled delistings implicate actors and activities beyond the nuclear file, complicating our ability to easily unwind sanctions and threatening our ability to impose coercive leverage in the case of Iranian malfeasance beyond the nuclear file. The delisting of some key Iranian entities that have facilitated a range of Iranian illicit activities and the cessation of sanctions prohibitions against them, especially terrorism financing, raises serious challenges to U.S. ability to affect Iranian behavior of concern.

There is no question trying to unwind any effective and global sanctions regime is difficult. Unwinding intertwined, conduct-based sanctions for a regime that uses its economy for various dangerous and nefarious activities of international security concern is incredibly challenging. But tearing down sanctions bluntly – particularly when pulling down the nuclear sanctions also threatens to pull down U.S. leverage related to issues of missile proliferation and terrorism – without addressing that underlying and related conduct creates real risks and does damage to the ability to use the very same tools against Iranian individuals and entities in the future.

In light of the risks of doing business with Iran, the reintegration of Iranian banks into the global financial system, including via the SWIFT bank messaging system, presents perhaps the most concerning issue. For example, Bank Sepah was designated under U.S. authorities not simply because of its facilitation of the Iranian nuclear program and procurement but also its role in financing arms and missile deals, activities that should remain a concern and are subject to UN sanctions.

The JCPOA explicitly called for the lifting of sanctions on “[s]upply of specialized financial messaging services, including SWIFT, for persons and entities ... including the Central Bank of Iran and Iranian financial institutions.”<sup>26</sup> The European Union lifted SWIFT-related sanctions for the Central Bank of Iran and all Iranian banks<sup>27</sup> originally banned from SWIFT.<sup>28</sup>

---

<sup>26</sup> “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 19(iv).



By allowing most of the Iranian banks back into the international financial order without dealing with their underlying conduct or controls, the United States and the international community assumed the good faith of the Iranian regime. This has heightened the risk that the Iranian banking system would be used by the regime to finance and facilitate other issues of significant national security concern.

Instead, we should consider a process of targeted unwinding that meets our strategic goals – and could even provide Iran relief if it is willing to abide by international rules and norms regarding transparency and accountability of its financial system. For Iranian banks, this would mean a stricter, monitored reentry into the financial system, given continued concerns about their facilitation of illicit and dangerous activities by the regime. This could be effectuated through a program – led by the European Union – to create a monitoring system through SWIFT (akin to the Terrorist Financing Tracking Program) to monitor all Iranian cross-border transactions and allow for the tracking and analysis of suspect Iranian banking activities. Instead of the blunt unwinding measure of plugging all Iranian banks (minus a few) back into the global banking messaging system, an aggressive monitoring program could provide a “halfway” house for reintegration of Iranian banks over time while managing the risk of more Iranian money traversing the banking system.

This type of system might actually force the Iranian regime to make some hard choices about not using its banks to facilitate illicit or dangerous activities that would be subject to monitoring and exposure. A system of targeted unwinding could advance the strategic goal that Iran not misuse its economy and financial system to benefit terrorists, proxies, and accelerate its nefarious international ambitions and capabilities. If such a system could prove effective, it might spur responsible reform within Iran as it tries to reintegrate into the global system. This in turn would give global banks and businesses some assurance that the Iranian banking system is maturing and under some degree of scrutiny. Scrutiny over such financial activity and reforms could help alleviate concerns by legitimate banks that they are being exposed to dangerous risk, especially if legitimate and trusted governments agencies (like financial intelligence units) are involved in the monitoring. This, in turn, could blunt Iranian claims that the United States was de facto continuing the imposition of sanctions by scaring Western banks away from doing business in Iran or with businesses interested in doing business in Iran.

---

([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/iran\\_joint-comprehensive-plan-of-action\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf))

<sup>27</sup> On Implementation Day, the EU lifted sanctions on the Central Bank of Iran and Bank Mellat, Bank Melli, Bank Refah, Bank Tejarat, Europaische-Iranische Handelsbank (EIH), Export Development Bank of Iran, Future Bank, Onerbank ZAO, Post Bank, and Sina Bank. Separately, the EU also lifted sanctions on Bank Sepah and Bank Sepah International. On Transition Day, the EU will also lift sanctions on Ansar Bank, Bank Saderat, , and Mehr Bank. See Attachment 1, parts 1 and 2 and Attachment 2, parts 1 and 2. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_1\\_attachements\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf))

<sup>28</sup> The Council of the European Union, “Council Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures against Iran and Repealing Regulation (EU) No 961/2010,” *Official Journal of the European Union*, March 24, 2012. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406807228342&uri=CELEX:32012R0267>)



The current tension with Iran over the unwinding of sanctions underscores that the implementation of the JCPOA and “negotiations” with Iran will be ongoing. In this regard, we should take full advantage of the leverage we have and devise new mechanisms to ensure we meet our strategic goals. We should be reinforcing this power and capability, not undermining it.

### **Faulty Assumptions**

The current state of sanctions unwinding reveals certain misconceptions about the state of play regarding the JCPOA and the position of the United States to strike a better bargain. There are many assumptions articulated at the time that need to be questioned, and there are a few that are clearly incorrect. It is important that this be clarified as the JCPOA unfolds and expectations and precedents are formed.

At the time of the negotiations, the financial and economic pressure campaign was not faltering, and the U.S. was not at risk of losing its ability to squeeze and influence Iran in the short term.

The regime and the economy were affected by cascading isolation and falling oil prices. During the period of the negotiations, the pressure was increasing – belying the notion that the United States was facing a cracking sanctions coalition and system. Quite the opposite was occurring. The ayatollahs’ concern over the strangulation of the Iranian economy – in concert with lingering fears of the ghosts of the Green Movement – is ultimately what brought them to the negotiating table and launched them on the charm offensive that allowed them to turn the tables on the West. The sanctions pressure was not sustainable for the regime. President Rouhani admitted that these measures threatened to drive Iran into an economic “Stone Age.”

The regime needs access to capital, new technologies, and connectivity to the oil markets and the global economy to maintain and sustain itself. That is what it lost over the past decade. It is what the Iranians negotiated to regain in the JCPOA. This is now the source of Iran’s most significant complaint.

There was also never a neat divide between “nuclear” and “non-nuclear” sanctions when the constriction campaign launched in 2005. This campaign was intended to use the illicit, dangerous, and illegitimate nature of Iranian activity as the driver for unplugging Iran from the global financial and commercial system. This is something I tried to articulate in my testimonies before the Senate last year. The sanctions were focused on the fact that the Iranians were leveraging their own economy to profit the regime and allow the construction of a suspect nuclear infrastructure and ballistic missiles, support terrorists and militias, strengthen Assad in Syria, engage in financial obfuscation, and perpetrate massive human rights abuses. Other than the nuclear issues, the underlying conduct was not on the table during the JCPOA negotiations. Without resolution of those issues, the triggers for financial isolation remain. Thus, we are witnessing the difficulty of unwinding sanctions that have been triggered by underlying Iranian conduct that has yet to change.

Moreover, the JCPOA has not resulted in the diplomatic unity promised or rewards for good behavior. Russia has quickly made its own deals and pacts with Iran – expanding coordination and cooperation in Syria and Iraq and signing deals for weapons systems. The United States has



been forced to assuage skeptical allies in the Gulf and Israel and mend diplomatic wounds. European countries are engaging at different levels and pace with Iran, sending mixed messages about what is expected by the international community. With the varied sanctions regimes, American companies are disadvantaged by the commercial opening provided to European companies. Legitimate companies concerned about real and reputational risks sit on the sidelines while less responsible actors dive into the Iranian market. Our closest allies are worried, and the responsible actors are losing market opportunities.

Finally, it is not clear that the JCPOA has opened a channel through which Iran can constructively engage with the international community and address the other serious concerns about its dangerous policies and behavior. On the contrary, Iran appears intent and willing to exacerbate those risks and tensions across the board. The JCPOA may have emboldened the regime to take more aggressive steps, exacerbating concerns among U.S. allies that Iran is being given free rein to expand its influence and threaten their interests. Just as important, the United States seems not to have a plan as to how to use the JCPOA implementation to drive broader strategic goals of constraining Iranian adventurism and sparking internal reforms.

The Iranians need to decide that they are willing and able to address those issues of concern and change their behavior – to include issues of financial transparency, terrorist financing, and corruption. The Iranians must find tangible ways to demonstrate that necessary reforms are possible before they can expect to be treated as legitimate actors in the financial and commercial systems. This is the source of their isolation.

## **Conclusion**

In the short term, the aversion to the risks of doing business in and with Iran will continue, especially if Iran continues to demonstrate an unwillingness to stop its provocative and dangerous activity. More importantly, Iran will not be in a position to join the international community completely, if it does not demonstrate clearly that it can engage as a trusted and transparent actor in the financial system. The onus to prove this should be on Iran's shoulders. Any complaints about lack of access to capital, markets, or investment should be posed to the clerical regime. Iran has to decide whether it will abide by international standards, norms, and obligations. Absent this, it will remain a risky environment in which to do business, no matter how attractive the opportunities.

The United States must be willing to use its financial and economic toolkit to constrain dangerous Iranian behavior and encourage responsible Iranian activity. This means forcing Iran to deal with the demands of the international market place on its own and addressing the underlying conduct that has proven problematic and risky. The United States must continue to isolate rogue Iranian activity – and that of its proxies – through the use of sanctions and financial measures that exclude such actors from the global financial and commercial system. The United States cannot abandon its use of these tools, especially as the JCPOA unfolds and Iran continues to test the bounds of U.S. will. The United States will need to rely on sanctions and financial measures even more in the future, and we should be doing everything we can to reinforce the strength and endurance of these powers – against Iran and other rogue actors in the international system.

